

Division of Quality Assurance

Guidelines for

Assisted Living Enforcement



STATE OF WISCONSIN
DEPARTMENT OF HEALTH SERVICES
Division of Quality Assurance
Bureau of Assisted Living

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**DIVISION OF QUALITY ASSURANCE
GUIDELINES FOR ASSISTED LIVING ENFORCEMENT**

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Introduction

In recent years, Wisconsin has experienced a decline in nursing home occupancy and experienced growth in assisted living facilities. Concurrent with the growth in community residential settings there has been an increase in the acuity of care required by residents. Many providers successfully comply with licensing requirements and meet the complex needs of residents. However, other providers may not adequately meet the service needs of residents and may not maintain compliance with fundamental and essential regulatory requirements.

Wisconsin State Statute (Chapter 50) and Wisconsin Administrative Codes grant authority to the Department of Health Services (DHS) to impose sanctions and penalties if regulated assisted living facilities do not comply with applicable laws and regulations.

To promote the health, safety, and welfare of residents and compel facilities to comply with regulatory requirements, the Division of Quality Assurance may impose the sanctions or penalties afforded by statute or administrative code. These sanctions or penalties are typically categorized as “enforcement.”

In March 2003, the Division of Quality Assurance (DQA) developed *Enforcement Procedures and Guidelines* to achieve the following objectives:

- Establish clear, specific criteria for enforcement analysis and decisions
- Improved consistency among regional offices, statewide
- Improved regulatory compliance
- Provide guidance for field staff and supervisors
- Improved quality of care and quality of life for residents
- Implementation of fair and reasonable sanctions
- Establish an efficient system for issuing sanctions, collecting forfeitures, and maintaining records
- Address “target areas” of noncompliance with standardized enforcement processes
- Address repeated, or persistent noncompliance

Statements of Deficiency (SOD)

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

Surveyors use the following instructions to write statements of deficiency:

- Follow the *Principles of Documentation*. [The Assisted Living “Documentation Standards” are under development. Pending completion, licensing specialists refer to the Center for Medicaid and Medicare Services (CMS) *Principles of Documentation* and ASPEN Standards for guidance.]
- Document if the violation is a repeat citation (consecutive surveys) or an uncorrected deficiency (follow-up visit).
- Verify that the correct regulation has been selected for the deficient practice identified.
- Describe the violation in clear, understandable terms.
- Include the specific dates of violation in the report (forfeitures are assessed per date of violation).
- Provide sufficient detail and corroborate findings using more than one source (e.g., observation, interview, record review).
- Describe the specific results and consequences of the deficient practice (document adverse outcomes or potential adverse outcomes).
- Record facts, not opinions.
- Answer:
 - Who was involved?
 - What occurred (or did not occur)? How did it occur?
 - What did staff do/not do that led to noncompliance?
 - When? (date/time)
 - Where?
 - How was the violation(s) verified? (evidence)
- Include resident and staff identifiers. (Include staff titles if relevant to the deficiency; e.g., “Staff A, Licensee.”)

Citations Subject to Enforcement Review

Surveyors or Assisted Living Regional Directors (ALRD) generally refer to the enforcement specialist any violation that:

- ***Results in serious harm, has a potential for serious harm, or indicates a breakdown in facility systems that could lead to serious harm.***
- ***creates a condition or occurrence that presents a substantial probability that death or serious mental or physical harm to a resident will result (or did occur).***
- ***creates a condition or occurrence that presents a direct threat to the health, safety or welfare of a resident.***

In addition, violations of the following requirements are generally referred to the enforcement specialist for review.

- Minimum staff training requirements
- Safe Environment and Fire Safety
 - For example, failure to meet requirements for smoke and heat detection systems, resident evacuation assessments, emergency plans and drills, safe building construction, inspection or service requirements, hot water temperatures.
- Abuse, neglect, misappropriation of property
- Resident rights
- Criminal records checks (repeat violations or serious concerns)
- Prompt and adequate treatment, physician notification, health services
 - Failure to provide services that contributes to a negative resident outcome (harm), or potential for negative outcome. For example, pressure sores without proper treatment, falls without intervention, pain that is not managed, significant, unplanned weight loss, illness and infections that are not assessed or for which medical attention is not sought, preventable injuries.
- Staffing Patterns
 - Failure to meet staffing requirements. Residents' needs are not met or safety is compromised due to inadequate staffing.
- Supervision
- Medications
 - For example, residents do not receive medications as ordered or insulin injections are administered by untrained staff in the absence of nurse delegation.
- Activities
 - For example, insufficient activity programming, inappropriate activities.
- Infection control or sanitation concerns, food borne illness
- Financial stability
 - Facility has not paid utility bills; staff are not paid; insufficient groceries; insufficient supplies to meet resident needs.
- Repeat or Uncorrected Violations

Enforcement Analysis and Determination Criteria

The Bureau of Assisted Living enforcement specialist evaluates citations to determine which sanctions to impose, if any, and the amount of any forfeiture to be assessed (based on statute and administrative rule). The enforcement specialist consults with the Office of Legal Counsel and administrative staff prior to revoking a license and as indicated depending on the scope and complexity of violations under review.

The following factors are considered in determining whether enforcement action will occur, the sanction to be imposed, and the amount of any forfeiture.

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 regulations and reasonable diligence in complying with such requirements, efforts to correct violations, and other mitigating factors in favor of the licensee.
3. A provider's compliance history. Previous violations, uncorrected, and repeat violations.
4. The financial benefit to the facility of committing or continuing the violation.
5. Sanctions imposed for comparable violations in other facilities.

The enforcement analysis takes into account the extent and seriousness of the deficient practice. For example, the number of residents affected by the deficient practice and the degree of negative outcome or potential negative outcome, the period of time during which the violation occurred (hours, days, weeks), or the number of locations in which the deficient practice was identified.

Incidents "self-reported" by the licensee that result in violations represent "good faith" and are considered in the enforcement review.

The findings for specific violations vary depending on circumstances, residents, staff, and other factors. As a result, enforcement determinations for violations of the same code may vary. The enforcement determination and forfeiture amounts, if any, are based on the facts reported in the statement of deficiency.

Revisit Fees

Pursuant to s. 50.03(5g)(cm), 50.02(2)(am)2., and 50.034(10), Wis. Stats., if the Department of Health Services imposes a sanction (e.g., special orders, department orders, forfeiture) or takes other enforcement action against a community-based residential facility (CBRF), adult family home (AFH), or residential care apartment complex (RCAC) for a violation of Chapter 50, Wis. Stats., or rules promulgated under it and the department subsequently conducts an onsite inspection to review the facility's action to correct the violation(s), the department may impose a \$200 inspection fee on the facility.

Pursuant to s. 49.45(47)(e), Wis. Stats., if the Department of Health Services takes enforcement action against a certified adult day care center (ADC) for violating a certification requirement established under s. 49.45(2)(a)11. and the department subsequently conducts an onsite inspection to review the facility's action to correct the violation(s), the department may impose a \$200 inspection fee on the adult day care center.

Providers will be notified when revisit fees are due. If revisit fees are not paid in a timely manner, the department will follow enforcement procedures consistent with non-payment of forfeitures (e.g., issuing a subsequent Statement of Deficiency with additional sanctions.)

Assisted Living Enforcement Options

Community Based Residential Facilities (CBRF)

Wisconsin State Statutes, Chapter 50

50.03(5g)(a) In this subsection, "licensee" means a community-based residential facility that is licensed under.

50.03(5g)(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:

50.03(5g)(b)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).

50.03(5g)(b)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.

50.03(5g)(b)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).

50.03(5g)(b)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).

50.03(5g)(b)5. That a licensee implement and comply with a plan of correction previously submitted by the licensee and approved by the department.

50.03(5g)(b)6. That a licensee implement and comply with a plan of correction that is developed by the department.

50.03(5g)(b)7. That a licensee accept no additional residents until all violations are corrected.

- 50.03(5g)(b)8.** That a licensee provide training in one or more specific areas for all of the licensee's staff or for specific staff members.
- 50.03(5g)(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.
- 50.03(5g)(c)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.
- 50.03(5g)(c)1.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).
- 50.03(5g)(c)1.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.
- 50.03(5g)(c)1.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.
- 50.03(5g)(c)1.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.
- 50.03(5g)(c)2.** Suspension of licensure for the community-based residential facility for 14 days.
- 50.03(5g)(c)3.** Revocation of licensure, as specified in pars. (d) to (g).
- 50.03(5g)(cm). Revisit Fees.** If the department imposes a sanction on or takes other enforcement action against a community-based residential facility for a violation of this subchapter or rules promulgated under it and the department subsequently conducts an on-site inspection of the community-based residential facility to review the facility's action to correct the violation, the department may impose a \$200 inspection fee on the community-based residential facility.

50.03(5g)(d) Under the procedure specified in par. (e), the department may revoke a license for a licensee for any of the following reasons:

50.03(5g)(d)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.

50.03(5g)(d)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).

50.03(5g)(d)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.

50.03(5g)(d)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).

50.03(5g)(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.

50.03(5g)(e)2. The department may immediately revoke a license for a licensee for the reason specified in par. (d) 2. or 3., 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.

50.03(5g)(e)3. The department may deny a license for a licensee whose license was revoked under this paragraph.

50.03(5g)(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).

50.03(5g)(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.

50.03(5g)(g)3. The department may extend the effective date of license revocation in any case in order to permit orderly removal and relocation of residents.

Wisconsin Administrative Code, DHS 83

DHS 83.08 Department action. (1) INITIAL LICENSE. (a) Within 70 days after receipt of a complete application, the department shall either approve or deny the license. The initial license issued by the department to an applicant may be a probationary license.

(b) A probationary or regular license issued by the department shall be only for the premises and persons named in the application. A license may not be transferred or assigned.

(c) A probationary license may be valid for up to 12 months, unless sooner revoked.

(d) A regular license is valid until suspended or revoked by the department.

(2) LICENSE DENIAL. The department shall deny a probationary or regular license to any applicant who does not substantially comply with any provision of this chapter or chapter 50, Stats., or who is not fit and qualified as specified in s. DHS 83.07 or who has failed to pay any fee or any outstanding amounts due to the department. The department shall provide the reasons for denial and the process for appeal of the denial in a written notice to the applicant.

(3) LICENSE REVOCATION. The department may revoke a license for any of the reasons and under the conditions specified under s. 50.03(5g)(d) to (g), Stats.

Adult Family Homes (AFH)

Wisconsin State Statute, Chapter 50

50.033(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.

50.033(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.

50.02(2)(am)2. Revisit fees. *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.* Pursuant to s. 50.02(2)(am)2., Wis. Stats., if the Department of Health Services takes enforcement action (e.g., special orders, department orders) against an adult family home for violation of this subchapter or rules promulgated under it and the department subsequently conducts an on-site inspection to review the facility's action to correct the violation(s), the department may impose a \$200 inspection fee on the adult family home.

Wisconsin Administrative Code, DHS 88

DHS 88.03(6) Action by licensing agency to enforce this chapter.

DHS 88.03(6)(a) Requirement for plan of correction.

DHS 88.03(6)(a)1. A licensing agency when it issues a notice of violation may require the licensee to submit a plan of correction for approval of the licensing agency. The licensee shall submit the plan of correction to the licensing agency not more than 30 days after the date of the notice or within a shorter period of time, as specified by the licensing agency, if the licensing agency determines that continuation of the violation may be harmful to the health, safety, welfare or rights of residents.

DHS 88.03(6)(a)2. The licensing agency may require modifications in a proposed plan of correction before approving it or may substitute its own plan of correction.

DHS 88.03(6)(b) Placing limits on type of individuals. A licensing agency may, at any time, following notice to the licensee and by modifying a license, limit the types of individuals served by an adult family home or the number of residents served by an adult family home for any of the following reasons:

DHS 88.03(6)(b)1. The types of individuals are not compatible.

DHS 88.03(6)(b)2. The licensee and service providers do not have the appropriate training to serve the residents.

DHS 88.03(6)(b)3. The licensee is unable to demonstrate that the needs of residents as identified in their individual service plans under s. DHS 88.06 (3) are being met.

DHS 88.03(6)(c) Placing conditions on license. A licensing agency may place a condition on a license if the licensing agency finds that a condition or occurrence relating to the operation and maintenance of the adult family home directly threatens the health, safety or welfare of a resident.

DHS 88.03(6)(d) Revocation. A licensing agency may revoke an adult family home's license if the licensing agency determines that the home has intentionally and substantially violated a requirement of this chapter or fails to meet the minimum requirements for licensure. The licensing agency shall give the licensee written notice of revocation and the grounds for the revocation and shall inform the licensee of the right to appeal that decision under sub. (7).

DHS 88.03(6)(e) Suspension. A licensing agency may summarily suspend a license when it finds that there is imminent danger to the health, safety or welfare of the residents in care. A finding of imminent danger may be based on but is not limited to any of the following:

DHS 88.03(6)(e)1. Failure of the licensee to provide environmental protections, such as heat, water, electricity, or telephone service.

DHS 88.03(6)(e)2. The licensee, a service provider or any other person affiliated with or living in the adult family home or who has contact with residents has been convicted of or has a pending charge for a crime against life or for causing bodily harm.

DHS 88.03(6)(e)3. The licensee, a service provider or any other person living in the adult family home or who has contact with residents has been convicted of a felony, misdemeanor or other offense or has a pending criminal charge which is substantially related to the care of the residents or activities of the home.

DHS 88.03(6)(e)4. The licensee, a service provider or any other person living in the adult family home or who has contact with residents is the subject of a current investigation of alleged abuse or neglect of a resident.

DHS 88.03(6)(f) Injunction. Pursuant to s. 50.033 (5), Stats., a licensing agency may commence an action in circuit court to enjoin the operation of an adult family home that is not licensed under this chapter or that is licensed and has repeatedly used methods of operation in substantial violation of this chapter, or that endangers the health, safety or welfare of any adult receiving care and maintenance in the home.

DHS 88.03(6)(g) Sanctions..

DHS 88.03(6)(g)1. A licensing agency shall provide an adult family home with written notice of any sanction to be imposed on the adult family home. The notice shall include:

DHS 88.03(6)(g)1.a. The grounds for a sanction based on an investigation made by the licensing agency.

DHS 88.03(6)(g)1.b. An explanation of the types of sanctions that the licensing agency is imposing under this section.

DHS 88.03(6)(g)1.c. An explanation of the process under sub. (7) for appealing an appealable sanction.

DHS 88.03(6)(g)2. The licensing agency may order any of the following actions:

DHS 88.03(6)(g)2.a. That a person stop conducting, maintaining or operating an adult family home if the adult family home is without a valid license.

DHS 88.03(6)(g)2.b. That a licensee stop violating any provision of its license or of this chapter.

DHS 88.03(6)(g)2.c. That a licensee submit a plan of correction under par. (a) for violation of any provision of its license or of this chapter.

DHS 88.03(6)(g)2.d. That a licensee implement and comply with a plan of correction previously submitted by the licensee and approved by the licensing agency.

DHS 88.03(6)(g)2.e. That a licensee implement and comply with a plan of correction developed by the licensing agency.

DHS 88.03(6)(g)2.f. That a licensee accept no additional residents until all violations are corrected.

DHS 88.03(6)(g)2.g. That a licensee provide or secure training in one or more specific areas for the licensee or service provider.

DHS 88.03(7) Appeal.

DHS 88.03(7)(a) Any person whose application for a license is denied under sub. (3) or revoked under sub. (6)(d) or suspended under sub. (6)(e) may request a hearing on that decision under s. 227.42, Wis. Stats.

DHS 88.03(7)(b) A request for a hearing shall be in writing, shall be filed with the department of administration's division of hearings and appeals and shall be sent to that office so that it is received there within 10 days after the date of the notice under sub. (3), (4) or (6)(d).

Residential Care Apartment Complexes (RCAC)

Wisconsin State Statute, Chapter 50

50.034(2)(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.

50.034(2)(f) Establishing standards and procedures for appeals of revocations of certification or refusal to issue or renew certification.

50.034(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).

50.034(8) Forfeitures.

50.034(8)(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.

50.034(8)(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).

50.034(8)(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.

50.034(8)(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.

50.034(8)(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.

Wisconsin Administrative Code, DHS 89

DHS 89.44(3) The department may revoke the registration of a residential care apartment complex which fails to comply with one or more of the requirements of this chapter. In the event of revocation, the department shall provide the residential care apartment complex with prior written notice of the proposed action, the reasons for the action and notice of the opportunity for appeal under s. DHS 89.45.

DHS 89.45 Appeals.

DHS 89.45(1) If the registration of a facility is revoked under s. DHS 89.44 (3) or, under s. DHS 89.62 (3), the application for registration is denied, the facility may request a hearing on that decision under s. 227.42, Wis. Stats.

DHS 89.45(2) A request for a hearing shall be in writing and shall be filed with the department of administration's division of hearings and appeals within 10 days after the date of notice of enforcement action under s. DHS 89.44 (3) or 89.62 (3). An appeal is filed on the date that it is received by the division of hearings and appeals.

DHS 89.56 Intermediate sanctions and penalties.

DHS 89.56(1) Notice of violation. The department shall issue a written notice of violation when it finds that a certified residential care apartment complex is in violation of this chapter. The notice shall explain the grounds for the notice of violation, the sanctions or penalties to be imposed, if any, and the process for appeal.

DHS 89.56(2) Plan of correction. A residential care apartment complex shall submit a written plan of correction to the department within 30 days after the date of the notice of violation. The department may specify a time period of less than 30 days for submittal of the plan of correction when it determines that the violation may be harmful to the health, safety, welfare or rights of tenants.

DHS 89.56(3) Sanctions. The department may order one or more of the following sanctions:

DHS 89.56(3)(a) That the facility stop violating the applicable provisions of this chapter.

DHS 89.56(3)(b) That the facility submit, implement and comply with a plan of correction for violations, subject to department review and approval. The department may require the plan of correction to be submitted and implemented within a time period specified by the department and may require modifications to the facility's proposed plan of correction.

DHS 89.56(3)(c) That the facility comply with a plan of correction developed and imposed by the department.

DHS 89.56(3)(d) That the facility stop admissions until the violations are corrected.

DHS 89.56(3)(e) That the facility provide or secure training for its service manager or other staff in areas specified by the department.

DHS 89.56(3)(f) That medical assistance or medical assistance waiver reimbursement for new admissions to the facility be denied until all violations are corrected.

DHS 89.56(3)(g) That payment be disallowed for services provided during the period of noncompliance.

DHS 89.56(3)(h) That a residential care apartment complex cease operations if it is without a valid certification.

DHS 89.56(3)(i) That the facility's certification be summarily suspended following procedures in ch. 227, Stats., when the department finds that public health, safety or welfare requires emergency action.

DHS 89.56(4) Penalties. The department may directly assess a forfeiture of from \$10 to \$1,000 per violation per day for violations which it determines to be harmful to the health, safety, welfare or rights of tenants.

Inspection fee. Per DHS 50.034(10) Revisit fees, if the department takes enforcement action against a residential care apartment complex for a violation of this section or rules promulgated under sub. (2) and the department subsequently conducts an on-site inspection of the facility to review the action to correct the violation, the department may impose a \$200 inspection fee on the residential care apartment complex.

DHS 89.57 Revocation.

DHS 89.57(1) Revocation. The department may revoke a residential care apartment complex's certification whenever the department finds that the residential care apartment complex has failed to maintain compliance with one or more of the requirements set forth in this chapter. In the event of revocation, the department shall provide the residential care apartment complex with prior written notice of the proposed action, the reasons for the action and notice of opportunity for appeal under s. DHS 89.59.

DHS 89.59 Appeals.

DHS 89.59(1) Any facility for which an application for certification is denied or not renewed, for which certification is revoked or summarily suspended or which is subject to an order for sanctions or penalties may request a hearing on that decision under s. 227.42, Stats. The hearing on a summary suspension order shall be limited to whether the reason for the order continues.

DHS 89.59(2) A request for a hearing shall be in writing and shall be filed with the department of administration's division of hearings and appeals within 10 days after the date of the notice under s. DHS 89.53 (2) (c) or (4) (b), 89.56 (1) or 89.57 (1) or within 10 days after the date of the order under s. DHS 89.56 (3). An appeal is filed on the date that it is received by the division of hearings and appeals.

Adult Day Care (ADC)

Certification Standards for Adult Day Care

VI. Laws and Codes

VI.(1) Non-compliance with any federal, state, and local laws/codes that govern the operation of the facility, including, but not limited to, space, heating, plumbing, ventilation and lighting systems, fire safety, sanitation and wage and hour requirements may result in revocation of certification.

VI.(3) Non-compliance with standards may result in revocation of certification and ineligibility for Medicaid Waiver funds.

Revisit fees. Pursuant to s. 49.45(47)(e), Wis. Stats., if the Department of Health Services takes enforcement action against a certified adult day care center (ADC) for violating a certification requirement established under s. 49.45(2)(a)11. and the department subsequently conducts an onsite inspection to review the facility's action to correct the violation(s), the department may impose a \$200 inspection fee on the adult day care center.