

ADMINISTRATIVE RULES – NOTICE OF PUBLIC HEARING

Health and Family Services Ch. HFS 83

NOTICE IS HEREBY GIVEN that pursuant to ss. 50.02 (1) and (2) (a), 50.025, and 227.11 (2) (a). Stats., and interpreting ss. 50.03, 50.035, and 50.037, Stats., the Wisconsin Department of Health and Family Services proposes to repeal and recreate ch. HFS 83, relating to community-based residential facilities, and affecting small businesses.

Hearing Date(s) and Location(s)

Date and Time	Location
December 7, 2007 8:30 AM – 12:30 PM	Northeastern Regional Office 200 North Jefferson Street Room 152A Green Bay, Wisconsin
December 12, 2007 11:30 AM – 3:30 PM	State Revenue Building 2135 Rimrock Road First Floor Events Room Madison, Wisconsin
December 17, 2007 8:30 AM – 12:30 PM	Northern Regional Office 2187 North Stevens Street Suite C Rhineland, Wisconsin
December 18, 2007 12:00 PM – 4:00 PM	Western Regional Office 610 Gibson Street Room 123 Eau Claire, Wisconsin
December 19, 2007 9:00 AM – 1:00 PM	Southeastern Regional Office 819 North 6 th Street Room 40 Milwaukee, Wisconsin

The hearing site is fully accessible to people with disabilities. If you are hearing impaired, do not speak English or have circumstances that might make communication at a hearing difficult; you require an interpreter or a non-English large print or taped version of the proposed rules, contact the person at the address or telephone number given below at least 10 days before the hearing. With less than 10 days notice, an interpreter may not be available.

Place Where Written Comments May be Submitted

Written comments may be submitted at the public hearing or submitted to the contact person listed below. Comments may also be made using the Wisconsin Administrative Rule Website at <http://adminrules.wisconsin.gov>.

Deadline for Comment Submission

The deadline for submitting comments to the Department is 4:30 p.m. on December 26, 2007.

Analysis Prepared by the Department of Health and Family Services

This proposed order repeals and re-creates ch. HFS 83 relating to CBRFs. CBRFs are facilities for 5 or more adults who require supervision and care and services above room and board. Nursing care is not the primary function of the facility. In Wisconsin, CBRFs are one of 4 categories of regulated entities referred to as assisted living facilities.

The purpose of the proposed rule is to accomplish the following:

- Focus on resident outcomes and quality of life and quality of care.
- Support reasonable and flexible regulatory processes.
- Improve readability and organization, and eliminate excess and prescriptive verbiage.
- Incorporate information from Division of Quality Assurance memos.
- Update HFS 83 with related regulations, including requirements regarding Family Care, Wisconsin Commercial Building Code, chs. HFS 12 and 13, and ch. 50, Stats.
- Address increasing acuity care levels of consumers residing in CBRFs.
- Revise staff training standards, establishing a more cost effective system for providers and the Department.
- Clarify medication administration requirements.
- Incorporate requirements for facilities with more than 20 residents into the main body of the rule.
- Promote utilization of nationally recognized standards of practice.

The proposed order recognizes national and state trends in the assisted living industry, and incorporates recommendations from the 2003 Assisted Living Workgroup Report to the U.S. Senate Special Committee on Aging. The Department's goal is to integrate these concepts into HFS 83 for the benefit of the consumers of Wisconsin. For example:

- Staff training in the provision of personal care will enhance the ability of staff to meet the increasing care needs of consumers in assisted living facilities.
- Additional requirements for assessment and care planning in the areas of mental health, wandering, falls, pain management, and choking will augment existing care planning requirements.
- Clarification of nurse delegation responsibilities to a non-licensed caregiver will address acuity and will allow facilities to provide appropriate care in a cost effective manner in times of limited nurse availability.
- A new requirement that a temporary service plan be developed and implemented on admission will help ensure that facilities will be prepared to meet the immediate needs of the consumers.
- Increased administrator qualifications and annual staff training standards are reflective of national trends.
- Increased requirements for disclosure to consumers and families regarding services, including nurse availability to help consumers choose a CBRF that best meets their needs.

- Development of a Department approved training curriculum in medication administration enhances the consumer choice to live in a community residential setting while decreasing risks associated with the administration of medication.
- Additional Department approved training curriculum incorporates current standards in fire safety, first aid/choking, and standard precautions to protect the health, safety and welfare of consumers in CBRFs.
- The new requirement for a sprinkler system in small facilities serving persons who are not physically or mentally capable of responding to an electronic fire alarm and exiting the facility without help, or physical or verbal prompting, will ensure the safety of vulnerable adults living in CBRFs.

Chapter HFS 83 was last substantially revised July 1, 1996.

Effect on Small Business (Initial Regulatory Flexibility Analysis) Analysis and supporting documents used to determine effect on small business:

The proposed rule will affect CBRFs that are licensed to care for 5 or more unrelated adults. Based on data from the APIS database, as of January 2006, there were 1373 licensed CBRFs in Wisconsin. The majority of these entities are “small businesses” as the term is defined under s. 227.114 (1) (a), Stats.

The North American Industry Classification System (NAICS) includes CBRFs in the Health Care and Social Assistance sector, (sector 62) and further defined in sub-sector 623 Nursing and Residential Care Facilities. CBRFs represent approximately 60% of the NAICS establishments, 30% of the \$2.7 billion in annual receipts, and 33% of the 72,000 employees in the sub-sector. Industries in sub-sector 623 provide residential care combined with either nursing, supervisory, or other types of care as required by residents. The facilities are a significant part of the production process; and care provided is a mix of health and social services with the health services being largely some level of nursing service.

Data obtained from the APIS database on January 18, 2006 records 1,373 CBRFs as licensed to operate in Wisconsin; CBRFs have averaged 1,356 facilities since 2001. Approximately one dozen facilities open, close, or, change ownership each month. CBRF entities include non-profits including churches, corporations for profits, partnerships, limited liability corporations, sole proprietorships, and governmental entities.

CBRFs are categorized based on residents’ ability to respond to an emergency. Class ‘A’ CBRFs may serve residents who are ambulatory, semi-ambulatory, or non-ambulatory if the residents are mentally and physically capable of responding to an electronic fire alarm and exiting the facility without any help or verbal or physical prompting. Currently 1/3 of all CBRFs hold Class ‘A’ licenses.

Class ‘C’ CBRFs may serve residents who are ambulatory, semi-ambulatory, or non-ambulatory but one or more of whom are not mentally or physically capable of responding to an electronic fire alarm and exiting the facility without help or verbal or physical prompting.

CBRFs are also categorized by size. CBRFs that have bed capacity for 5 to 8 residents are licensed as small CBRFs. CBRFs that have bed capacity for 9 to 20 residents are licensed as medium CBRFs. CBRFs that have bed capacity for 21 or more residents are licensed as large CBRFs. Class ‘C’ CBRFs currently make up 85% of the licensed bed capacity, up from 15% in 1983.

Class ‘A’	<u>Total</u>	Class ‘C’	<u>Total</u>	<u>Total</u>
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Types of CBRF Entities	Class 'A'				Class 'C'				CBRFs
	Small	Medium	Large		Small	Medium	Large		
Non-Profit Corporation for Profit	76	65	12	153	66	38	34	138	291
Partnership/LLC	162	44	6	212	162	165	73	400	612
Sole Proprietorship	34	12	1	47	105	163	66	334	381
Governmental	23	12	0	35	17	12	1	30	65
Total	7	3	1	11	9	2	2	13	24
	302	136	20	458	359	380	176	915	1373

The 1,373 CBRFs are licensed for a total of 22,035 beds, an average of 16 beds per facility.

Most of the revenue CBRFs receive is for resident care. The low and high rate charged per resident is gathered on the license application and subsequent renewals and is maintained in the APIS database. Residents are charged different rates based on the levels of care provided. The January 18, 2006 data for all CBRFs was averaged by class and size to estimate revenue for a 'typical' CBRF. Average revenue decreases as facility sizes increase.

Average Annual Revenue per Licensed Bed, APIS Data	Class 'A'				Class 'C'			
	Small	Medium	Large	All Sizes	Small	Medium	Large	All Sizes
Average Low Rate Revenue	37,788	32,313	32,139	35,908	42,361	30,110	29,436	34,787
Average Median Rate Revenue	40,070	36,533	35,483	38,763	46,104	30,070	29,425	40,206
Average High Rate Revenue	42,185	40,753	38,827	41,612	49,846	42,885	42,935	45,626

Expenditure data for Wisconsin CBRFs is not readily available; to determine average operating expenses per licensed bed, data from *The State of Seniors Housing 2005* report is compiled below. This study defines assisted living beds as "properties designed for frail seniors who need assistance with activities of daily living, but do not require skilled nursing care." Beds identified for persons with Alzheimer's are defined as "designated for those residents with significant cognitive impairment as a result of having Alzheimer's or a related dementia." These categories most closely match the Wisconsin definition of a CBRF. The national sample contained 117 assisted living residences, including Alzheimer's units. The sample represents 10,078 assisted living beds, resulting in an average of 86 beds per facility. The sample covers all 50 states and consists of 87% for-profit businesses. The data presented below is an average annual per bed cost from all 117 entities included in the sample. The data is presented in income statement format for ease of presentation and does not reflect any actual operating results for any given entity. The averaging process generally inflates the individual line item expense. The larger 86 bed average facility will include higher administrative costs than the typical 16 bed CBRF in Wisconsin.

Assisted living facilities are more profitable than the demonstration income statement below implies. *The State of Seniors Housing 2005* report includes operating margins ranging from 19.3% - 33.8%; these ratios reflect results of Earnings Before Interest, Taxes, Depreciation, Amortization, and Rent

(EBITDAR). The revenues in the table below, \$35,712 and \$40,348 are within the revenue ranges in the APIS dataset, providing validation to Wisconsin CBRFs. All expenses are also displayed as a percentage of revenue.

National Median Annual Operating Revenue and Expenses per occupied Assisted Living bed	Senior Assisted Living Facilities		Senior Assisted Living Facilities including Alzheimer's residents	
	Revenue		Revenue	
Revenue	35,712	100.00%	40,348	100.00%
Direct Labor				
Administrative	1,601	4.48%	1,576	3.91%
Dietary	1,593	4.46%	1,550	3.84%
Housekeeping Maintenance	501	1.40%	597	1.48%
Maintenance	397	1.11%	371	0.92%
Assisted living	6,285	17.60%	6,039	14.97%
Nursing	1,207	3.38%	2,548	6.32%
Marketing	577	1.62%	768	1.90%
Other Labor	676	1.89%	420	1.04%
Payroll Taxes	1,158	3.24%	1,281	3.17%
Employee Benefits	931	2.61%	1,684	4.17%
Total Labor	14,926	41.80%	16,834	41.72%
Non-Labor Expenses				
Property Taxes	1,067	2.99%	966	2.39%
Liability Insurance	901	2.52%	753	1.87%
Raw Food	1,541	4.32%	1,744	4.32%
Utilities	1,308	3.66%	1,319	3.27%
Marketing/Advertising	763	2.14%	500	1.24%
Repairs & Maintenance	620	1.74%	795	1.97%
Housekeeping	174	0.49%	227	0.56%
Management Fees	1,661	4.65%	2,262	5.61%
Debt Service/Lease Payments	7,446	20.85%	9,364	23.21%
Misc. Operating Expenses	2,022	5.66%	2,267	5.62%
Corporate/Administrative Expenses	2,914	8.16%	327	0.81%
Total Non-Labor Expenses	20,417	57.17%	20,524	50.87%
Total Expenses	35,343	98.97%	37,358	92.59%
Net Operating Income	369	1.03%	2,990	7.41%

Labor costs are 42% of revenue for both sample income statements, with higher receipts covering the higher cost of care at the Alzheimer's facilities. Non-labor or fixed cost expenses are slightly higher for facilities offering lower care levels, due mostly to lower receipts. The data in the table above was used to determine whether any increased costs associated with the proposed rules have a significant impact on small business in Wisconsin.

Pursuant to the Department's criteria, a proposed rule will have a significant economic impact on a substantial number of small businesses if at least 10% of the businesses affected by the proposed rules are small businesses and if operating expenditures, including annualized capital expenditures, increase by more than the prior year's consumer price index or reduces revenues by more than the prior year's consumer price index. For the purposes of this rulemaking, 2005 is the index year. The CPI rate for 2005 is 3.4%.

It is anticipated that all CBRFs will experience modest increased costs from one or more of the additional requirements defined above. A number of CBRFs already meet or exceed the requirements set forth in the proposed rule and will not be affected by the rule changes. It is estimated that many of the cost increases would be less than 1% of revenue on a single bed; distributing the cost across all licensed beds further reduces the impact of increased costs to the CBRF

Approximately 117 of the small Class 'C' CBRFs may be required to install a sprinkler system. The cost to install a sprinkler system at these facilities will likely exceed 3.4% of operating expenses. Should these facilities need to make changes to meet other regulated areas such emergency lighting, increased cost for training, solid doors, higher costs for an administrator, etc, this will most likely exceed the established Department cost criteria of 3.4%. Only 8.5% of all CBRFs appear to be affected by the need for sprinkler systems, the single most costly item in the proposed rule. The affected facilities have other options available to them to address the cost of sprinklers; including downsizing to a 4 bed adult family home, or requesting a waiver from the Department.

The proposed rule may increase costs for CBRFs modestly in several areas, however, changes in administrative reporting requirements may reduce this administrative burden. Based on available data, the increased costs for most CBRFs will be less than the 2005 CPI of 3.4%. The effect on small business CBRFs cannot be clearly defined as there are too many variables. Small CBRFs will experience a larger fiscal impact than larger facilities as the per bed impact for any single item is greater.

Based on the January 2006 data, it is estimated that 892 CBRFs (65% of all CBRFs) are small business with annual revenue less than \$5 million or 25 or fewer employees. To determine small business status, the Department used CBRF published low monthly rates and a conservative FTE calculation. The logic used may have overstated the estimate of small business CBRFs.

Revenue for each CBRF was estimated using data from the APIS database. Each CBRF monthly low rate was multiplied by licensed beds, then by twelve months, and then 85%; the industry occupancy rate. Five CBRFs exceed annual receipts of \$5 million using this formula. Using the CBRF monthly high rate resulted in eight entities exceeding \$5 million in annual receipts. Several corporations operate multiple CBRFs; revenue estimates for these corporations were tallied together.

NAICS employee data in sub-sector 623 Nursing and Residential Care Facilities (71,877 employees) was distributed by licensed beds for all BQA licensed entities in this sub-sector, including CBRFs. This calculation results in an average of 0.878 staff per licensed bed. Staff levels were projected using the average staff calculation and multiplying by licensed capacity. The results showed 130 CBRFs with 26 or more employees. Once again, corporate owned CBRFs were tallied together.

CAPITAL EXPENDITURES

Sprinkler system for small class 'C' facilities.

Small class 'C' CBRFs serve 5 to 8 persons with physical or cognitive impairments which prevent them from responding to an alarm and escaping a fire without assistance. Many of these facilities are older, private homes with aging mechanical and electrical systems that have been converted to CBRFs, increasing the need for fire protection. An analysis of federal data and public news accounts shows at least 2 fires a day in the nation's assisted living facilities. These fires result in generally one fatal fire a month, twice the rate of nursing homes. Wisconsin CBRFs are required to report all fires that occur on the premises. In 2005, 10 fires were reported. While there were no deaths, one resident was injured.

In August, 2005, the South Milwaukee Common Council passed the Fire Prevention, Protection and Control Code. This Code was drafted by the South Milwaukee Fire Department and 6 surrounding communities because of the potential increase in loss of life from fire that could occur in residences converted to house a group of elderly or disabled persons. The Code requires the retrofit of fire sprinkler protection in all adult family homes and CBRFs regardless of class or occupancy load. Facilities must begin installation within one year from the date of notification. Other local governments may follow South Milwaukee's lead in this requirement.

Alabama is one of the few states that require all assisted living facilities to be sprinklered, and has not had a fatal fire in an assisted living facility in a decade. The National Fire Protection Association (NFPA) has documented and analyzed 28 fatal board and care facility fires during the past 20 years. This report, published in the NFPA Journal January/February 1993, stated that an approved automatic sprinkler system would have controlled or extinguished the fire and may have altered the outcome at a board and care home in Detroit in which 10 residents died. The Journal also reported that the average property loss per fire in a sprinklered building is \$2,130 versus \$5,845 in a non-sprinklered building.

See related articles regarding fire safety in the nation's assisted living facilities.

http://www.usatoday.com/news/nation/2005-12-15-fire-safety_x.htm

<http://www.iafc.org/associations/4685/files/healthcare.pdf>

<http://archive.gao.gov/d15t6/138117.pdf>

<http://www.gao.gov/new.items/d04660.pdf>

Installing a sprinkler system may be a financial hardship for some small class 'C' CBRFs but there are alternatives available. Facilities may choose to change the classification of their licensure to serve persons who are physically and mentally capable of taking life-sustaining action. A CBRF could reduce capacity and become a four-bed adult family home, not subject to ch. HFS 83. However, both options would most likely result in some decreased revenue, either from fewer residents or providing services to residents with fewer health needs at a lower rate. A CBRF can request a waiver from the Department. The Department may grant a waiver of the requirement if the facility submits alternate provisions to meet the rule that would not jeopardize the health, safety, and welfare of its residents. CBRFs have 5 years to comply with the sprinkler requirement allowing substantial time to budget for the associated costs.

The cost to install a sprinkler system in a small class 'C' facility is estimated between \$13,000 and \$23,000 or between \$1,625 (\$13,000 for 8 beds) and \$4,600 (\$23,000 for 5 beds) per licensed bed. Based on a Department study, 117 small Class 'C' facilities, or 8.5% of all CBRFs will need to install sprinkler systems. Small Class 'C' CBRFs have 5 years to comply. As a capital purchase spread over 5 years, \$920 annually (\$4,600/5 years) per bed is 2.6% of the average Wisconsin CBRF gross annual revenue of \$34,787 per licensed bed. As a single item, this cost is estimated to be less than the 2005 CPI of 3.4 %.

Hand drying.

The proposed rule requires that common use bathrooms be provided with individual towel dispensers, enclosed cloth towel dispensing units or electric hand dryers to help prevent the spread of infection. The risk of developing a communicable disease is 2 to 4 times greater in a communal living arrangement. This requirement does not apply to private resident bathrooms. The number of common use bathrooms in a facility is generally limited. Facilities will have 3 months after the effective date of the proposed rule to comply with this requirement. CBRFs may request a variance from the Department.

The cost of a cloth towel dispensing unit is approximately \$64. An individual paper towel dispenser costs between \$40 and \$60. Costs for laundry or paper supplies may cost \$150 per year. This requirement doubles the annual per bed housekeeping cost of \$174 and \$227 from the table of revenues and expenses in the previous section and is 1/2 of 1% of revenue for one bed.

Fire inspection for small facilities.

Currently ch. HFS 83 requires all facilities serving 9 or more residents to arrange for an annual fire inspection. The proposed rule requires small facilities to meet this same requirement as facilities serving 9 or more residents. The overwhelming majority of municipalities conduct this inspection for small facilities at no cost to the provider. Nineteen counties throughout the state, including Milwaukee, Dane, Sheboygan and Jefferson do not provide this service. Small facilities in these counties will need to arrange for an annual inspection, possibly at a cost to the provider. At this time the review is completed by the Department. However, the Department no longer has the resources to complete this task.

The cost for fire inspection of some CBRFs will range from \$60 to \$150 annually, an insignificant per bed cost (\$12 - \$30 per bed in a five bed facility). See the following website <http://dhfs.wisconsin.gov/forms/DDES/DDE0795.pdf> for a copy of the Fire Inspection Report form.

Fees for plan review for new construction, additions, remodeling, and smoke and heat detector, and sprinkler system installation.

The purpose of the plan review is to determine compliance with the structural requirements contained in proposed rule, and the Department of Commerce building code requirements; related accessibility requirements; prior to new construction; additions; remodeling and installation of smoke and heat detectors; and sprinkler systems. This review focuses on fire safety including, minimum type of construction; number of exits; egress routes; placement of fire extinguishers; smoke and heat detectors; and sprinkler heads. The proposed rule does not require plans to be prepared by a certified architect. The plan review is conducted by highly trained Department engineers and ensures the building meets applicable requirements prior to construction. This service is provided by the Department for a nominal fee. The existing fee is based on the estimated cost of the construction project and is listed in the table below:

Current Plan Review Fees for CBRFs	
Cost of Project	Plan Review Fee
\$1 - \$5,000	\$100
\$5,001 - \$25,000	\$300
\$25,001 - \$100,000	\$500
\$100,001 - \$500,000	\$750
\$500,001 - \$1,000,000	\$1,500
\$1,000,001 - \$5,000,000	\$2,500

\$5,000,000 or more	\$5,000
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Most CBRF plan reviews are for projects under \$500. Department time study data reveals that the cost for engineers to review these projects is much greater than the current \$100 fee. The proposed rule would increase the plan review fee to \$300 for projects with an estimated dollar amount of at least \$2,000 but less than \$25,000. The fee for projects less than \$2,000 will remain at \$100. All other fees will remain the same. Department databases indicate an average of 150 small CBRF plan reviews are conducted by the Department annually. Eleven percent of CBRFs may have to pay the increased fee. This increase is less than ¼ of 1% of the revenue for a single average bed. During calendar year 2005, approximately 150 CBRF plans were submitted for review including 75 plans for fire and sprinkler systems. Another 30 plans were for new facility construction or major remodeling projects. Providers have the ability to budget accordingly when planning for capital expenditures.

Stand-by power source.

The proposed rules require emergency back up lighting in limited areas, including stairways and exit passageways to ensure safe evacuation of residents in case of a fire, power outages, or natural disaster. Many residents in CBRFs are elderly and have limited ambulation ability, vision deficits or hearing impairments, making it important that exit routes are clearly illuminated at all times. Staffing levels are lower on the night shifts so their efforts need to focus on resident evacuation rather than finding a source of light. The back up lighting may be battery operated. The average cost of a battery operated unit is \$30. Facilities may require 2 or more back-up lighting units depending on the layout of the facility.

Facilities will have 3 months after the effective date of the proposed rule to comply with this requirement. Any facility may request a variance from the Department to this requirement.

Increased cost for stand-by power sources may have a one-time cost of approximately \$100, ¼ of 1 % of the revenue for a single CBRF bed. The number of affected CBRFs is unknown.

Solid core wood door.

Existing rules require facilities to have a door between the basement and first floor for smoke separation purposes. The proposed rule will require these doors to be solid core wood or the equivalent and are designed to contain fire and limit the spread of smoke to allow additional time to evacuate vulnerable persons from a facility. Basements are high risk areas for the development of fire due to location of such items as furnaces, clothes dryers, electrical panels, and highly combustible materials. It is necessary to provide safety measures between the basement and first floor to minimize the effects of a fire. Persons living in assisted living facilities are dependent on state regulations to make sure facilities meet appropriate safety standards.

Facilities will have 3 months after the effective date of the proposed rule to comply with this requirement. Any facility may request a variance from the Department to this requirement.

The one time cost for solid core doors or equivalent fire protection is estimated at an expense of \$400 per basement entrance. This improvement is estimated at 1% of revenue on one bed one time. The number of CBRFs affected is unknown.

ONGOING OPERATIONAL

Initial license and renewal fees.

Facilities are required to pay start up and renewal fees to the Division of Quality Assurance. Facilities are required to pay a base fee of \$306 plus \$39.60 per licensed bed capacity for a 2 year license. This fee is prorated for facilities receiving an initial, probationary license. This fee is established under ch. 50, Stats. and is not a requirement under the proposed rule.

Background checks.

CBRFs may not employ persons convicted of a crime related to the care of a vulnerable adult. Community-based residential facilities are required under s. 50.065, Stats., to conduct caregiver background checks of all employees upon hire and every 4 years thereafter. Wisconsin statutes set the search fee of \$2 for non-profit organizations, \$5 for governmental agencies and \$13 for any other requestor. The frequency of caregiver background checks and the associated fees will depend upon both the size of the facility and staff turnover.

Increased administrator qualifications.

The proposed rule requires the administrator of the facility to have an associate degree or higher in a business or health care related field, or at least 60 credit hours of post-secondary course work in business, healthcare, nursing, social services, management or other fields related to human services. The existing rule requires administrators be at least 21 years of age, have completed high school or equivalent, have administrative experience or one post-high school course in business management, and have one year experience working with the client group of the facility. Current administrators will not be subject to the new administrator qualifications. Only administrators hired after the rule is enacted will be subject to the new educational requirements. This requirement was developed to improve leadership skills and accountability in the provision of services to residents whose acuity levels are rising.

Using data from the Department of Workforce Development and the Wisconsin Technical School System, it is estimated that the increased administrator qualifications could increase beginning salary by \$5,000 annually. Fringe benefits would increase from \$400 - \$2,000 annually depending upon the benefits available from any specific CBRF entity. Market salary conditions, unemployment rates, and regional variances already affect administrator salary and will continue to do so with the increased qualifications. It is anticipated that sole proprietors who continue to administer their own business would be unaffected as only administrators hired after the rule was enacted will be subject to the new educational requirements. Any facility may request a variance from the Department to this requirement.

Higher administrator qualifications could potentially increase the beginning salary by \$5,000 annually, with fringe benefit costs to \$7,000 depending up the benefit package. Increased per bed costs are estimated at \$438 (\$7,000 for 16 beds). These per bed costs could be \$1,400 at a 5 bed CBRF. Additional administrative cost may raise labor to 43% of revenue on the sample income statement, an increase of just over 1%.

Staff training including 15 hours annual continuing education.

Over the past several years, the acuity level of resident living in CBRFs has increased steadily. Many residents have complex medical and, or behavioral needs that require a trained, skilled response. CBRFs often care for residents who, in the past, would have lived in a nursing home and have care needs that require staff assistance with eating, toileting, dressing, supervision, and ambulation. Many residents also have significant medical conditions, such as diabetes, heart and respiratory illnesses, and wound care that requires medical intervention and frequent monitoring by properly trained staff. A

strong training program is essential to ensure that staff has the required skills to meet the needs of the residents.

While the overwhelming majority of CBRFs provide good care, the Department has taken enforcement action and fined facilities that do not provide adequate care. For calendar year 2005, the Department assessed \$439,406 in forfeitures against CBRFs. The 10 most frequently cited rules that resulted in fines included lack of staff training in the areas of fire safety, the spread of communicable diseases, and the prevention of choking for residents. Forfeitures were also assessed against CBRFs that did not provide prompt and adequate treatment to residents, proper resident supervision, and resident rights. Please refer to the charts enclosed to see the increase in fines assessed over the past 5 years and the requirements most often cited.

Training requirements have been revised to increase staff training standards, while also establishing a more cost effective system for providers. In addition, training requirements have been revised to address the increasing acuity care levels of consumers residing in CBRFs and enhance the ability of staff to meet the increasing care needs of consumers living in assisted living facilities. Currently staff are required to complete 45 hours of Department approved training. The average cost per person for each of the required training areas is \$384. The attached chart shows a breakout for each training requirement.

Program	Hours Required	Avg. Cost Per Person*
Fire Safety	6	\$28.24
Standard Precautions	3	\$35.40
Medication	8	\$63.50
Dietary	3	\$35.00
First Aid	4	\$37.00
Resident Rights	Minimum Total hours for Block I is 32 hours	\$48.00
Challenging Behaviors		\$42.00
Client Specific Training		\$53.00
Needs Assessment		\$42.00

* Cost is based on qualification of the staff receiving training. For example, all staff must be trained in Fire Safety. Only staff that provides medication administration assistance to residents would be required to be trained in medication.

Providers also have another option for meeting the current training requirements. Providers may pay a one-time fee to a number of private entities that have created a Department approved training program. Providers then may use this program to train all staff in their facility on an on-going basis. The cost of a video-based training program is approximately \$3,675.

The training requirements established in the proposed rule allows more flexibility than the existing rule. The proposed rule removes the prescribed number of 45 training hours in specified topic areas and allows providers to “provide, obtain or otherwise ensure adequate staff training” in the areas of Resident Rights, Resident Group Specific Training, Responding to Challenging Behaviors, Assessment of Residents, Individual Service Plan Development, Provision of Personal Care, and Dietary. This change allows providers flexibility in meeting the training requirements in these topic areas. Providers now may use in-house staff knowledgeable in a topic area to train other staff without having to seek Department approval for the trainer and the curriculum. Providers who do not have in-house resources may seek out trainers in the private sector to provide this training to staff. This should result in savings

to the provider because the private sector trainers do not need to be approved by the Department and train to Department approved curriculum. The overall changes made to the training requirements will create a savings for providers by eliminating the requirement for Department approved trainers and curriculum in these topic areas.

The proposed rule requires Department approved training curriculum in the areas of Fire Safety, First Aid, Medications and Standard Precautions. All trainers will need to use the Department's curriculum. Utilizing the Department's standard curriculum will create savings for providers. Providers will no longer need to expend resources to create their own training programs for separate, departmental approval. Trainers for these topic areas will need to be certified by a Department approved entity using standards established by the Department. Trainers seeking certification from this entity will pay a cost determined by the entity. Trainers must renew their certification every 2 years.

The proposed rule increases continuing education hours to be completed by staff from 12 to 15 hours per year. Staff training is currently estimated at \$114.00 annually (12 x 9.50). If an hourly wage of \$9.50 was calculated for staff time spent in training, this would cost providers an additional \$28.50 (9.50 x 3) per staff, per year. Continuing education training requirements help ensure staff receive information in current standards and practices related to areas such as Standard Precautions, Resident Group Specific, Medication, Resident Rights Prevention and Reporting of Abuse, Neglect and Misappropriation, and Fire Safety and Emergency Procedures.

The proposed changes to ch. HFS 83 generally reduce the administrative tasks associated with training staff. Actual training time may increase, but savings in administering the program will redirect limited resources to where these will do the most good for residents. Increased flexibility in obtaining training will allow CBRFs to meet the specific needs of their residents and obtain savings from being allowed to use training resources currently not available to them. Purchasing training from sources outside of the CBRF will provide savings often available in an open market. Many CBRFs already exceed the minimum Department training requirements and will be unaffected by these changes. Specific costs for any single facility are not readily determined, but should not materially increase operating expenses.

Communicable disease screening

In the existing rule, CBRFs are required to ensure that all employees are screened for the presence of clinically apparent communicable diseases, including tuberculosis, within 90 days before the start of employment. This standard is similar to employee health screening requirements for nursing homes, home health agencies, hospices, hospitals, facilities for the developmentally disabled and restaurants. *The Journal of American Medical Association* (April 19, 2000) identifies people who live in communityliving settings and people who work as health care workers as two groups of people at risk for acquiring tuberculosis. Pulmonary tuberculosis is a contagious disease that is usually spread through the coughing and sneezing of an infected person. Transmission of the infection usually occurs only after prolonged exposure. It is important for persons in high risk groups to be tested to ensure they are free from infectious disease to prevent exposure and spread of the disease to residents and to identify the need for treatment.

The average cost for a pre-employment screening and tuberculosis skin testing is \$50.00. This amount was obtained from current providers and area clinics. It is estimated that the average CBRF (16 beds) will pay \$250 annually for these health screenings. It is estimated that the average CBRF has 14 employees. Assuming a 35 % annual turnover rate, it is estimated that five new screenings will need to be conducted annually. Screenings will cost 7/10ths of 1% of the revenue for one bed; the expense is

un-measurable when distributed across the sixteen beds. This is a minor cost to assure the health, safety and welfare of Wisconsin's CBRF residents.

ONGOING TRANSACTIONAL

Annual resident assessment, Individual service planning, Annual on-site medication review, Annual resident evacuation assessment.

As required in the existing rule, all facilities must assess each resident prior to admission in order to determine if the facility is able to meet the needs of the residents. Areas of assessment include: physical health, medications, presence of pain, nursing procedures required, mental and emotional health, behaviors that may be harmful, risks such as choking, falling or wandering. In addition to the assessment, facilities must develop an individual service plan for each resident based on the individual needs identified from the assessment. The plan also specifies the different types of interventions staff will use to meet the resident's needs, and identify the provision or arrangement for those services necessary. The assessment and the development of the individual service plan generally take 4 to 8 hours depending upon the acuity of the resident.

The assessment and individual service plan are required to be updated when a resident undergoes a significant change or at least annually to identify the needs and abilities in the areas listed above. This update of the assessment and individual service plan generally takes 2 to 3 hours. Existing CBRF staff, or county human services staff, should be able to complete the required assessments with no increased cost to the facility. CBRFs lacking the staff to complete the required assessments may need to use the services of a consultant; these costs could range from \$20 – \$100 per hour. At the time the annual assessment is completed, the facility must offer all residents the opportunity to complete a satisfaction evaluation which identifies the resident's level of satisfaction with the facility's services. See the following website <http://dhfs.wisconsin.gov/forms/DDES/DDE2372.pdf> for a copy of Resident Satisfaction Form.

At least annually, a physician, registered nurse, or pharmacist is required to conduct an on-site review of the facility's medication administration and storage system. The on-site review will generally assess medication storage including, locked areas, separation of internal and external medications, refrigerated medications, labeling, and security of narcotics. The medication administration portion of the on-site review will assess staff administration of medications to residents to ensure proper route, proper dosage, proper resident, proper time and proper administration method. The last component of the assessment includes a review of the facility's medication administration records. This review ensures proper documentation of medications administered, including proof of use audits for all narcotics, documentation of medication errors or resident refusals to take medications and documentation showing staff understanding of potential side effects and benefits of psychotropic medication use. This on-site visit generally takes between 2 to 3 hours depending on the size of the facility and acuity of residents served. A registered nurse on staff would be qualified to perform the on-site medication administration. CBRFs lacking staff to complete this review may need to use the services of a consultant; these costs could range from \$20 – \$100 per hour; or \$60 - \$300 annually.

Part of the on-going transactional costs for facilities includes an evaluation of each resident's ability to evacuate the facility in case of fire or disaster without any help or verbal or physical prompting from staff. The assessment is standardized by the Department and must be completed by a staff person knowledgeable of the resident's abilities. This evaluation must be completed annually and when there is a significant change in a resident's condition. This assessment generally takes one hour for a newly admitted resident and subsequent evaluations are generally completed in 30 minutes. Existing CBRF

staff, or county human services staff, should be able to complete the required evacuation evaluation with no increased cost to the facility. See the following website <http://dhfs.wisconsin.gov/forms/DDES/DDE2373.pdf> for a copy of the Resident Evacuation Assessment form.

Costs for annual assessments, service plans, on-site visits and evacuation evaluations may cost from \$20 - \$100 per hour if performed by consultants. These costs are ¼ of 1% of the revenue for single average bed. There is no increased cost for CBRFs that perform these required assessments with existing staff.

Mandatory reporting requirements

All CBRF mandatory reporting requirements are listed in s. HFS 83.12 of the proposed rule. Many of these reports are required by Wisconsin statute or other administrative code. Section 50.04 (2t), Stats. requires facilities to report all deaths related to the use of a physical restraint, psychotropic medication or suicide to the Department within 24 hours of the death. Chapter HFS 13 requires CBRFs to report all allegations of abuse or neglect of a resident, suspicious injury of unknown source or misappropriation of a resident's property to the Department within 7 days of the occurrence. CBRFs are also required to notify the Department anytime a resident is missing or is seriously injured requiring hospitalization if there has been a fire on the premises, or when law enforcement personnel are called to the facility as a result of an incident that jeopardized the health safety or welfare of a resident. None of these reports are new requirements for CBRFs.

Start Up Compliance Costs:

A person requesting licensure of a CBRF must complete an initial license application as required by s. 50.03, Stats. In addition to identifying general and facility information, the proposed rule requires a perspective licensee to complete financial information. This financial information includes the completion of a balance sheet which identifies assets; both current and fixed, and liabilities and net worth. Many corporate entities will not experience additional costs developing a balance sheet to meet Department reporting requirements as standard reports in accounting systems; balance sheets are readily available to any CBRF using automated accounting systems. For those CBRF entities that do not follow generally accepted accounting principles (GAAP), the aid of an accounting service may be required. Based on industry experience it will take one to 5 hours for an accountant to develop a balance sheet from the available records provided by the CBRF entity. Accountants currently charge \$100 - \$200 an hour for such services. This potential cost to CBRFs is a one-time startup expense.

The proposed rule requires new CBRFs to submit financial information showing assets, liabilities and net worth at the time of initial licensure as one way to determine whether the entity is qualified and has adequate resources to care for dependent adults. In the past, facilities have ceased operations abruptly due to financial problems with little or no notice to residents and families. This has caused physical and mental distress and resulted in residents being forced into accepting a new placement without adequate time to visit a variety of potentially new facilities to determine which best meets their needs and satisfaction. The information on the balance sheet will enable the Department to evaluate the financial viability of an entity.

See the following website <http://dhfs.wisconsin.gov/forms/DDES/DDE0287.pdf> for a copy of the Application for Communitybased Resident Facility.

Small Business Regulatory Coordinator

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Fiscal Estimate

There is no fiscal effect on state or local revenues or liabilities.

Obtaining Copies of Rules and Fiscal Estimate

A copy of the full text of the rules and the fiscal estimate can be obtained at no charge from the Wisconsin Administrative Rules Website at <http://adminrules.wisconsin.gov> or by contacting the person listed below.

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