



REGULATORY OVERSIGHT OF COMMUNITY-BASED RESIDENTIAL FACILITIES

Wisconsin Department of Health Services / Division of Quality Assurance

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The Department of Health Services (DHS), Division of Quality Assurance (DQA) regulatory role is to ensure that community-based residential facility (CBRF) providers are following the law as required by state statute and administrative code. The protection of vulnerable adults is a top priority for DHS.

CBRFs are defined by state statute as a place where five or more unrelated people live together in a community setting. Services provided include room and board, supervision, support services, and may include up to three hours of nursing care per week.

DQA is responsible for administering Wis. Admin. Code [ch. DHS 83](#) as required by [Wis Stat. ch. 50](#), which governs the licensure of a CBRF. In addition, all CBRFs must adhere to Wis. Admin Code chs. [DHS 12](#) and [DHS 13](#), Caregiver Background Checks and Reporting and Investigation of Caregiver Misconduct.

Fit and Qualified Review

Prior to licensing a CBRF, DHS must determine if the applicant is fit and qualified to operate a CBRF. Wis. Admin. Code, § DHS 83.07 identifies the following standards for DHS to consider when making this determination.

Compliance History

Compliance history with Wisconsin, any other state's licensing requirements, and with any federal certification requirements, including any license revocation or denial

Criminal History

Arrest and criminal records, including any of the following:

- Crimes or acts involving abuse, neglect, or mistreatment of a person or misappropriation of property of the person
- Crimes or acts subject to elder abuse reporting under Wis. Stat. § [46.90](#)
- Crimes or acts related to the manufacture, distribution, prescription, use, or dispensing of a controlled substance
- Fraud or substantial or repeated violations of applicable laws and rules in the operation of any health care facility or in the care of dependent persons
- A conviction or pending criminal charge which substantially relates to the care of adults or minors, to the funds or property of adults or minors, or to the operation of a residential or health care facility

Financial History

- Financial history and financial viability of the owner or related organization
- Outstanding debts or amounts due to the DHS or other government agencies, including unpaid forfeitures and fines

Community Advisory Committee

Before licensure, Wis. Stat. § 50.03(4)(g) requires an applicant for CBRF licensure to make a good faith effort to establish a community advisory committee consisting of representatives from the proposed CBRF, the neighborhood in which the CBRF will be located, and a local unit of government. The community advisory committee provides a forum for communication for those persons interested in the proposed CBRF. The advisory committee is to continue in existence after licensure to make recommendations to the CBRF regarding the impact of the CBRF on the neighborhood. DHS is required to determine compliance with this requirement prior to and after initial licensure.

Inspections

DHS licensing specialists regularly inspect CBRFs via unannounced surveys. Timeframes for inspections are not established by state statute or administrative rule. It is DHS policy to survey CBRFs within two years of the preceding compliance survey. While the agency goal is to conduct surveys at least every two years, workload priorities are managed to ensure that complaints are investigated first.

Complaints

In addition to conducting regular surveys to determine compliance with state statute and administrative code, DHS is responsible for investigating all complaints over which DHS has jurisdiction. Complaints are triaged and investigated based upon the severity of the allegation. All complaint investigations are unannounced. If any individual believes that a CBRF has violated the statute or administrative code, that individual has the right to file a complaint.

There are several ways to file a complaint with DQA.

- To email, send your complaint to DHSwebmailDQA@wisconsin.gov?subject=Complaint.
- To call toll free, dial 1-800-642-6552.
- To contact the appropriate DQA Regional Office directly, refer to the [Bureau of Assisted Living regional office map](#).

Enforcement

Wis. Stat. ch. 50 grants authority to DHS to impose sanctions and penalties if a CBRF does not comply with applicable laws and regulations. To promote the health, safety, and welfare of residents and compel facilities to comply with regulatory requirements, DHS may impose the sanctions or penalties afforded by statute or administrative code.

The enforcement process begins with a Statement of Deficiency (SOD). The SOD is a written report that follows a survey or investigation in which the surveyor documents facts that show noncompliance with the regulation. The SOD is a legal record of the surveyor's findings and forms the basis for enforcement determination.

DHS relies on a system of progressive sanctions as directed by Wis. Stat. § 50.03(5g) that, depending on the severity of a violation, is targeted to correct the problem. The DHS enforcement philosophy for Assisted Living facilities is multifaceted, incorporating the following objectives:

- Apply sanctions that address the cause of violations so facilities can improve systemic concerns, correct deficiencies and sustain compliance.
- Employ a system of progressive sanctions (as shown below) that, depending on the severity of the violation, is targeted to correct the problem and compel compliance with regulatory requirements. For example, if the training or qualifications of caregivers contributed to a violation, the DHS may order a directed plan of correction (DPOC) that requires the provider to obtain specific training for staff from a qualified program or instructor.
- Aggressive action against facilities with persistent or serious non-compliance
 - Repeated and uncorrected violations almost always include forfeiture.
 - Violations that result in adverse outcome to residents or have a potential for adverse outcome usually include forfeiture and/or a directed plan of correction.
 - Multiple violations will typically result in forfeitures, orders/DPOCs, an order prohibiting the admission of new residents, and may include an order of Impending Revocation.
- Collaboration with other agencies (including advocates, counties, managed care organizations, the Department of Safety and Professional Services, the DHS Office of Inspector General, the U.S. Department of Justice, the Office of the Attorney General, and Department of Justice) includes:

- Notices of violations are sent to counties and managed care organizations for their information in making placement decisions and to increase oversight and accountability for facilities under contract.
- Referrals of caregiver misconduct against credentialed staff, i.e., nurses and physicians, are made to the Department of Safety and Professional Services.
- Referrals of serious non-compliance cases, involving health care fraud or warranting criminal investigation, are made to the Office of Inspector General, the U.S. Department of Justice, the Office of the Attorney General, and the Wisconsin Department of Justice.

Progressive enforcement sanctions that can be taken by the DHS include:

- Order to comply with the regulation
- Order to submit and comply with a plan of correction
- Order to provide training, trainer approved by DQA
- Order to comply with a plan of correction directed by DHS
- Order to obtain consultation from an external expert or professional
- Forfeiture assessment (\$10 – \$1,000/day)
- Order to admit no new or additional residents until DHS verifies correction
- Corporate Integrity Agreement with the operator detailing their plans for sustained compliance (These agreements typically include face-to-face meetings with the operator, benchmarks for completing specific corrective action, onsite monitoring by a third-party, and a quality assurance and improvement plan developed by the facility.)
- Impending revocation of license
- Revocation of license

License revocation is considered and may be taken when a facility:

- Fails to correct non-compliance that results in harm to residents or presents a high potential for harm
- Shows substantial or persistent non-compliance with the regulations, for example, repeat violations or uncorrected violations that create conditions of risk for residents
- Shows a pattern of serious non-compliance that represents a risk to health, safety, or welfare of residents
- Has operational or systems problems that create or may create adverse outcomes for residents

DHS relies on a system of progressive sanctions that, depending on the severity of a violation, is targeted to correct the problem. However, when violations are extensive, repeated, or egregious or when other sanctions have proven ineffective, license revocation is the best assurance for resident safety and protection.

Nonetheless, if a facility corrects the violations and is able to achieve and sustain compliance with the requirements, revocation may not be the most appropriate sanction. Many residents are vulnerable due to their medical conditions, frailties, and physical, psychological, or cognitive disabilities. Relocation can be traumatic and detrimental for residents with frail or unstable conditions and this is an important consideration made by DHS. Information about resident relocation requirements is found at the following link:

<https://www.dhs.wisconsin.gov/relocation/index.htm>

Resources

Additional information about the survey process and enforcement guidelines for assisted living facilities, including CBRFs is available at:

- Assisted Living Survey Guide:
<https://www.dhs.wisconsin.gov/regulations/survey.htm>
- Information for consumers and their families regarding CBRFs is available at:
<https://www.dhs.wisconsin.gov/guide/cbrf.htm>
- Information about making a complaint regarding a CBRF or a caregiver is available at:
<https://www.dhs.wisconsin.gov/guide/complaints.htm>