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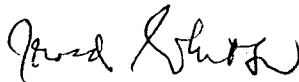
CERTIFICATE

STATE OF WISCONSIN)
) SS
DEPARTMENT OF HEALTH AND SOCIAL SERVICES)

I, Gerald Whitburn, Secretary of the Department of Health and Social Services and custodian of the official records of the Department, do hereby certify that the annexed rules relating to a monthly assessment on licensed and occupied beds in intermediate care facilities for the mentally retarded (ICF-MRs) and other nursing homes were duly approved and adopted by this Department on April 2, 1993.

I further certify that this copy has been compared by me with the original on file in the Department and that this copy is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the State Office Building, 1 W. Wilson Street, in the city of Madison, this 2nd day of April, 1993.



SEAL:

Gerald Whitburn, Secretary
Department of Health and Social Services

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**ORDER OF THE
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
CREATING RULES**

To create HSS 15, relating to a monthly assessment on licensed and occupied beds in intermediate care facilities for the mentally retarded (ICF-MR) and other nursing homes.

Analysis Prepared by the Department of Health and Social Services

The Budget Adjustment Act, 1991 Wisconsin Act 269, created s. 50.14, Stats., which for the 1992-93 state fiscal year imposes an assessment of \$68 a month on each licensed, occupied bed in all intermediate care facilities for the mentally retarded (ICF-MR), except facilities that are owned or operated by state government or the federal government or are located outside of Wisconsin, and \$32 a month on each licensed occupied bed in nursing homes, except beds occupied by residents whose care is paid for in whole or part by Medicare and except homes that are owned or operated by state government or the federal government or are located outside of Wisconsin. The assessment is for the privilege of doing business in the state.

The Department is to levy, enforce and collect the assessments. These rules reproduce the provisions of s. 50.14(2), Stats., that prescribe how the total assessment of a facility is calculated and provisions of s. 50.14(3), Stats., concerning when payments are to be submitted to the Department and the Department's obligation to verify the bed count and adjust the amount due accordingly. They also incorporate by reference specified parts of ss. 77.59 to 77.61, Stats., and s. 77.62, Stats., which apply to the Department of Revenue to govern determinations of deficiencies in payments and refunds owed in relation to sales and use taxes. These parts are made to apply to deficiency and refund determinations by the Department in relation to the assessments, as well as interest and penalties for late payments or failure to make payments, collection of delinquent payments and certain other administrative matters. Section 50.14(4), Stats., directs the Department and facilities to follow those provisions. Finally, the rules establish such additional procedures and other requirements as are necessary for levying, enforcing and collecting the assessments.

The Department's authority to create these rules is found in s. 50.14(5)(b), Stats. The rules interpret s. 50.14, Stats.

SECTION 1. HSS 15 is created to read:

Chapter HSS 15

**ASSESSMENT FOR OCCUPIED BEDS IN NURSING HOMES AND INTERMEDIATE
CARE FACILITIES FOR THE MENTALLY RETARDED (ICF-MR)**

HSS 15.01	Authority and purpose
HSS 15.02	Definitions
HSS 15.03	Facilities and beds not subject to assessment
HSS 15.04	Assessment calculation
HSS 15.05	Deficiency and refund determinations
HSS 15.06	Interest and penalties
HSS 15.07	Administration and due dates
HSS 15.08	Collection of delinquent assessments
HSS 15.09	Appeals

HSS 15.01 AUTHORITY AND PURPOSE. This chapter is promulgated under the authority of s. 50.14(5)(b), Stats., to establish procedures and other requirements necessary for levying and collecting the monthly assessment imposed under s. 50.14(2), Stats., on all occupied, licensed beds in intermediate care facilities for the mentally retarded (ICF-MR) and nursing homes, except facilities that are owned and operated by state government or the federal government or located outside the state, or beds occupied by residents whose care is reimbursed in whole or in part by medicare under 42 USC 1395 to 1395ccc.

HSS 15.02 DEFINITIONS. In this chapter:

- (1) "Assessment" means a tax that is determined, levied, collected and paid according to this chapter and s. 50.14, Stats., including any applicable interest and penalties.
- (2) "Bedhold" means a facility bed is being held for a resident who is temporarily absent from the facility under the conditions described in s. HSS 132.53(5) or s. HSS 134.53(6), whichever applies.
- (3) "Department" means the Wisconsin department of health and social services.
- (4) "Facility" means an ICF-MR or nursing home.
- (5) "ICF-MR" or "intermediate care facility for the mentally retarded" means a facility or distinct part of a facility defined under 42 USC 1396d(d) and regulated under ch. HSS 134.
- (6) "Midnight census" means the count of occupied beds in a facility at 12:00 a.m. on any given day.
- (7) "Nursing home" has the meaning prescribed under s. 50.01(3), Stats., except that it does not include an ICF-MR.
- (8) "Occupied bed" means a licensed bed in a facility that at the midnight census is being charged or is chargeable to a resident or third party, including a bed under s. HSS 132.53(5) or s. HSS 134.53(6) that is being held for a resident who is temporarily absent from the facility.

HSS 15.03 FACILITIES AND BEDS NOT SUBJECT TO ASSESSMENT. (1) EXEMPT

FACILITIES. The following facilities are excluded from assessments imposed under this chapter and s. 50.14, Stats.:

- (a) State-owned or state-operated facilities;
- (b) Facilities owned or operated by the federal government; and
- (c) Facilities located outside the state.

(2) EXEMPT BEDS. Beds for which payment is made in whole or in part by medicare under 42 USC 1395 to 1395ccc are excluded from the calculation under s. HSS 15.04.

HSS 15.04 ASSESSMENT CALCULATION. (1) ASSESSMENT. Every facility which is not excluded under s. HSS 15.03(1) shall pay an assessment per occupied bed as prescribed by s. 50.14, Stats., and as calculated pursuant to this section and s. 50.14, Stats. The amounts of the assessment per occupied bed shall be as specified by s. 50.14, Stats.

(2) CALCULATION. (a) The assessment shall be on the average number of occupied, licensed beds of the facility for the calendar month previous to the month of assessment, based on an average daily midnight census computed and reported by the facility and verified by the department. Beds for which payment is made by medicare under 42 USC 1395 to 1395ccc shall be excluded from the calculation. A bed occupied by a person who is eligible for both medicare and medicaid, and for which medicare pays a portion of the room and board for the person, is excluded from the calculation.

(b) In determining the number of occupied, licensed beds, if the number of beds is other than a whole number, the fractional part of the amount shall be disregarded unless it equals 50% or more of a whole number, in which case the amount shall be increased to the next whole number.

(c) In a facility having some beds that are ICF-MR beds and some beds that are nursing home beds, separate calculations shall be performed for the ICF-MR beds and for the nursing home beds. The bed of a person with a developmental disability as defined under s. HSS 132.13(4) or

s. HSS 134.13(9) who is a resident of a nursing home shall be assessed at that facility's rate, while the bed of a resident who is not developmentally disabled but who is residing in an ICF-MR shall be assessed at the ICF-MR rate.

HSS 15.05 DEFICIENCY AND REFUND DETERMINATIONS. The department may conduct office or field audits or both to determine any assessment or refund due. The department and facilities under this chapter have authority and obligations in the same manner described in s. 77.59(1) to (5), (6)(intro.), (a) and (c) and (7) to (10), Stats.

HSS 15.06 INTEREST AND PENALTIES. Assessments are subject to interest and penalties in the same manner and amounts described in s. 77.60(1) to (7), (9) and (10), Stats.

HSS 15.07 ADMINISTRATION AND DUE DATES. (1) A facility shall provide the department with the data necessary for the calculation of the assessment on forms prescribed by the department, shall retain records supporting that data, and shall tender payment for the assessment in accordance with instructions issued by the department. In administering this system, the department and facilities shall have powers and obligations in the same manner described in s. 77.61(9) and (12) to (14), Stats.

(2) The department shall mail the required assessment forms to each subject facility during the first 5 working days following the assessment month. The completed forms and payment shall be submitted by the facility on a timely basis. The completed forms and payment shall be considered timely only if the envelope containing them is properly addressed, has postage duly prepaid, is postmarked no later than the last day of the calendar month following the assessment month, and is actually received by the department within 5 calendar days after the last day of the calendar month.

(3) If the department determines that a facility's bed calculation is inaccurate, the department shall notify the facility of any changes in the calculation or assessment and shall send the facility an invoice for the additional amount due or send the facility a refund. Any additional amount due shall be paid by the facility no later than 30 days following the date of the department's notice.

(4) A facility shall notify the department of a change in ownership, transfer of license, change in number of licensed beds, address change and any other information pertinent to the facility's assessment on a form provided by the department. Notification of change shall be included with the first assessment payment made following the change.

HSS 15.08 COLLECTION OF DELINQUENT ASSESSMENTS. The department may collect delinquent assessment payments in a manner comparable to that described in s. 77.62, Stats.


HSS 15.09 APPEALS. If a facility contests any action of the department under this chapter or s. 50.14, Stats., the facility may submit a request for hearing to the department's office of administrative hearings. The request for hearing shall be in writing and shall contain a brief and plain statement identifying every matter or issue contested. The request for hearing shall be sent to the department's office of administrative hearings so that it is received there no later than 30 days after the date of the department's action. A final hearing decision shall be subject to judicial review as prescribed under ch. 227, Stats. A request for a hearing does not relieve the facility of the obligation to pay a disputed assessment within the prescribed deadline.

Note: A request for a hearing should be sent to the Office of Administrative Hearings, P.O. Box 7875, Madison, WI 53707.

The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2), Stats.

Wisconsin Department of Health and
Social Services

Date: April 2, 1993

By: 

Gerald Whitburn
Secretary

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