AN EVALUATION

Regulation of Nursing Homes and Assisted Living Facilities

Department of Health and Family Services

02-21

December 2002

2001-2002 Joint Legislative Audit Committee Members

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December 13, 2002

Senator Gary R. George and
Representative Joseph K. Leibham, Co-chairpersons
Joint Legislative Audit Committee
State Capitol
Madison, Wisconsin 53702

Dear Senator George and Representative Leibham:

We have completed an evaluation of the Department of Health and Family Services' regulation of nursing homes and assisted living facilities, as requested by the Joint Legislative Audit Committee. As of June 30, 2001, there were 462 nursing homes and 2,114 assisted living facilities in Wisconsin; approximately $1.0 billion in federal and state Medical Assistance (Medicaid) funds helped to support the cost of care provided to residents in these long-term care facilities. In fiscal year (FY) 2000-01, 80.2 percent of the Department's 215.7 full-time equivalent staff with regulatory responsibility for long-term care were regional regulatory staff. Expenditures for regional regulatory staff totaled $12.5 million.

Although both nursing homes and assisted living facilities are inspected by state staff, there are significant differences in the oversight provided. Nursing homes are inspected under a well-established process that is dictated by federal regulations designed to ensure quality, occurs frequently, and employs teams of inspectors that include registered nurses who evaluate resident care. In contrast, the regulatory system for assisted living facilities, which is controlled entirely by the State, is less-established, and each inspection typically involves a single inspector who is not required to have medical credentials. Furthermore, as of June 30, 2001, 47.1 percent of assisted living facilities had not been visited by inspectors for any reason for at least one year. During our review period, there was an increase in the number of citations the Department issued to assisted living facilities, in part because of the implementation of new state regulations, and complaints about assisted living facilities increased 82.1 percent. In contrast, nursing home complaints decreased 3.0 percent. We provide options for the Legislature to consider if it is not satisfied with the current regulatory process for assisted living facilities.

We also reviewed the enforcement process for both nursing homes and assisted living facilities, which can include financial penalties, restrictions on new admissions, and other sanctions. Although prompt imposition of penalties is considered an effective method of compelling compliance, 64.6 percent of FY 2000-01 nursing home citations for which forfeitures could be assessed were awaiting review by the Department. Other available enforcement options have rarely been used. We include several recommendations to improve the current enforcement process.

We appreciate the courtesy and cooperation extended to us by the Department of Health and Family Services and the Department of Justice. A response from the Department of Health and Family Services is Appendix 7.

Respectfully submitted,

Janice Mueller
State Auditor

JM/KW/ss

Summary

In fiscal year (FY) 2000-01, 462 nursing homes and 2,114 residential assisted living facilities had the capacity to serve more than 80,000 Wisconsin residents whose physical or mental capacities were limited by illness, disability, or age. The Department of Health and Family Services regulates both types of long-term care facilities, primarily through facility inspections. In FY 2000-01, 215.7 full-time equivalent staff within the Bureau of Quality Assurance were involved in the regulation of nursing homes and assisted living facilities: 68.1 percent were regional nursing home regulatory staff, 12.1 percent were regional assisted living facility regulatory staff, and 19.8 percent were central office staff.

Chapter 50, Wis. Stats., defines a nursing home as a place where five or more persons who are not related to the operator or administrator reside, receive care or treatment, and require access to 24-hour limited, intermediate, or skilled nursing services because of their mental or physical condition. Because the majority of residents' care is funded, at least in part, through the federal Medical Assistance (Medicaid) or Medicare programs, nursing homes are subject to federal program rules as well as state regulations. In contrast, the three types of residential assisted living facilities in Wisconsin—community-based residential facilities, adult family homes, and residential care apartment complexes—are not subject to federal regulation and are regulated entirely by the State.

In FY 2000-01, the Department spent $12.5 million for regional regulatory staff. From FY 1997-98 to FY 2000-01, regional staffing costs for nursing home regulation increased 13.5 percent to reach $10.9 million. Federal funding to support regional nursing home regulatory staff increased only 1.6 percent during this period, whereas general purpose revenue funding increased 27.3 percent. Therefore, by FY 2000-01, federal funding supported only 56.9 percent of the cost of regional nursing home regulatory staff; in FY 1997-98, it had supported 63.5 percent.

Although regional staffing costs have been significantly lower for assisted living facility regulation, they increased 60.0 percent from FY 1997-98 to FY 2000-01 to reach $1.6 million. Most of this increase was supplied by an increase in the licensure fees paid by assisted living facilities.

Both nursing home and assisted living facility inspectors observe care; interview residents, their families, and caregivers; and review medical and facility records. However, there are significant differences in the oversight provided to nursing homes and assisted living facilities. For example, under federal Medicaid and Medicare program rules, nursing homes are subject to routine, unannounced inspections by teams of inspectors that must include at least one registered nurse and that typically are on-site for four to five days. In contrast, inspections of assisted living facilities are typically performed by a single inspector in one day. We found that nursing home inspectors generally had more education and prior work experience in long-term care than assisted living facility inspectors.

When inspectors determine that nursing homes or assisted living facilities have violated applicable regulations, the Department issues citations, which are formal findings of deficient practice. While the number of citations issued to assisted living facilities increased 140.3 percent, from less than 2,000 in FY 1997-98 to more than 4,000 in each of the next three years, the number of citations issued to nursing homes increased 6.1 percent, from 3,051 in FY 1997-98 to 3,236 in FY 2000-01. The Department attributes the significant increase in assisted living facility citations to the amendment and implementation of administrative code governing community-based residential facilities, as well as to a shift in oversight responsibility from its Division of Community Services to its Bureau of Quality Assurance.

It should be noted that in 92.7 percent of federal nursing home citations issued from FY 1997-98 through FY 2000-01, the Department identified a potentially harmful situation before any residents were harmed. The potential for harm to residents is not specified in assisted living facility citations, but we found that 37.3 percent of citations issued in community-based residential facilities and 43.4 percent of citations issued in adult family homes pertained to physical environment and safety, which typically do not involve direct harm to residents but rather help prevent situations in which harm may occur.

We also found that the number of citations issued to both nursing homes and assisted living facilities varied significantly among the Department's five regulatory regions. For example, in FY 2000-01, three times as many federal nursing home citations were issued in the Southeastern Region as in the Northeastern Region. Likewise, nearly five times the number of state nursing home citations were issued in the Western Region as in the Southern Region. The number of state citations issued to assisted living facilities during routine inspections also varied significantly by region. The average ranged from 2.9 in the Western Region to 6.6 in the Northern Region.

Some of the regional variation in nursing home citations appears to be the result of inconsistent application of nursing home regulations. For example, when state inspectors were accompanied by federal inspection staff, they issued 54.5 percent more federal citations in FY 1999-2000 and 139.1 percent more federal citations in FY 2000-01.

It is unclear whether differences in regional citation patterns among assisted living facilities indicate differences in the quality of the facilities inspected or variations in inspector performance. However, increases in the number of complaints against assisted living facilities, the rate at which complaints are substantiated, and the relative infrequency of assisted living facility inspections suggest that in contrast to nursing home regulation, the regulatory system for assisted living facilities has reached a critical juncture.

From FY 1997-98 through FY 2000-01, the number of nursing home complaints decreased 3.0 percent, and the capacity of nursing homes decreased by 4.3 percent. In contrast, assisted living facility complaints increased 82.1 percent, while the estimated capacity of assisted living facilities increased 35.4 percent. The Department partially substantiated 74.3 percent of the 2,061 assisted living facility complaints it investigated, and 32.9 percent of the 3,792 investigated nursing home complaints for which complete data were available.

Moreover, assisted living facilities are inspected less frequently than nursing homes. From October 1999 through September 2001, nursing homes were inspected, on average, once every 12 months. When both routine inspections and complaint investigations are considered, nursing homes were visited by state regulatory staff an average of 4.4 times in FY 2000-01. In contrast, as of June 30, 2001, 47.1 percent of assisted living facilities had not been visited by state regulatory staff for any purpose for at least one year. Under administrative code, residential care apartment complexes are to be inspected at least once every three years, but there are no formal requirements in statutes or administrative code concerning the frequency of inspections for the other types of assisted livings facilities: community-based residential facilities or adult family homes.

If the Legislature is not satisfied with the current regulatory process for assisted living facilities, a number of options are available, including establishing standards for the frequency with which assisted living facilities should be inspected, establishing minimum qualifications for assisted living facility inspectors, and increasing the number of staff assigned to inspect assisted living facilities.

Nursing homes and assisted living facilities that are cited by the Department are subject to an enforcement process during which penalties can be assessed. The most frequently imposed penalty is a state forfeiture, or fine. From FY 1997-98 through FY 2000-01, the

Department imposed a total of 864 forfeitures on nursing homes that violated state regulations. Complete data are available for 855 nursing home forfeitures, which had a total value of $6.5 million. Of the 854 penalties imposed on assisted living facilities from FY 1997-98 through FY 2000-01, 67.7 percent were forfeitures, which totaled $341,266. These forfeitures were imposed exclusively on community-based residential facilities because the Department did not implement inspections for residential care apartment complexes until 2002, and statutes do not allow the imposition of forfeitures on adult family homes. The Department has a well-documented process for determining nursing home forfeiture amounts; in contrast, there are no criteria in statutes or administrative code for determining assisted living facility forfeitures. We include a recommendation that the Department develop written criteria to guide forfeiture assessment for assisted living facilities.

While s. 50.04(5)(c), Wis. Stats., requires the Department to notify a nursing home if it determines that a forfeiture should be assessed for a violation, or for failure to correct a violation, statutes do not specify when the notice must be sent. The Department's internal standard is to assess forfeitures within four months, or 120 days, of the date a citation was issued. However, we found that only 26.0 percent of the 855 forfeitures assessed from FY 1997-98 through FY 2000-01 met the 120-day standard.

Forfeitures paid by nursing homes are deposited into the Common School Fund, which is used to make loans to local governments and to fund the purchase of instructional materials and library books by school districts. Statutes permit some agencies that assess forfeitures to retain a percentage of amounts received to cover their administrative costs, and the Legislature may wish to consider amending statutes so that a portion of the forfeitures paid by nursing homes and assisted living facilities is directed to the Department. We include a recommendation that the Department report to the Legislature on its administrative costs related to forfeitures.

In addition to state forfeitures, the Department may assess other penalties on nursing homes or assisted living facilities. These penalties range from restrictions on admissions or federal reimbursements to licensure constraints and management controls. We include a recommendation that the Legislature amend statutes to allow the Department to restrict admissions to nursing homes in a more timely manner.

The Department of Justice may file state criminal charges against either long-term care facility operators or individual caregivers based on information gathered through the regulation of nursing homes and assisted living facilities. Department of Justice data indicate one assisted

living facility, one facility for the developmentally disabled, and 24 individual caregivers were charged with criminal resident abuse and/or neglect from July 1999 through June 2002.

A nursing home that disagrees with a citation may participate in the informal dispute resolution process that has been required by federal regulations since 1995. From FY 1997-98 through FY 2000-01, nursing homes requested informal dispute resolution for an estimated 12.4 percent of all federal citations and 18.0 percent of all state citations. The Department met its 21-day standard for timeliness for only 32.5 percent of decisions. We include a recommendation that the Department report to the Legislature on its efforts to improve the timeliness of decisions it issues through the informal dispute resolution process.

When federal citations issued by state inspectors result in penalties, nursing homes may appeal to the federal Department of Health and Human Services. After receipt of a statement of deficiency containing a federal citation, federal law grants nursing home providers 60 days to request a hearing before an administrative law judge at the Department of Health and Human Services. Under state regulations, nursing homes and assisted living facilities may appeal both statements of deficiency for state citations and forfeiture amounts they have been assessed for these citations to the Department of Administration's Division of Hearings and Appeals (DHA). Wisconsin Statutes allow nursing homes and assisted living facilities ten days to file an appeal with DHA after receiving a statement of deficiency or a forfeiture assessment.

A majority of appeals are closed before formal hearings are held. From FY 1998-99 through FY 2000-01, 79.1 percent of appeals filed were closed before hearings were held. Many providers indicate that they file appeals in order to preserve their right to do so while the matter is also examined through the informal dispute resolution process. Since the majority of existing appeals are closed before they are heard but entail administrative costs for providers, the Department, and DHA, we include a recommendation that the Legislature modify statutes to allow providers 60 days to file an appeal of state citations and forfeitures.

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The Department of Health and Family Services regulates nursing homes and assisted living facilities.

In fiscal year (FY) 2000-01, 462 nursing homes and 2,114 residential assisted living facilities had the capacity to serve more than 80,000 Wisconsin residents whose physical or mental capacities were limited by illness, disability, or age. Nursing homes provide care for people who need round-the-clock nursing services, and they require a physician's order for admission. Assisted living facilities provide more limited medical care in residential settings. To protect the safety and well-being of nursing home and assisted living facility residents who cannot independently ensure that they are receiving adequate care, and to ensure that public funds are spent appropriately, the Department of Health and Family Services regulates both types of long-term care facilities.

Inspections are the Department's principal regulatory tool.

Inspections are the Department's principal regulatory tool. To ensure compliance with the federal standards that apply to nursing homes, as well as with state regulatory standards, the Department's Bureau of Quality Assurance is responsible for conducting routine but unannounced inspections. Although there are some significant differences in the processes by which nursing homes and assisted living facilities are inspected, as well as in inspection frequency, both types of inspections include direct observation of care; interviews with residents, their families, and caregivers; and record reviews. Inspectors also investigate complaints against nursing homes and assisted living facilities as they are received by the Department. If inspections or investigations indicate that applicable regulations have been violated, the Department takes enforcement action that can result in fines and forfeitures or, less commonly, restrictions on new admissions, licensure constraints, restrictions on management, or criminal penalties. The Department's monitoring process is designed to allow provider comment before citations are issued, and it includes appeals mechanisms.

In recent years, concerns have been raised about the degree to which the regulatory process ensures quality care in both nursing homes and assisted living facilities. For example, resident advocates and others are concerned about:

- the adequacy of state and federal regulations;
- the role of inspection and enforcement activities in identifying unsatisfactory conditions and achieving immediate correction; and

- the extent to which financial penalties deter long-term care facilities from allowing unsatisfactory conditions to develop or continue.

Additionally, those in the long-term care industry are concerned about:

- the consistency of enforcement activities among the Department's regional offices;

- whether current regulatory procedures appropriately target troubled long-term care facilities; and

- the best practices or modified enforcement procedures used in other states to ensure resident safety and quality of care.

In response to these concerns and at the request of the Joint Legislative Audit Committee, we examined:

- state and federal regulations governing the inspection processes;

- the processes for regulating and enforcing care standards in nursing homes and assisted living facilities;

- the Department's use of various enforcement mechanisms as a means of compelling compliance with regulations; and

- the processes for resolving regulatory disputes with nursing homes and assisted living facilities.

In conducting this evaluation, we analyzed data on citations and penalties issued against nursing homes and assisted living facilities; interviewed administrators and inspectors in the Department and staff of the Board on Aging and Long-Term Care, which serves as an advocate for residents and is responsible for monitoring providers and regulators; and discussed concerns about the regulatory process with providers at professional association meetings and during site visits to facilities. In addition, we contacted officials in Illinois, Indiana, Iowa, Michigan, Minnesota, and Ohio to learn about their practices in regulating nursing homes and assisted living facilities.

Nursing Homes

Chapter 50, Wis. Stats., defines a nursing home as a place where five or more persons who are not related to the operator or administrator reside, receive care or treatment, and require access to 24-hour limited, intermediate, or skilled nursing services because of their mental or physical condition. Because the majority of residents' care is funded, at least in part, through the federal Medical Assistance (Medicaid) or Medicare programs, nursing homes are subject to federal program rules as well as state regulations.

Most nursing homes in Wisconsin are skilled or intermediate care facilities.

Several types of nursing homes are identified in state law and serve different populations, but 418 of the 462 nursing homes in Wisconsin on June 30, 2001, were either skilled or intermediate care facilities, as defined by s. HFS 132, Wis. Adm. Code. As shown in Table 1, these two types of nursing homes accounted for 95.0 percent of licensed nursing home capacity in FY 2000-01.

Table 1

Types of Nursing Homes in Wisconsin
June 30, 2001

Type of Nursing Home	Number of Homes	Capacity[1]	Percentage of Total Capacity
Skilled and intermediate care facilities	418	45,668	95.0%
Facilities for the developmentally disabled	40	2,096	4.4
Institutes for mental disease	4	310	0.6
Total	462	48,074	100.0%

[1] Licensed capacity as of December 31, 2000. Actual occupancy was less.

Skilled nursing facilities serve individuals whose medical needs, as prescribed by a physician, require either direct professional nursing services or care provided under the supervision of professional nursing personnel, such as registered or licensed practical nurses. Intermediate care facilities serve individuals under periodic medical supervision, whose long-term illnesses or disabilities have typically stabilized and whose nursing needs are met by registered nurses. We limited our analysis to skilled and intermediate care nursing homes that were certified to participate in either Medicaid or Medicare, because they are

subject to the same regulatory standards and the same inspection process. These nursing homes include 411 of the 418 facilities shown in Table 1 and represent 89.0 percent of all nursing homes open on June 30, 2001.

Except with respect to the imposition of certain penalties, our analysis does not include facilities for the developmentally disabled, which provide specialized care to persons with mental retardation or a related condition, or institutes for mental disease, which provide diagnosis, treatment, or care for persons with mental illnesses, such as schizophrenia.

Assisted Living Facilities

Three types of residential assisted living facilities in Wisconsin are subject to state regulation.

Our analysis of assisted living facilities includes only the three types of residential assisted living facilities that are subject to state regulation. The nursing care available in assisted living facilities is limited by statute. As shown in Table 2, these facilities had an estimated capacity of 32,500 at the end of FY 2000-01.

Table 2

Residential Assisted Living Facilities in Wisconsin
June 30, 2001

Type of Facility	Number of Facilities	Estimated Capacity	Percentage of Estimated Capacity
Community-based residential facilities	1,334	21,200	65.2%
Adult family homes[1]	662	2,600	8.0
Residential care apartment complexes	118	8,700	26.8
Total	2,114	32,500	100.0%

[1] Does not include one- and two-bed adult family homes, which are regulated by counties.

Community-based residential facilities, which were 63.1 percent of all residential assisted living facilities and accounted for 65.2 percent of capacity at the end of FY 2000-01, serve five or more adults, typically in a large house or an institutional setting. Community-based residential facilities are permitted by statute to provide each resident with up to three hours of nursing care per week. This limit does not pertain to personal care services, such as assistance with eating, dressing, bathing, and movement from place to place. Community-based residential facilities serve a variety of populations, including the elderly, the physically and developmentally disabled, and Alzheimer's residents.

Adult family homes, which were 31.3 percent of all residential assisted living facilities and accounted for 8.0 percent of capacity at the end of FY 2000-01, serve three or four adults, often in the provider's home. Statutes limit the amount of nursing care a resident may receive to seven hours per week, but this limit does not pertain to personal care services. Like community-based residential facilities, adult family homes serve a variety of populations, including the elderly, the physically and developmentally disabled, and Alzheimer's residents.

Residential care apartment complexes, which were 5.6 percent of all residential assisted living facilities and accounted for 26.8 percent of capacity at the end of FY 2000-01, serve five or more adults in independent apartments. Statutes do not enumerate the amount of nursing care these facilities may provide, but they limit combined nursing and personal care services provided by these facilities to 28 hours per week per resident.

The number of residential care apartment complexes increased 293.3 percent over three years.

As shown in Table 3, the number of residential assisted living facilities increased by 15.9 percent over a three-year period that ended at the close of FY 2000-01. Residential care apartment complexes were the fastest-growing facility type, increasing from 30 to 118 facilities, or by 293.3 percent. In contrast, the number of skilled and intermediate care nursing homes certified to participate in either Medicaid or Medicare declined from 420 at the close of FY 1997-98 to 411 at the close of FY 2000-01, or by 2.1 percent. While the estimated capacity of assisted living facilities increased by 35.4 percent over this three-year period, the capacity of nursing homes decreased by 4.3 percent.

Table 3

Change in the Number of Nursing Homes and Residential Assisted Living Facilities
As of June 30

Type of Long-Term Care Facility	1998	2001	Percentage Change
Nursing Homes			
Skilled and intermediate care facilities[1]	420	411	-2.1%
Residential Assisted Living Facilities			
Adult family homes[2]	485	662	36.5
Community-based residential facilities	1,309	1,334	1.9
Residential care apartment complexes	30	118	293.3
Total	1,824	2,114	15.9

[1] Includes only facilities certified to participate in Medicaid or Medicare.
[2] Does not include one- and two-bed adult family homes, which are regulated by counties.

A 2002 report by the National Conference of State Legislatures on long-term care in the 50 states attributes growth in assisted living facilities relative to growth in nursing homes to factors that include:

- more people needing assistance in the activities of daily living;
- individuals and families increasingly seeking care in home- and community-based settings;
- states and the federal government having sought to curb the growing costs of institutional care supported with Medicaid; and
- a United States Supreme Court ruling to provide care in the least-restrictive setting possible, which has served as a market stimulus for the development of alternatives to care in nursing homes.

State Regulatory Resources

As noted, the Department's principal means of regulating both nursing homes and assisted living facilities is the routine, unannounced inspection, which is conducted by its Bureau of Quality Assurance. The

Bureau, which is part of the Division of Supportive Living, also regulates more than 40 other types of health care providers by developing administrative rules, administering a nurse aide registry to track qualifications and safeguard against abusive workers, conducting caregiver background checks to safeguard against abusive workers, and certifying Medicaid and Medicare providers. In FY 2000-01, it had 283.0 FTE staff, including 215.7 who were involved in the regulation of nursing homes and assisted living facilities.

Most of the Bureau's staff with regulatory responsibility for long-term care are regional staff responsible for nursing homes. As shown in Table 4, nursing home regional staff accounted for 68.1 percent of regulatory staff in FY 2000-01, and assisted living facility regional staff accounted for 12.1 percent. Significantly more staff are assigned to regulate nursing homes because of federal requirements for nursing home regulation.

In FY 2000-01, 80.2 percent of regulatory staff worked in regional offices.

Regional staff responsible for the regulation of nursing homes and assisted living facilities conduct on-site inspections and investigate complaints. The central office staff, who accounted for 19.8 percent of regulatory positions in FY 2000-01, are management staff, support staff, and technical experts who provide support and training to regional staff and collect data required by the federal government.

Table 4

Long-Term Care Regulatory Staff
Bureau of Quality Assurance
FY 2000-01

Type of Staff	FTE Positions	Percentage of Total
Nursing home regional staff	146.9	68.1%
Assisted living facility regional staff	26.0	12.1
Subtotal	172.9	80.2
Central office staff	42.8	19.8
Total	215.7	100.0%

The Bureau's five regulatory regions and the number of long-term care facilities for which each had regulatory responsibility on June 30, 2001, are shown in Figure 1.

Figure 1

Regulatory Regions and Long-Term Care Facilities[1]
June 30, 2001

[1] Includes only nursing homes certified to participate in Medicaid and Medicare.

Although the Department periodically submits detailed time reports to the federal government, we were not able to use these data to determine total state and federal expenditures for long-term care regulation, including all expenditures for central office staff. However, in FY 2000-01 the Department spent $12.5 million on regional regulatory staff. From FY 1997-98 to FY 2000-01, federal funding to support regional nursing home regulatory staff increased at a significantly lower rate, 1.6 percent, than did general purpose revenue (GPR) and licensure fee funding, which increased 34.3 percent, as shown in Table 5. As a result, federal funding supported 63.5 percent of the $9.6 million spent on regional nursing home regulatory staff in FY 1997-98, but declined to 56.9 percent of the $10.9 million spent for the same purpose in

FY 2000-01. Department staff attribute the limited increase in federal funding during this period to a decline in the number of nursing homes in operation.

Table 5

Regional Staff Expenditures for Long-Term Care Regulation[1]
FY 1997-98 and FY 2000-01
(in millions)

Funding Source	FY 1997-98	FY 2000-01	Percentage Change
Nursing Homes			
GPR	$3.3	$4.2	27.3%
Licensure fees	0.2	0.5	150.0
State subtotal	3.5	4.7	34.3
Federal	6.1	6.2	1.6
Total	$9.6	$10.9	13.5
Assisted Living Facilities			
GPR	0.3	0.2	-33.3
Licensure fees	0.4	0.9	125.0
State subtotal	0.7	1.1	57.1
Federal[2]	0.3	0.5	66.7
Total	$1.0	$1.6	60.0

[1] Excludes expenditures for central office staff.
[2] Includes funds from Medicaid and the Social Services Block Grant.

Regional staffing costs have been significantly lower for assisted living facility regulation than for nursing home regulation, but expenditures for assisted living facility regional regulatory staff increased 60.0 percent from FY 1997-98 to FY 2000-01, compared to a 13.5 percent increase for nursing home regional regulatory staff. Most of this increase was supplied by an increase in the licensure fees paid by assisted living facilities. Table 6 shows the licensure fees paid in FY 2000-01.

Table 6

Annualized Long-Term Care Facility Licensure Fees[1]
FY 2000-01

Type of Facility	Base Fee	Per Resident Fee	Fee Revenue
Nursing Homes	$ 0.00	$ 6.00[2]	$286,704[3]
Assisted Living Facilities			
Residential care apartment complexes	350.00	6.00[4]	25,824
Community-based residential facilities	153.00	19.80	616,299
Adult family homes	67.50	N/A	49,545

[1] Annual amounts. Community-based residential facilities and adult family homes are assessed fees biennially.
[2] Per licensed bed.
[3] Estimate.
[4] Per apartment.

Licensure fees for nursing homes have not changed since 1983.

Nursing homes were first subject to licensure fees in 1973, and they have been subject to an annual fee of $6 per licensed bed since 1983. Licensure fees for residential care apartment complexes were first established in 1995 and have not increased since then. However, fees for community-based residential facilities and adult family homes increased by 80.0 percent under 1999 Wisconsin Act 9, the 1999-2001 Biennial Budget Act, and the Department requested another 60.0 percent increase in licensure fees for community-based residential facilities and adult family homes, and the same increase for adult day care facilities, during the 2001-03 biennial budget process. Such an increase would have provided an estimated $685,700 to fund an additional 9.0 FTE inspectors. However, this request was not included in the Governor's 2001-03 executive budget.

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Both nursing homes and assisted living facilities are inspected by state staff who observe care; interview residents, their families, and caregivers; and review medical and facility records, but there are significant differences in the oversight provided. Nursing home inspections typically involve a greater number of staff, with more education and prior long-term care experience, who are on-site for a longer period of time. Nursing homes are also inspected more frequently than assisted living facilities. However, assisted living facilities have experienced a greater increase in citations for deficient practices and have a higher percentage of complaints substantiated. Consequently, the Legislature may wish to consider a number of options to improve regulatory oversight of assisted living facilities.

The Inspection Process

Nursing home inspections follow a federally mandated process.

Under federal Medicaid and Medicare program rules, nursing homes are subject to routine, unannounced inspections by teams of inspectors that must include at least one registered nurse. Teams typically are on-site for four to five days, during which time the inspectors follow a federally mandated inspection process for evaluating compliance with applicable regulations in 15 areas of operation, including nursing and physician services, physical environment, quality of life, and resident rights. They also evaluate compliance with state regulations that are the basis for state licensure and address some areas not regulated by the federal government, such as the adequacy of medical records.

Inspections of assisted living facilities follow a state-defined process that varies by facility type.

Since there are no federal requirements regarding the processes by which assisted living facilities are to be evaluated, inspections of these facilities follow a process that is set forth in Wisconsin Statutes and administrative code. Requirements vary according to the type of assisted living facility inspected, but each inspection generally focuses on resident rights, services provided, food services, environment, safety, and staff training. In contrast to nursing home inspections, inspections of assisted living facilities are typically performed by a single inspector in one day.

Nearly all nursing home inspections are of nursing homes that have been previously inspected. Because of the continued growth in the number of assisted living facilities, a greater proportion of assisted living facility inspections are performed in new facilities that have not yet begun to provide services. Additionally, assisted living facilities often receive technical assistance to help them comply with state

regulations. For example, during inspections that we observed, inspectors:

- provided advice on alternatives to using side rails to keep residents from falling out of bed;
- gave specific recommendations for making the facility more accessible to residents with limited mobility; and
- assisted staff in understanding the documentation necessary to complete resident files.

A pilot project offers technical assistance to some nursing homes in Milwaukee County.

In contrast, federal requirements limit the amount of technical assistance inspectors can provide to nursing homes. However, in July 2002, the Department introduced a pilot project that offers limited technical assistance to those nursing homes in Milwaukee County that have at least 90.0 percent of their residents funded by the Medicaid program. The assistance available varies according to the nursing homes' needs, but it may include individualized on-site training or group training at the Department's offices. The pilot project was established to address concerns about the closure of facilities with a large number of Medicaid-funded residents in Milwaukee, and the resulting reduction in the number of available nursing home beds for these residents. All technical assistance will be provided outside of the nursing home inspection process.

Both nursing home and assisted living facility inspections are to conclude with a meeting at which inspection findings and potential citations for deficient practices may be discussed. At that time, providers have an opportunity to offer any additional information they believe should be considered before inspectors determine whether applicable regulations have been violated and citations should be issued. After the visit, inspectors review their findings to determine whether the documentation they gathered provides sufficient evidence to support the issuance of citations. Following management review of the findings, the Department issues a statement of deficiency to the provider that either details each citation and the applicable regulation that was violated or, in some cases, indicates that no deficiencies were found.

The Inspection Team

At least one registered nurse serves on each nursing home inspection team.

In addition to requiring that at least one registered nurse serve on each nursing home inspection team, federal Medicaid and Medicare program rules suggest including as team members persons with other training, such as physicians, speech and occupational therapists, dieticians, social workers, and engineers. In contrast, there are no federal requirements governing the inspection of assisted living facilities or prescribing the qualifications of inspectors. As noted, while routine inspections in nursing homes typically involve a team of inspectors, routine inspections in assisted living facilities typically are conducted by a single inspector.

Only 1 of the 21 assisted living facility inspectors reported licensure as a registered nurse, although 18 had post-secondary degrees.

To determine the qualifications of nursing home and assisted living facility inspectors, we surveyed each of the five regional offices and obtained information on 112 inspectors employed on April 15, 2002. We found that nursing home inspectors generally had more education than assisted living facility inspectors. Specifically:

- of the 91 nursing home inspectors, 59, or 64.8 percent, reported licensure as a registered nurse, while only 1 of the 21 assisted living facility inspectors reported licensure as a registered nurse; and

- all nursing home inspectors reported having a post-secondary degree, although 18 of the 21 assisted living facility inspectors reported having post-secondary degrees in fields such as social work, education, or psychology.

Nursing home inspectors reported more years of prior work experience in long-term care than did assisted living facility inspectors.

We also found that nursing home inspectors had more prior work experience in long-term care than assisted living inspectors did. Specifically:

- 65 of the 91 nursing home inspectors, or 71.4 percent, reported six or more years of prior work experience in long-term care, whereas 5 of the 21 assisted living facility inspectors, or 23.8 percent, reported six or more years of prior work experience in long-term care; and

- at least 60.0 percent of the nursing home inspectors in all five regions reported six or more years of prior work experience in long-term care, while only the Western Region reported at least 60.0 percent of its assisted living inspectors possessed six or more years of prior work experience in long-term care.

Outcomes of Inspections

A citation is a formal finding of deficient practice.

When inspectors determine that nursing homes or assisted living facilities have violated applicable regulations, the Department issues citations, which are formal findings of deficient practice. Both nursing homes and assisted living facilities received more citations in FY 2000-01 than they had in FY 1997-98; however, the increase has been much greater in assisted living facilities, in part because of the implementation of new state regulations.

Citations Issued

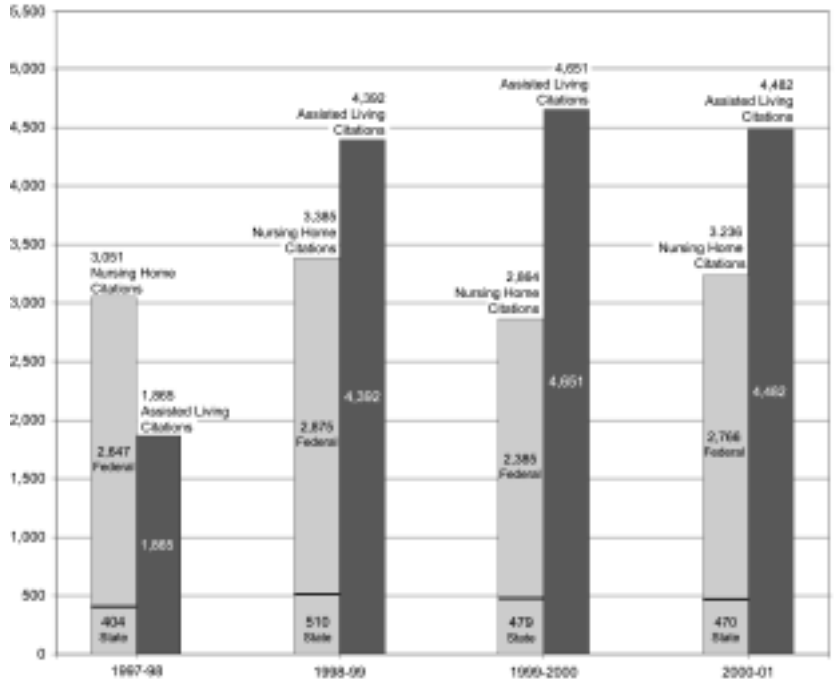
As shown in Figure 2, the number of citations issued to assisted living facilities increased from less than 2,000 in FY 1997-98 to more than 4,000 in each of the next three years. From FY 1997-98 through FY 2000-01, the increase in citations was 140.3 percent, which is nearly nine times greater than the 15.9 percent increase in the number of assisted living facilities providing care during this period. In contrast, the number of citations issued to nursing homes increased from 3,051 in FY 1997-98 to 3,236 in FY 2000-01, or by 6.1 percent. Most nursing home citations were for violations of federal regulations.

The number of assisted living facility citations increased after administrative code was amended.

The Department attributes the significant increase in assisted living facility citations from FY 1997-98 to FY 1998-99 to two factors: a shift in oversight of these facilities from its Division of Community Services to its Bureau of Quality Assurance, and the amendment and implementation of administrative code governing community-based residential facilities. As the amount of oversight provided by the Bureau of Quality Assurance increased, and after the code was amended, many facilities were found in noncompliance and were cited accordingly. The number of citations issued to assisted living facilities has remained relatively stable in subsequent years.

Figure 2

Nursing Home and Assisted Living Facility[1] Citations
FY 1997-98 through FY 2000-01



[1] Includes adult family homes and community-based residential facilities.

Another increase in the number of assisted living facility citations may occur for FY 2001-02 and FY 2002-03, based on the Department's implementation of a more formal survey process for residential care apartment complexes in January 2002. As originally proposed in 1995 Assembly Bill 150, the 1995-97 biennial budget bill, the regulation of residential care apartment complexes was to be limited. The Legislature increased the extent of regulation when it passed the biennial budget, and administrative rules implemented in March 1997 gave the Department authority to issue citations to these facilities. At that time, the Department conducted periodic inspections and offered technical assistance to providers. In response to increases in the number of these facilities and concerns about the quality of care they provided, the Department began in May 2000 to develop a more formal survey process that included the issuance of citations. The process was implemented in January 2002.

Severity Levels for Nursing Home Citations

The severity of both state and federal nursing home citations is ranked in terms of harm to residents. Federal citations are assigned one of four severity levels:

- no harm but potential for minimal harm, such as information missing from a resident care plan that would document a change in physical condition;
- no harm but potential for more than minimal harm, such as a fall that did not result in injury to a resident;
- actual harm but not immediate jeopardy, such as a resident's acquisition of an avoidable pressure sore because of the nursing home's failure to follow appropriate prevention procedures; and
- immediate jeopardy to resident health or safety, such as a failure to monitor a resident with a history of wandering away from a facility, or a failure to ensure that door alarms function properly.

Most federal nursing home citations identified potential, not actual, harm to residents.

As shown in Table 7, most citations for federal violations from FY 1997-98 through FY 2000-01 indicate no actual harm occurred to nursing home residents. In 92.7 percent of federal citations issued, the Department identified a potentially harmful situation before any residents were harmed. However, in 7.1 percent of federal citations issued, the Department identified instances of actual harm or immediate jeopardy to resident health or safety. An additional explanation of the severity levels for federal nursing home citations, along with additional data, can be found in Appendix 1.

Table 7

Federal Nursing Home Citations by Level of Severity
FY 1997-98 through FY 2000-01

Level of Severity	Citations	Percentage
No harm but potential for minimal harm	1,457	13.6%
No harm but potential for more than minimal harm	8,439	79.1
Subtotal	9,896	92.7
Actual harm but not immediate jeopardy	697	6.5
Immediate jeopardy to resident health or safety	61	0.6
Subtotal	758	7.1
Severity level not available	19	0.2
Total	10,673	100.0%

State nursing home citations addressed harmful practices and practices that did not directly threaten resident safety.

Violations of state nursing home regulations are also assigned severity levels, but these severity levels differ from those defined by federal regulations. As shown in Table 8, the Department issued nearly an equal number of citations to correct practices that posed no direct threat as it did citations for violations that directly threatened resident safety. An explanation of the severity levels for state nursing home citations, along with additional data, can be found in Appendix 2.

Table 8

State Nursing Home Citations by Level of Severity
FY 1997-98 through FY 2000-01

Level of Severity	Citations	Percentage
Correction orders for no direct threat to resident health, safety, or welfare	818	43.9%
No direct threat to resident health, safety, or welfare	75	4.0
Subtotal	893	47.9
Directly threatens resident health, safety, or welfare	885	47.5
Substantial probability for death or serious harm	69	3.7
Subtotal	954	51.2
Severity level not available	16	0.9
Total	1,863	100.0%

Because levels of severity are not specified for assisted living facility citations, we could not determine whether the majority of assisted living facility citations were for violations with the potential to result in harm to residents. However, 37.3 percent of citations issued in community-based residential facilities and 43.4 percent of citations issued in adult family homes pertained to physical environment and safety, such as the presence and functionality of fire alarms, accessibility for disabled residents, and proper sanitation practices. These types of citations typically do not involve direct harm to residents, but rather help prevent situations in which harm may occur. The Department indicates that its managers determine the relative severity of assisted living facility citations and whether penalties should be imposed based on past decisions about similar citations.

Regional Variations in Citations Issued

The number of citations issued to nursing homes and assisted living facilities varied by region.

In our 1998 evaluation, we suggested it would be reasonable to expect the rate at which long-term care facilities are cited to be similar across the state. However, as shown in Table 9, we found significant regional variation in the number of citations issued in FY 2000-01. For example, three times as many federal nursing home citations were issued in the Southeastern Region as in the Northeastern Region. Likewise, nearly

five times the number of state nursing home citations were issued in the Western Region as in the Southern Region. Reasons for these differences may include:

- the number of facilities in a region;
- the number of beds within each facility in a region;
- the number of inspections completed in a region;
- variations in facility performance; and
- variations in inspector performance.

Table 9

Number of Citations Issued by Region
FY 2000-01

	Federal Nursing Home Citations		State Nursing Home Citations		State Assisted Living Facility Citations	
Region	Number	Percentage	Number	Percentage	Number	Percentage
Northeastern	301	10.9%	58	12.3%	582	13.0%
Northern	337	12.2	61	13.0	1,291	28.8
Southeastern	938	33.9	155	33.0	1,517	33.8
Southern	650	23.5	33	7.0	666	14.9
Western	540	19.5	163	34.7	426	9.5
Total	2,766	100.0%	470	100.0%	4,482	100.0%

We also compared the number of citations issued per routine nursing home inspection in each region. As shown in Table 10, the average number of federal citations issued to nursing homes during routine inspections in FY 2000-01 ranged from 1.4 in the Northeastern Region to 4.6 in the Southern Region. Statewide, the average was 2.9. The number of state citations issued during routine nursing home inspections ranged from 0.2 in the Southern Region to 0.6 in the Northern Region. Additional information on citations by region can be found in Appendix 3.

Table 10

Average Number of Federal Nursing Homes Citations Issued During Routine Inspections
FY 1997-98 through FY 2000-01

Region	1997-98	1998-99	1999-2000	2000-01
Northeastern	2.0	1.3	1.1	1.4
Northern	2.7	3.2	3.0	3.5
Southeastern	3.3	3.5	3.2	3.6
Southern	2.2	3.1	2.9	4.6
Western	2.8	3.4	2.3	2.4
Statewide average	2.6	2.9	2.4	2.9

More nursing home citations were issued when federal staff accompanied state inspectors.

While some of this regional variation is evidence of different levels of facility performance, some appears to be the result of inconsistent application of regulations. Some providers have asserted that inspectors apply regulations inconsistently and that the likelihood of citations increases when federal staff accompany state inspectors to evaluate their performance. Although this process has recently changed, we analyzed the number of citations received by 23 nursing homes over a three-year period. We found that citation patterns do appear to be affected by the presence of federal staff. For example:

- In FY 1999-2000, the Department issued 102 federal citations to 11 nursing homes at which state inspectors were accompanied by federal staff, an increase of 54.5 percent over the 66 federal citations that had been issued to these same nursing homes in FY 1998-99, when state inspectors were unaccompanied. From FY 1998-99 to FY 1999-2000, there was a 17.0 percent decrease in federal citations issued statewide.

- In FY 2000-01, the Department issued 153 federal citations to 12 nursing homes at which state inspectors were accompanied by federal staff, an increase of 139.1 percent over the 64 federal citations that had been issued to these nursing homes in FY 1999-2000, when state inspectors were unaccompanied. From FY 1999-2000 to FY 2000-01, there was a 16.0 percent increase in federal citations issued statewide.

The Department has taken a number of steps to address concerns that regional differences in nursing home citation patterns may be caused by inspectors applying regulations inconsistently. For example, the Department:

- reviews all potential federal citations alleging widespread potential for harm, actual harm, or immediate jeopardy through a statewide teleconference involving regional and central office staff, who ensure that citations contain sufficient evidence and that appropriate severity levels have been assigned to the violations;

- created ten new supervisory positions, beginning in March 1997, to help ensure consistent enforcement of regulations within each region;

- incorporated the use of a citation review tool, which requires the inspection team to review its documentation and decision-making process for completeness; and

- increased emphasis on the 18-month probationary period for all inspectors, to ensure their level of training and competence.

The federal government has suggested performance improvements for state inspectors.

Although the federal government does not review regional trends in the issuance of nursing home citations, it does examine the timeliness of the State's evaluation activities, the sufficiency of support for federal citations, documentation of deficient practices, expenditures of federal funds, and the integrity of the State's data management system. In addition to observing state staff during 23 inspections in FY 1998-99 and FY 1999-2000, the federal government conducted five comparative inspections after state inspectors had completed their work at nursing homes. In the majority of the reviews in which they were observers, federal staff noted that state inspectors worked well together and worked well with facility staff. Federal staff also suggested in a majority of reviews that state inspectors improve either their documentation of how nursing homes failed to comply with regulations or the accuracy of their decisions regarding nursing home compliance.

As shown in Table 11, the number of citations issued to assisted living facilities during routine inspections also varied significantly by region. In FY 2000-01, the average ranged from 2.9 in the Western Region to 6.6 in the Northern Region. Statewide, the number of citations issued during routine assisted living facility inspections decreased, on average, from 5.2 in FY 1997-98 to 4.0 in FY 1999-00, before it increased to 4.9 in FY 2000-01.

Table 11

Average Number of Assisted Living Facility Citations Issued During Routine Inspections[1]
FY 1997-98 through 2000-01

Region	1997-98	1998-99	1999-2000	2000-01
Northeastern	1.3	2.7	4.1	3.6
Northern	0.0	2.6	1.8	6.6
Southeastern	3.7	3.7	3.2	5.4
Southern	8.8	4.8	5.9	5.0
Western	5.7	7.4	4.5	2.9
Statewide average	5.2	4.2	4.0	4.9

[1] Does not include initial licensure inspections for new facilities.

The cause of regional differences in assisted living facility citations cannot be determined.

It is unclear whether differences in regional citation patterns among assisted living facilities indicate differences in the quality of the facilities inspected or variations in inspector performance. Unlike the inspection process for nursing homes, there is no federal oversight or evaluation of the inspection of assisted living facilities.

Complaint Investigation

Complaint investigation is another means by which the State can assess compliance with regulations. The Department maintains data on both the number of complaints it receives for nursing homes and assisted living facilities and the number of complaints it substantiates. Like inspections, complaint investigations follow a federally prescribed process for nursing homes, and the Department's own policies for assisted living facilities.

The Department receives complaints from a variety of sources, including residents and their families, facility staff, ombudsmen from the Board on Aging and Long-Term Care, and other groups interested in the welfare of residents. Department staff report that all complaints are generally investigated, unless:

- the complaint is for an incident that occurred more than one year ago;

- the complainant provided insufficient information for the Department to determine whether the complaint should be investigated, and left no contact information; or

- the complaint is unrelated to resident well-being, such as a complaint about staff salary levels.

In these instances, the Department determines on a case-by-case basis whether the complaint should be investigated. When investigations are completed, the Department notifies the complainant of whether the complaint was fully substantiated, partially substantiated, or not substantiated.

Complaints against assisted living facilities increased 82.1 percent, while capacity increased 35.4 percent.

Table 12 shows the number of complaints filed against nursing homes and assisted living facilities in both FY 1997-98 and FY 2000-01. During this period, nursing home complaints decreased 3.0 percent and the capacity of nursing homes decreased by a similar rate, 4.3 percent. Assisted living facility complaints increased 82.1 percent, whereas the estimated capacity of assisted living facilities increased 35.4 percent. While some increase in complaints would be expected because of an increase in capacity, staff in the Department attribute the increase in assisted living facility complaints to increased awareness of the complaint process by residents and family members, as well as to an increase in the level of care required by residents.

Table 12

Nursing Home and Assisted Living Facility Complaints Received
FY 1997-98 and FY 2000-01

Type of Facility	FY 1997-98	FY 2000-01	Percentage Change
Nursing homes	1,355	1,314	-3.0%
Assisted living facilities	408	743	82.1

From FY 1997-98 through FY 2000-01, 74.3 percent of complaints against assisted living facilities were at least partially substantiated.

The Department considers a complaint partially substantiated if it identifies a deficient practice related to at least a portion of the complaint. From FY 1997-98 through FY 2000-01, the Department partially substantiated 1,531 assisted living facility complaints, or 74.3 percent of the 2,061 assisted living facility complaints investigated. During the same period, it partially substantiated 1,248 nursing home complaints, or 32.9 percent of the 3,792 nursing home complaints investigated and for which complete data were available. Data related to an additional 1,346 nursing home complaints were not complete.

Because some complaints may include a number of concerns, regional staff divide each complaint into multiple subject areas in order to investigate all areas in which violations may be present. Nursing home complaints are divided into subject areas based on federal regulations; assisted living facility complaint subject areas were created by the Department.

Table 13 shows the subject areas for substantiated complaints in nursing homes and assisted living facilities. From FY 1997-98 through FY 2000-01, the most common areas for which complaints were substantiated in nursing homes include quality of care and nursing services. Quality of care complaints address many areas relating to the well-being of residents, such as activities of daily living and medication errors. Nursing services complaints include concerns about the sufficiency of nursing staff.

The most common areas for which complaints were substantiated in assisted living facilities are resident rights and resident abuse. Complaints concerning resident rights include issues related to privacy, prompt and adequate treatment, and maintenance of a safe environment. Resident abuse complaints include physical and mental abuse, neglect, and the misappropriation of resident property.

Table 13

Substantiated Complaint Subject Areas
FY 1997-98 through FY 2000-01

Nursing Homes		Assisted Living Facilities	
Subject Area	Percentage	Subject Area	Percentage
Quality of care	38.5%	Resident rights	11.9 %
Nursing services	15.6	Resident abuse	10.8
Resident behavior and facility practices	15.5	Medication use	8.6
Resident abuse	8.0	Nutrition and food services	7.8
Physical environment	5.7	Resident supervision	7.8
Resident rights	5.1	Staff adequacy	7.7
Quality of life	3.4	Administration	7.5
Dietary services	2.4	Program services provided	6.6
Administration	1.5	Staff training	6.3
Assessment of resident needs	1.4	Staff treatment of residents	5.5
Admissions, transfers, discharges	1.2	Physical plant and safety	5.2
Infection control	0.7	Home-like environment	4.5
Pharmacy services	0.6	Other	4.1
Rehabilitation services	0.2	Quality of life	2.7
Physician services	0.1	Admission procedures	1.8
Other	0.1	Licensed capacity	0.7
		Restraints	0.5
Total	100.0%	Total	100.0%

Inspection Frequency

Nursing homes are inspected more frequently than assisted living facilities.

Although both nursing homes and assisted living facilities are subject to routine inspections, nursing homes are inspected more frequently. For federal fiscal years 1999-2000 and 2000-01, or from October 1999 through September 2001, federal data indicate that the Department complied with federal requirements to conduct one routine inspection of each nursing home participating in the Medicaid or Medicare programs between 9 months and 15 months after the last inspection, and the Department inspected all of these facilities an average of once every 12 months.

Nursing home inspectors visited each nursing home an average of 4.4 times in FY 2000-01.

When routine inspections and complaint investigations are both considered, nursing home inspectors have an even greater regulatory presence. Each nursing home was visited an average of 4.4 times in FY 2000-01, although the number of times inspectors visit individual nursing homes varied. For example:

- 2.6 percent of nursing homes were not visited, most likely because the time elapsed between routine inspections was greater than the 12 months of the fiscal year, but still within the federally prescribed maximum of 15 months;
- 46.4 percent of homes were visited between 1 and 3 times;
- 45.0 percent of homes were visited between 4 and 9 times; and
- 6.0 percent of homes were visited between 10 and 25 times.

Only 52.6 percent of routine assisted living facility inspections met the Department's standard for timeliness.

Wisconsin administrative code provides that residential care apartment complexes are to be inspected at least once every three years, but there are no formal requirements in statutes or administrative code concerning the frequency of inspections of community-based residential facilities or adult family homes. The Department indicates that it has established a practice of conducting routine inspections of all assisted living facilities biennially. As shown in Table 14, from FY 1997-98 through FY 2000-01, the Department met the two-year standard for only 52.6 percent of the routine inspections.

Even when both routine inspections and complaint investigations are considered, inspectors visited each assisted living facility an average of less than once per year in FY 2000-01. Furthermore, as of June 30, 2001, 47.1 percent of assisted living facilities had not been visited by inspectors for any reason for at least one year, and 13.3 percent had not been visited for more than two years.

Table 14

Time between Routine Inspections for Assisted Living Facilities
FY 1997-98 through FY 2000-01

Time	Number of Inspections	Percentage
Two Years or Less		
One year or less	672	25.7%
One to two years	704	26.9
Subtotal	1,376	52.6
More than Two Years		
Two to three years	918	35.1
Three to four years	233	8.9
Four years or more	88	3.4
Total	2,615	100.0%

As noted, the number of assisted living facilities increased from 1,824 in FY 1997-98 to 2,114 in FY 2000-01, or by 15.9 percent. As the number of assisted living facilities increases, the likelihood that the Department can conduct more frequent inspections and achieve its own two-year standard diminishes. The Department places a higher priority on complaint investigations because the concern is known, and on initial licensure inspections because administrative code requires it to conduct such inspections within 70 days after receiving a facility's application for a license. However, staff in the Department indicate that routine inspections are the most effective way to determine compliance, especially through the discovery of previously unreported problems. Staff also indicate that reducing the time spent on-site for routine inspections so that more facilities can be visited in a more timely manner could limit the ability of inspectors to uncover deficient practices, thereby reducing overall effectiveness of the inspections.

To improve the timeliness of its inspections, the Department is attempting to secure additional federal Medicaid funds to support additional assisted living facility inspectors, based on the premise that Medicaid funds are used to pay for the care of residents in 86.8 percent of assisted living facilities the Department regulates. If it is successful in capturing the $361,800 in additional funds, the Department intends to request up to 9.0 additional FTE assisted living facility inspectors. The

Department indicates that receipt of this federal funding would not require the commitment of additional GPR, because current licensure fee revenue could be used to meet federal matching requirements.

Operators of assisted living facilities oppose a regulatory system like that for nursing homes.

Assisted living facility providers indicate a strong desire that the regulatory system for assisted living facilities not become like that for nursing homes. For example, they believe that a more frequent and prescriptive inspection process would be inappropriate for assisted living facilities because residents generally have less-intensive medical needs and more choices about the amount and type of care they receive. In addition, assisted living facility providers are concerned that a more prescriptive process would lead to an environment like that of nursing homes, which they contend would conflict with the intent of assisted living facilities to provide care in a more home-like setting.

No citations were issued in 49.6 percent of nursing home inspections and complaint investigations.

The Department, nursing home providers, and resident advocates also have concerns that the nursing home inspection process, as prescribed by the federal government, limits the State's ability to focus resources on nursing homes that have histories of noncompliance with regulations or high rates of complaints. From FY 1997-98 through FY 2000-01, 49.6 percent of nursing home inspections and complaint investigations in Wisconsin resulted in no citations. Under current federal inspection requirements, states are to allocate the same resources to compliant nursing homes as they allocate to nursing homes with long histories of noncompliance. Therefore, in April 2002, the Department submitted a proposal to the federal government requesting permission to conduct a three-year pilot project in the Western Region that would target inspection and enforcement resources to the most noncompliant nursing homes. Although all nursing homes would continue to be inspected regularly, the additional resources directed to the most noncompliant nursing homes would include additional time for on-site inspections, technical assistance, and sharing of best practices. The Department indicates that there are many obstacles to overcome before the federal government would approve such a pilot, which is not expected before 2003.

Future Considerations

The regulation of nursing homes follows a well-established inspection process that occurs frequently, is designed to ensure quality, and employs teams of inspectors that include registered nurses and engineers to evaluate both resident care and the physical plant. In contrast, the inspection process for assisted living facilities is less established, occurs with less frequency, and typically employs a single inspector. Increases in the number of complaints against assisted living facilities, the rate at which complaints are substantiated, and the relative infrequency of assisted living facility inspections suggest that the regulatory system for assisted living facilities has reached a critical juncture.

The assisted living facility industry is experiencing rapid growth, but minimal data are collected about the medical needs, conditions, or acuity levels of assisted living facility residents statewide. On June 30, 2001, 86.8 percent of assisted living facilities received Medicaid funds and, in calendar year 2001, $148.3 million in Medicaid funds was provided for residents in these facilities. Given the amount of public funding provided, some suggest that the regulatory oversight of assisted living facilities should be increased. However, assisted living facility providers contend that the level of care required by residents in their facilities does not warrant increased regulatory oversight.

The Legislature could consider options to improve regulatory oversight.

If the Legislature is not satisfied with the current regulatory process for assisted living facilities, a number of options are available. For example, if it wishes to comprehensively review assisted living facility regulations, the Legislature could request the Joint Legislative Council to study the issue and make recommendations to improve regulatory oversight that could better ensure quality care. Alternatively, the Legislature could:

- establish standards for the frequency with which assisted living facilities should be inspected;

- establish minimum qualifications for assisted living facility inspectors;

- increase the number of staff assigned to inspect assisted living facilities by seeking additional federal funds, increasing facility licensure fees, or directing the Department to reallocate its existing resources; or

- direct the Department to develop technical assistance training programs to better enable assisted living facilities to comply with regulations.

While the nursing home regulatory system is well-established, the consistency with which regulations are applied continues to be of concern. Furthermore, given that 49.6 percent of nursing home inspections and complaint investigations conducted from FY 1997-98 through FY 2000-01 resulted in no citations, the current approach to nursing home regulation, which treats all nursing homes equally regardless of their compliance history, is of concern to providers. Other issues, such as financial viability, increased resident medical needs, and staff turnover, affect the ability of the nursing home industry to provide quality care. For example, from January 1999 through August 2002, 47 nursing homes in Wisconsin have entered into bankruptcy.

In FY 2000-01, $916.1 million in Medicaid funds was provided for residents in nursing homes. As financial concerns increase, some providers and advocates have suggested that the percentage of allowable Medicaid costs reimbursed is an indicator of the ability of a nursing home to provide quality care. We reviewed the statistical relationship between compliance with federal regulations, the number of facility complaints investigated by the Department, staff turnover, and the percentage of allowable costs reimbursed in FY 2000-01. Our calculation of allowable costs was based on the technique used in a June 2001 analysis conducted by the Legislative Fiscal Bureau. We found homes with a higher estimated percentage of allowable costs reimbursed tended also to have a relatively smaller number of licensed beds, and a relatively smaller number of total patient days. However, we found little statistical relationship between a number of factors suggested as indicators of a nursing home's ability to provide quality care and the percentage of costs reimbursed. Additional information on these analyses is provided in Appendix 4.

The federal government has recently taken steps to better assess the quality of care provided in nursing homes. For example, the Centers for Medicare and Medicaid Services established a new set of quality measures intended to provide consumers with information that can assist them in selecting a nursing home. The measures are drawn from data collected during routine resident assessments and address residents' physical and clinical conditions and abilities, as well as their preferences. They include, for example, incidence of infections, pain management, and daily use of physical restraints. Since April 2002, these quality measures have been reported on a pilot basis for six states. Measures for all 50 states became available on the Centers for Medicare and Medicaid Services' Web site in November 2002.

In Wisconsin, a group of facility operators has studied staffing techniques and noted improved quality of care, as measured through the inspection process, when staff turnover is reduced. This voluntary coalition of 11 nonprofit nursing homes has reported that an emphasis on sharing successful staff training and improvement methods among participating facilities has enhanced the quality of care at no extra cost. These facilities noted that one-third of their membership was in full compliance with the federal regulations in 1995, when they began to use the model, and cited an improvement in care by 1999, as measured by a near doubling of the facilities in full compliance with the federal regulations. These facilities and their evaluators also reported that declines in staff turnover rates were tied to increased quality and may have a positive effect on facility costs.

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Nursing homes and assisted living facilities that are cited by the Department are subject to an enforcement process that can result in financial penalties, restrictions on their ability to admit new residents, licensure constraints, additional management oversight or control by the State, and criminal charges. The most frequently imposed penalty is a state forfeiture, or fine. The Department has a well-documented process for determining nursing home forfeiture amounts; in contrast, there are no criteria in statutes or administrative code for determining assisted living facility forfeitures.

A 1998 statutory change raised maximum forfeiture amounts for nursing home citations, but both the number of citations issued and the total dollar value of all forfeitures have recently declined. Furthermore, although prompt imposition of penalties is considered the most effective method of compelling compliance, most state nursing home forfeitures are not assessed or paid in a timely manner, and only a portion of the forfeiture amount is collected because of statutory discounts. Other available enforcement options for nursing homes and assisted living facilities have rarely been used by the Department.

The Enforcement Process

Deficient practices must be corrected according to a plan approved by the Department.

To ensure that deficient practices that have been cited by inspectors are corrected, providers are required to submit plans of correction, which are reviewed by the Department. In some cases, the Department develops its own plan of correction for the provider to implement. Additionally, the Department may require specific training for facility staff. After the Department approves a plan of correction, the facility is required to make changes as specified in the plan, which the Department verifies. Inspectors may return to a facility for verification purposes only, or they may incorporate this effort into subsequent routine inspections or complaint investigations.

Penalties are used to compel compliance.

The Department also may issue penalties against facilities that have been cited for deficient practices or that are slow in achieving compliance. Penalties can be imposed for single occurrences of serious violations, as well as for less-serious violations that have been cited repeatedly. Nursing homes and assisted living facilities are subject to state penalties, while only nursing homes are subject to federal penalties. State penalties for assisted living facilities vary by facility

type. From FY 1997-98 through FY 2000-01, all of the penalties imposed on assisted living facilities were imposed on community-based residential facilities and adult family homes.

Financial Penalties for Nursing Homes

A total of $6.5 million was assessed for 855 nursing home forfeitures.

The State has a well-documented process for determining forfeiture amounts it assesses nursing homes that have been cited for violations of state regulations. Nursing homes are also subject to federal fines, called civil money penalties, for violations of federal regulations. From FY 1997-98 through FY 2000-01, the Department imposed a total of 864 forfeitures on nursing homes that violated state regulations. Complete data are available for 855 of these forfeitures, which had a total value of $6.5 million.

Although the maximum state forfeiture amount increased in response to legislation that took effect in 1998, there was a decline in the number of forfeitures assessed in FY 2000-01, and the total dollar value of forfeiture assessments for that year also declined. Furthermore, most state nursing home forfeitures have not been assessed or paid in a timely manner, and only a portion of the amount assessed is collected because of discounts.

State Forfeiture Assessments

Two forfeiture specialists in the Department's central office determine nursing home forfeiture amounts, subject to maximum amounts specified in statute. Section 50.04(5)(b), Wis. Stats., also provides guidance in the determination, by specifying four factors to be considered:

- the gravity of the violation;
- "good faith" exercised by the provider, including reasonable diligence in complying with requirements, prior accomplishments showing a desire to comply with requirements, and efforts to correct violations, such as facility staff identifying and attempting to remedy the deficient practice;
- any previous violations committed by the provider; and
- the financial benefit to the provider of committing or continuing the violation.

The Department developed guidelines for calculating nursing home forfeiture amounts.

In addition to the four factors outlined in statute, other factors, including the number of days the violation occurred, are influential in determining the amount of the forfeiture. In response to our 1998 recommendation that it establish policies and provide staff training to improve the process for setting forfeiture amounts, the Department developed a document to guide staff in determining nursing home forfeitures. It involves reviewing each of the four statutory factors; considering other factors, such as whether the violation was corrected when inspectors revisited the nursing home and whether the incident was self-reported; and using tables of forfeitures ranges, which are shown in Appendix 5, to help forfeiture specialists calculate final forfeiture amounts. Managers at the central office review forfeiture specialists' work before forfeiture notices are sent. A forfeiture notice is sent after a statement of deficiency has been received by the nursing home.

As shown in Table 15, the average state forfeiture amount per citation increased by more than 300.0 percent over a four-year period, from $2,597 in FY 1997-98 to $11,246 in FY 2000-01. However, both the number of citations for which forfeitures were assessed and the total dollar value assessed for all citations declined significantly in the last year of this period, when forfeiture specialist positions were vacant.

Table 15

Nursing Home State Forfeiture Assessments[1]
FY 1997-98 through FY 2000-01

	1997-98	1998-99	1999-2000	2000-01
Number assessed	210	174	355	116
Average assessment	$2,597	$6,168	$10,204	$11,246
Total assessment	$545,380	$1,073,178	$3,622,252	$1,304,498
Maximum assessment	$40,500	$170,500	$270,750	$89,250
Minimum assessment	$100	$100	$187	$100

[1] Assessed by citation.

The sizable increase in average forfeiture amounts per citation can be attributed to a statutory change that took effect in 1998. 1997 Wisconsin Act 237 increased the maximum state nursing home forfeiture from $5,000 to $10,000 for the most serious citations, and from $1,000 to $5,000 for citations directly threatening resident health, safety, and welfare.

Like the average assessment per citation, total annual assessments for all citations also increased in FY 1998-99 and FY 1999-2000. Department staff attribute this increase to the statutory increase in maximum forfeiture amounts; nursing homes being assessed for an increased number of days of violations; and the Department filling vacant forfeiture specialist positions, which allowed more forfeiture assessments to be completed. After reaching a high of $3,622,252 in FY 1999-2000, total annual assessments dropped 64.0 percent, to $1,304,498, in FY 2000-01. According to staff, this decline is due, in part, to vacancies in forfeiture specialist positions.

While s. 50.04(5)(c), Wis. Stats., requires the Department to notify a nursing home if it determines that a forfeiture should be assessed for a violation, or for failure to correct a violation, statutes do not specify when the notice must be sent. The Department's internal standard is to assess forfeitures within four months, or 120 days, of the date a citation was issued. Staff indicated that once a forfeiture specialist begins the task, a forfeiture can take between a few hours and several days to calculate, depending on:

- the number of statutes and codes cited;
- the complexity of the issues involved in the violations;
- whether the statement of deficiency clearly and completely explains how the deficient practice violates a regulation;
- the availability of resources for research capabilities; and
- the number of days the facility was in violation.

Nursing home forfeitures are not assessed in a timely manner.

Although the amount of time required to calculate a forfeiture varies, the Department has not met its standard of 120 days from citation issuance to forfeiture assessment. In our 1998 report, we found that the Department's timeliness in assessing nursing home forfeitures had improved from FY 1993-94 through FY 1996-97. However, we found that only 26.0 percent of the 855 forfeitures assessed from FY 1997-98 through FY 2000-01 met the 120-day standard. The average time between the nursing home's receipt of the statement of deficiency and receipt of the forfeiture assessment ranged from a low of 147 days in FY 1997-98 to a high of 208 days in FY 2000-01. Additionally, the Department reported in February 2002 that 217, or 64.6 percent, of FY 2000-01 state citations for which forfeitures could be assessed were awaiting review.

Staff vacancies and time spent in training have led to a backlog in nursing home forfeiture assessments.

Although staff in 2.0 FTE positions determine state forfeitures, these staff have other responsibilities, such as determining forfeitures for other types of facilities and preparing for and participating in forfeiture appeal hearings. For example, the forfeiture specialists reported spending 730 hours in 2000 on forfeitures and subsequent appeals for only five nursing homes. Additionally, these positions were vacant from September 2000 to January 2001, during which time few forfeitures were assessed and a backlog developed. The Department notes that an extensive training program provided to the staff hired in January 2001 led to an increase in the backlog, because few forfeitures were assessed during the training period. Department staff further attribute the delay in assessing nursing home forfeitures to an increase in the number and the duration of state violations, as measured by the number of days nursing homes are found to be noncompliant.

Statutes do not provide specific penalties for nursing homes that do not pay forfeitures.

In addition to concerns about the timeliness of forfeiture assessment, the promptness with which facilities make their forfeiture payments is also of concern. As required by s. 50.04(5)(f), Wis. Stats., nursing homes must pay forfeitures within ten days of receipt of the assessment, unless they contest the forfeiture amount and file an appeal. If a nursing home does not appeal and does not pay within the required ten days, the Department's legal counsel refers the case to the Department of Justice for collection. Statutes do not provide for any penalty if homes do not pay forfeitures, and many forfeitures are appealed. For example, among the 855 nursing home forfeitures issued from FY 1997-98 through FY 2000-01 for which complete data were available, 371 were appealed. Of the remaining 484, 143 were paid within the required 10 days.

Most nursing homes that pay forfeitures pay the full amount assessed or pay a reduced amount, which is permitted by statute to encourage timely payment. Section 50.04(5)(fm), Wis. Stats., allows a 35.0 percent reduction in the total forfeiture assessment when facilities pay within ten days and waive their right to appeal, and many nursing homes are taking advantage of the discount. As shown in Table 16, 70.7 percent of the 116 state forfeitures assessed in FY 2000-01 were reduced by 35.0 percent; in FY 1998-99, when this discount was first allowed, only 27.6 percent of forfeitures were reduced.

Table 16

Reductions in Nursing Home State Forfeiture Assessments
FY 1997-98 through FY 2000-01

Percentage Reduced	1997-98	1998-99	1999-2000	2000-01
0.0 percent (forfeiture not reduced)	71.9%	47.1%	33.5%	22.4%
35.0 percent	0.0	27.6	57.5	70.7
100.0 percent (forfeiture deleted)	3.3	1.2	0.6	2.6
Other amount	24.8	24.1	8.4	4.3
Total	100.0%	100.0%	100.0%	100.0%

Nearly half the forfeiture amounts due from nursing homes in FY 1999-2000 and FY 2000-01 have not been paid.

Nevertheless, not all nursing home forfeitures have been paid. Although all amounts due in FY 1997-98 have been paid, as of May 7, 2002:

- less than 10.0 percent of the amounts due in FY 1998-99 had not been paid;
- 48.5 percent of forfeiture amounts due in FY 1999-2000, or $1.3 million, had not been paid; and
- 48.9 percent of forfeitures amounts due in FY 2000-01, or $0.4 million, had not been paid.

Department records show that these forfeitures are unpaid for several reasons. For example:

- $1.3 million is due from nursing homes that have filed for bankruptcy;
- $355,000 is due from nursing homes that have appealed forfeitures; and
- $303,000 is due from nursing homes that have not paid for unknown reasons and have been referred to the Department's own legal counsel or to the Department of Justice for collection.

As required by Article X, Section 2 of the Wisconsin Constitution and prescribed in ch. 50, Wis. Stats., forfeitures paid by nursing homes are deposited into the Common School Fund, which is used to make loans to local governments and to fund the purchase of instructional materials and library books by school districts. Nursing home providers note that the payment of forfeitures limits their ability to direct resources to improve care, and the Department acknowledges the current payments do not benefit the nursing home industry.

Although the constitutional requirement that forfeitures be deposited into the Common School Fund eliminates any incentive for the Department to artificially increase forfeiture assessments, statutes permit some agencies that assess forfeitures to retain a percentage of amounts received to cover their administrative costs. For example:

- 50.0 percent of forfeitures received for violations of state pari-mutuel racing laws are deposited into two racing-related appropriations;

- 40.0 percent of forfeitures received for violations of vehicle size, weight, and load laws are deposited into the Transportation Fund; and

- a "deduction of the expenses of collection" for violations of certain insurance regulation laws can be retained before deposit into the Common School Fund.

In 2001, the Joint Legislative Council identified a number of limitations, based on judicial rulings, that restrict the Legislature's ability to direct forfeitures away from the Common School Fund. Specifically, any amounts retained by the assessing agency:

- should represent the actual costs, or at least a reasonably accurate estimate of the costs, of prosecuting the offense;

- cannot be used for future enforcement unrelated to the cost incurred for enforcing present law;

- cannot be so large as to leave only a nominal amount for the Common School Fund; and

- are subject to judicial standards of reasonableness.

The Legislature may wish to consider amending statutes so that a portion of the nursing home and assisted living facility forfeitures assessed is directed to the Department, rather than the Common School Fund, and resources that currently support forfeiture assessment functions can be redirected to the regulation of long-term care. To ensure that the Legislature is able to consider statutory changes, *we recommend the Department of Health and Family Services report to the Joint Legislative Audit Committee by March 1, 2003, on:*

- *the number and percentage of FY 2000-01 and FY 2001-02 state nursing home citations eligible for forfeiture and awaiting review; and*

- *the percentage of a forfeiture that represents a reasonable estimate of the Department's administrative costs related to assessing a forfeiture*.

Federal Civil Money Penalties

In addition to state forfeitures, nursing homes are also subject to federal fines, called civil money penalties, for violations of federal regulations. Because federal policies allow nursing homes to correct many federal violations before penalties are imposed, nursing homes are assessed fewer federal civil money penalties than state forfeitures. Like state forfeitures, civil money penalties may be reduced by 35.0 percent if a nursing home waives its right to appeal. Revenue from federal civil money penalties is shared between the federal government and the Department, depending on whether the nursing home is certified to receive funding through Medicaid, Medicare, or both. The Department may use funds from civil money penalties:

- to operate a nursing home while either correction of deficiencies or closure is pending;

- to relocate residents to other facilities; or

- to reimburse residents for personal funds or property lost at a nursing home as a result of actions by the nursing home or its employees.

With permission from the federal government, the Department may also use a portion of these funds on pilot projects, such as the technical assistance pilot project in Milwaukee County.

The dollar value of federal civil money penalties assessed against nursing homes increased nearly tenfold over four years.

From FY 1997-98 through FY 2000-01, nursing homes were assessed $1.2 million in civil money penalties. As shown in Table 17, the number of assessments more than quadrupled over this period, and total assessments increased nearly tenfold. Department staff attribute this increase to changes in federal requirements in September 1998 and December 1999 that limited nursing homes' ability to correct certain deficiencies before penalties were imposed if they had been cited for serious deficiencies in the past. The assessment amounts shown in Table 17 reflect any reductions that were negotiated through appeal or settlement.

Table 17

Nursing Home Federal Civil Money Penalty Assessments[1]
FY 1997-98 through FY 2000-01

	1997-98	1998-99	1999-2000	2000-01
Number assessed	7	15	28	33
Average assessment	$8,520	$16,504	$11,321	$16,890
Total assessment	$59,640	$247,557	$316,999	$557,369
Maximum assessment	$17,000	$88,985	$103,000	$245,000
Minimum assessment	$877	$1,430	$390	$1,000

[1] Assessed by statement of deficiency.

Assisted Living Facility Forfeitures

As with nursing homes, forfeitures are the state penalty most frequently imposed on assisted living facilities. Of the 854 penalties imposed on assisted living facilities from FY 1997-98 through FY 2000-01, 578, or 67.7 percent, were forfeitures. These forfeitures totaled $341,266 and were imposed exclusively on community-based residential facilities because the Department did not implement inspections for residential care apartment complexes until 2002, and statutes do not allow the imposition of forfeitures on adult family homes. As shown in Table 18, the average forfeiture assessed per statement of deficiency in FY 2000-01 was $507, while the maximum forfeiture assessed was $12,200.

Table 18

Assisted Living Facility Forfeiture Assessments[1]
FY 1997-98 through FY 2000-01

	1997-98	1998-99	1999-2000	2000-01
Number assessed	86	127	175	190
Average assessment	$488	$599	$725	$507
Total assessment	$41,957	$76,019	$126,898	$96,392
Maximum assessment	$4,000	$6,200	$30,180	$12,200
Minimum assessment	$50	$49	$100	$50

[1] Includes community-based residential facilities only. Assessed by statement of deficiency.

Forfeiture notices are sent to assisted living facilities at the same time statements of deficiency are issued. Statutes require the forfeitures to be paid within ten days of receipt of the assessment and do not provide a discount for timely payment. The assisted living facility providers with whom we spoke did not express concern about the timeliness of forfeiture assessment.

The Department has not developed written criteria for use in determining forfeiture amounts for assisted living facilities.

Assisted living facility forfeitures are not based on written criteria such as statutes, administrative code, or the Department's formal written policies. Rather, regional and central office staff confer to determine forfeiture amounts based on a facility's compliance record and the Department's treatment of other facilities for similar violations. Such a practice, which relies exclusively on the individual judgements of staff, could lead to inconsistencies. Therefore, *we recommend the Department of Health and Family Services establish a written procedure to guide the assessment of forfeitures for assisted living facilities.*

Other Penalty Options

In addition to state forfeitures and federal civil money penalties, the Department may assess a number of other penalties on nursing homes and assisted living facilities that do not comply with state or federal regulations. These other options, which are listed in Table 19, range from restrictions on admissions or federal reimbursements to licensure constraints and management controls. In addition, the Department of Justice may issue state criminal charges against a facility, individual nursing home administrators, or facility staff members.

Table 19

Other Penalties for Nursing Homes and Assisted Living Facilities
By Type of Violation

Other Penalties	Nursing Home Violations: Federal	Nursing Home Violations: State	Assisted Living Facility Violations: State
Restrictions on Admissions or Reimbursement			
Suspension of new admissions	●[1]	●	●
Suspension or denial of federal payment	●		
Licensure Constraints			
Conditional license		●	●
License suspension		●	●[2]
License revocation		●	●
Management Controls			
State monitoring	●	●	●[3]
Temporary management	●		
Receivership		●	●[3]
State Criminal Charges		●	●

[1] Federal suspension of new admissions applies to Medicare and Medicaid residents only.
[2] This penalty is not applicable to adult family homes.
[3] This penalty is applicable to community-based residential facilities only.

Restrictions on Admissions or Reimbursement

Nursing home admissions may be restricted for violations of state or federal regulations; only the State can restrict new admissions to assisted living facilities because federal regulations do not apply to these facilities. According to staff in the Department, restricting new admissions can be an effective enforcement option. However, the Department has not imposed admissions restrictions on nursing homes because s. 50.04(4)(d), Wis. Stats., limits its ability to do so in a timely manner. The statute allows the Department to suspend admissions of new residents to nursing homes with serious violations of state statutes or administrative code when subsequent serious violations are cited. However, nursing homes must have a history of serious violations in order for the penalty to be considered, and they have 90 days to correct the violation before the Department can suspend new admissions.

Admissions have been restricted in assisted living facilities but not in nursing homes.

In contrast, statutes allow the Department to suspend new admissions to assisted living facilities at the same time a statement of deficiency is issued, which provides an immediate penalty. Of the 854 penalties imposed on assisted living facilities from FY 1997-98 through FY 2000-01, 60, or 7.0 percent, involved suspensions of new admissions. Most of these suspensions were for community-based residential facilities.

Because restricting admissions may be effective in compelling compliance with regulations and because current statutory authority limits the instances in which it may be used, *we recommend the Legislature amend s. 50.04(4)(d), Wis. Stats., to allow the Department of Health and Family Services to restrict nursing home admissions in a more timely manner.*

Reimbursement for Medicaid or Medicare residents may be restricted to compel compliance.

Federal regulations permit a number of additional restrictions on nursing home admissions or reimbursement. Specifically:

- The State may restrict admissions by suspending Medicaid and Medicare reimbursement for new residents. The requirements regarding the types of violations that must have occurred before this penalty is imposed are less stringent than the requirements for a state penalty. In FY 2000-01, federal suspension of reimbursement for new admissions was imposed on nine nursing homes.

- The federal government may suspend reimbursement for all Medicaid and Medicare residents in a nursing home. In FY 2000-01, this penalty was not imposed on any Wisconsin nursing homes.

- The federal government may restrict reimbursement by terminating its agreement with the nursing home to participate in Medicaid and Medicare, which ends federal funding to the facility. This penalty is usually imposed if there is immediate jeopardy to resident health or safety, or if the facility does not achieve substantial compliance within six months of the inspection that found noncompliance. In FY 2000-01, no providers were terminated from the federal programs.

Licensure Constraints

Suspending, revoking, or placing conditions on the licenses of nursing homes or assisted living facilities is another means by which the Department can enforce compliance with state—but not federal—regulations. License revocation, which closes a facility, is one of the most severe penalties that can be imposed; in addition to affecting revenue, it affects employees and is disruptive to residents, who must find alternative placements. Revocation is, therefore, considered a penalty of last resort and is typically imposed either after other penalties fail to compel compliance or when there is an immediate and direct threat to the health, safety, and welfare of residents.

License revocation has been used against 29 assisted living facilities.

Conditional licenses require nursing homes to meet certain conditions, such as hiring a consultant with expertise in areas in which the home has been issued citations. From FY 1997-98 through FY 2000-01, the Department issued three conditional nursing home licenses but did not revoke or suspend any nursing home licenses. However, 29 assisted living facilities faced license revocation during that period.

Management Controls

Management controls that restrict a nursing home or assisted living facility provider's ability to operate independently include:

- state monitoring, which can be imposed on nursing homes and community-based residential facilities, but not other types of assisted living facilities;
- temporary management, which can be imposed only on nursing homes; and
- receivership, which can be imposed on nursing homes and community-based residential facilities, but not other types of assisted living facilities.

These controls have not been used frequently for nursing homes because operators have the opportunity to correct violations before they are imposed, the controls may be imposed only after serious problems have developed or persisted, and the cost involved in imposing them can be high and may be incurred by the Department. They have never been applied to assisted living facilities.

When a long-term care provider is monitored, an employee or contractor of the State is assigned to oversee the correction of cited deficiencies. Monitoring is intended to be a safeguard against further harm to residents when harm or a situation with potential for harm has occurred.

Monitoring may be imposed when nursing homes violate either state or federal regulations; the criteria for determining that the penalty is appropriate are similar for both types of violations. Statutory conditions under which a monitor may be used to correct state violations include:

- lack of a valid license, or suspension or revocation of the existing license by the Department;
- pending closure of the nursing home without adequate arrangements for relocation of residents; or
- the existence of an emergency, as determined by the Department, that threatens the health, safety, or welfare of the residents.

Nursing home monitoring was imposed three times in FY 2000-01.

The Department notes that the federal government does not fund the costs of monitors, even in response to violations of federal regulations, and will not permit the State to charge a facility for a monitor. The cost of a monitor, which the Department reports can be as high as $80 per hour, would therefore be incurred by the State, and the Department reports that it does not have funds available for this purpose. Statutes allow the Department to charge a facility for the cost of a monitor that is imposed in response to a violation of state regulations, but in many cases nursing homes do not have the funds to pay for monitors and, therefore, appeal the penalty. The Department indicates that monitoring was imposed three times in FY 2000-01.

Temporary management, in which the State selects or recommends a person to manage a nursing home, oversee correction of deficiencies, and ensure the health and safety of residents while the corrections are being made, may be imposed when the nursing home has violated federal regulations that rise to the level of immediate jeopardy or when there are widespread deficiencies constituting actual harm to residents. The temporary manager has the authority to hire, terminate, or reassign staff; obligate funds; alter procedures; and otherwise manage a nursing home to correct operational deficiencies. Federal regulations require nursing homes to pay the salaries of temporary managers. In FY 2000-01, temporary management was not imposed on any nursing home in Wisconsin.

One skilled nursing facility has been placed in receivership.

When a nursing home or assisted living facility is placed in receivership, the Department becomes the license holder and is responsible for daily operations until residents can be relocated and the nursing home or assisted living facility can be closed. The Department may place nursing homes or community-based residential facilities, but not other types of assisted living facilities, in receivership for violating state regulations. As noted, this penalty has never been applied to community-based residential facilities, and it is rarely used for nursing homes because

of the expense involved for the State. From FY 1997-98 through FY 2000-01, the Department placed one skilled nursing facility in receivership. In addition, three facilities for the developmentally disabled, which are another type of nursing home, were placed in receivership during this time period. The Department indicated that it contracts for receivership services because it does not have the staff to operate a nursing home or assisted living facility full-time.

The Department believes that increased use of other state penalties might help to prevent the conditions that lead to receivership, and the Department is developing a proposal to amend ch. 50, Wis. Stats., to allow for the imposition of other penalties before conditions at nursing homes become serious enough for receivership. The proposal includes:

- allowing monitoring for nursing homes that the Department has identified as being financially unstable, which will be defined by the Department in cooperation with provider groups;

- allowing monitoring for nursing homes that frequently cycle in and out of compliance with regulations;

- allowing conditional licenses to be imposed before a nursing home has a serious violation that persists; and

- allowing for probationary licenses that extend beyond the 12 months currently allowed.

State Criminal Charges

The Department of Justice's Medicaid Fraud Control Unit or local law enforcement may file criminal charges against either facility operators or individual caregivers based on information gathered through the regulation of nursing homes and assisted living facilities. Department of Justice data indicate one assisted living facility, one facility for the developmentally disabled, and 24 individual caregivers were charged with criminal resident abuse and/or neglect from July 1999 through June 2002.

The Department of Justice investigates resident abuse or neglect, misappropriation of resident funds, and Medicaid fraud.

The Medicaid Fraud Control Unit is responsible for compliance with federal regulations that direct states to investigate Medicaid fraud and allegations of resident abuse or neglect, as well as misappropriation of resident funds for Medicaid recipients. Currently, one attorney directs the unit's two staff attorneys, six investigators, and two administrative support staff. The unit is funded by a federal matching grant that supports 75 percent of its costs; the remaining 25 percent is funded by GPR.

The Medicaid Fraud Control Unit gathers information on potential criminal resident abuse or neglect cases primarily from the Department of Health and Family Services, as well as private citizens, local law enforcement, and providers. While the Department of Health and Family Services investigates noncompliance with state and federal regulations, as well as instances of caregiver misconduct that may result in civil findings against individuals, the Department of Justice determines whether criminal conduct has occurred.

We also note that staff from the Department of Health and Family Services participate in monthly meetings to share information regarding potential resident abuse or neglect with representatives of the Medicaid Fraud Control Unit, the Western and Eastern U.S. Attorney's offices, the Department of Regulation and Licensing, the Board on Aging and Long-Term Care, and others. Department of Health and Family Services' staff present information related to nursing homes that have received citations for which actual harm to residents occurred, and assisted living facilities facing serious accusations of resident abuse or neglect.

From January 2000 through July 2002, the Department of Health and Family Services made 194 referrals to the Department of Justice that included:

- 181 referrals involving skilled and intermediate care nursing homes and facilities for the developmentally disabled; and

- 13 referrals involving assisted living facilities.

At the Department of Justice, if a preliminary review warrants further examination, the case is referred to a team of one investigator and one attorney in the Medicaid Fraud Control Unit. These staff investigate and evaluate cases to determine whether criminal charges can be supported and should be filed. These determinations require legal judgement on the quality and credibility of available evidence and witnesses, as well as whether the legal standard of beyond a reasonable doubt can be met. Between July 1, 1999 and June 30, 2002, the Department of Justice was

notified of approximately 845 instances of potential resident abuse or neglect, and 265 instances of potential misappropriation of resident funds.

From July 1999 through June 2002, criminal complaints were issued against two long-term care facilities.

As of June 2002, complaints were issued by the Department of Justice against one assisted living facility and one facility for the developmentally disabled:

- In January 2002, criminal charges were filed against Homes for Independent Living, located in Jefferson County, regarding the Linden Corners community-based residential facility. In August 2002, the company paid $20,000 in penalties as part of a settlement agreement with the Department of Justice.

- In February 2002, criminal charges were filed against Benchmark Healthcare of Wisconsin, Inc., located in Milwaukee County, regarding The Jackson Center, a facility for the developmentally disabled. In June 2002, Benchmark entered a no-contest plea and was convicted of five felony counts and one misdemeanor count of resident abuse, four felony counts of neglect of a resident, and one felony count of second-degree sexual assault. As a result, the corporation was ordered to pay $101,000 in fines.

As of June 2002, criminal charges had been filed against 24 caregivers for resident abuse or neglect, and against 4 caregivers for misappropriation of resident funds. Since no reporting is required from local law enforcement agencies to the Department of Health and Family Services, the Department does not track the outcomes of all criminal cases. The analyses that would be required to evaluate the efficiency and effectiveness of enforcement activities involving criminal charges were outside the scope of this evaluation.

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Informal dispute resolution is available only to nursing homes.

Although the inspection process is designed so that concerns can be addressed in daily meetings and an end-of-inspection conference, providers sometimes disagree with inspectors' findings and the citations issued. A nursing home that disagrees with a citation may participate in the informal dispute resolution process that has been required by federal regulations since 1995, file a formal appeal, or both. From FY 1997-98 through FY 2000-01, nursing homes requested informal dispute resolution for an estimated 12.4 percent of all federal citations and 18.0 percent of all state citations. However, they have expressed concerns related to the outcomes and the timeliness of the informal dispute resolution process. The formal appeals process, which is available to both nursing homes and assisted living facilities, is not used frequently by either type of long-term care provider.

Informal Dispute Resolution

The informal dispute resolution process is intended to resolve differences between nursing homes and the Department in a timely manner and to prevent costly and time-consuming formal appeals. We analyzed the outcomes and timeliness of the informal dispute resolution process from FY 1997-98 through FY 2000-01.

Outcomes of Informal Dispute Resolution

Contested nursing home citations were not changed in 50.5 percent of informal dispute resolution decisions.

From FY 1997-98 through FY 2000-01, informal dispute resolution was requested for 1,972 citations, and we were able to analyze the outcomes of 1,657. Providers withdrew requests for informal dispute resolution for 160 of the 1,657 citations. As shown in Table 20, 50.5 percent of decisions for the remaining 1,497 disputed nursing home citations resulted in no change, and 15.7 percent of the decisions resulted in deletion of citations from the statement of deficiency. The number of decisions in which citations were deleted increased from 12.1 percent of decisions for FY 1997-98 to 23.0 percent of decisions for FY 2000-01.

Many informal dispute resolution decisions resulted in citations that were partially rewritten. For example, wording was changed in 17.7 percent, examples were deleted in 11.1 percent, the severity level was changed in 3.2 percent, and regulatory references were changed in 1.3 percent. Outcomes of informal dispute resolution for federal and state citations are shown separately in Appendix 6.

Table 20

Informal Dispute Resolution Decisions
FY 1997-98 through FY 2000-01

Decision	1997-98	1998-99	1999-2000	2000-01	Total	Percentage
No change to citation	238	195	167	156	756	50.5%
Specific wording changed	68	71	56	70	265	17.7
Citation deleted	54	53	44	84	235	15.7
Examples deleted	56	50	25	35	166	11.1
Severity level changed	22	9	6	11	48	3.2
Regulation or code changed	8	2	3	7	20	1.3
Other	2	1	1	3	7	0.5
Total	448	381	302	366	1,497	100.0%

Timeliness of Informal Dispute Resolution Decisions

Federal regulations require that nursing homes request informal dispute resolution within ten days of receiving a statement of deficiency. Nursing homes are required to submit specific information that refutes or clarifies information contained in the statement of deficiency, explain why this information was not available during the inspection, and identify the resolution sought.

Federal regulations allow states discretion in determining who will conduct reviews and how reviews will be conducted, as well as in establishing a time line for the process. The Department used its discretion to establish a policy that:

- allows providers to request informal dispute resolution for both federal and state citations, although not for state forfeitures;

- allows providers to request an in-person meeting or a telephone conference call within 3 days or a desk review within 10 days of receiving a statement of deficiency;

- requires providers to submit additional documentation within 7 to 10 days of receiving a statement of deficiency, depending on the type of review requested; and

- requires the Department to issue a decision within 21 days of issuing a statement of deficiency.

Only 32.5 percent of the Department's decisions met its timeliness standard.

As shown in Table 21, the Department met its 21-day standard for timeliness for only 32.5 percent of decisions from FY 1997-98 to FY 2000-01. During that period, providers requested either an in-person meeting or a telephone conference call for 88.1 percent of citations contested through the informal dispute resolution process. Desk reviews, which are significantly less time-consuming, were requested for 10.8 percent of citations. Department staff attribute the delay in issuing informal dispute resolution decisions to the workload being too great for one staff person to manage; from April 2000 through June 2002, one staff person was assigned to this task.

Table 21

Informal Dispute Resolution Decision Notification Timeliness
FY 1997-98 through FY 2000-01

Days to Notification[1]	1997-98	1998-99	1999-2000	2000-01	Total	Percentage
0-21 days	191	152	113	31	487	32.5%
22-54 days	210	221	166	235	832	55.6
55-70 days[2]	47	8	23	58	136	9.1
More than 70 days	0	0	0	42	42	2.8
Total	448	381	302	366	1,497	100.0%

[1] From the day the nursing home receives the statement of deficiency.
[2] Department policy suggests inspectors conduct verification visits during this time, which is 45-60 days after the inspectors leave the facility. Federal regulations require inspectors to conduct verification visits by the end of this time.

Methods used by other midwestern states may assist with timeliness.

Other midwestern states report mixed success in meeting their timeliness standards for issuing informal dispute resolution decisions, which range from approximately 20 to 40 days after a facility receives the statement of deficiency. However, the limits that some states place on their review process may assist them in issuing timely decisions. For example, Michigan allows in-person conferences only in rare instances,

Ohio does not offer them at all, and Illinois restricts them to serious federal citations only and holds them at department offices. Indiana, Iowa, and Minnesota all allow providers to choose a desk review or in-person conference but limit in-person conference time to one hour.

From January 1995 through March 2000, the Department's five regional managers decided informal dispute resolution cases for providers in their respective regions. Beginning in July 2002, the Department returned responsibility for informal dispute resolution decision-making to these regional managers. This action may improve timeliness. The Department could consider a number of other options to improve the timely issuance of decisions, including:

- revising the informal dispute resolution policy to limit citations for which informal dispute resolution may be requested, such as federal citations only;

- revising the informal dispute resolution policy to limit in-person conferences to serious citations only and/or to restrict their length; or

- conducting all informal dispute resolution conferences at offices of the Department.

To apprise the Legislature of its efforts to improve the timeliness of decisions it issues in the nursing home informal dispute resolution process, *we recommend the Department of Health and Family Services report to the Joint Legislative Audit Committee by July 1, 2003, on:*

- *the effect on timeliness of returning responsibility for informal dispute resolution decision-making to regional managers;*

- *the number of cases resolved through informal dispute resolution; and*

- *the number of cases resolved through informal dispute resolution that were subsequently appealed.*

Although the regional managers do not review citations issued by inspectors they supervise, providers remain concerned about both the potential for inconsistent decision-making among regions and the independence of the five managers. In addition, nursing home providers have previously expressed concern that the staff who resolve informal disputes do not have formal medical credentials. Federal regulations do not require a medical background for informal dispute resolution

decision-makers; they only encourage states to include at least one person not directly involved in the inspection in the informal dispute resolution decision-making process. We also found that other midwestern states do not always have staff with medical backgrounds conducting informal dispute resolution. For example, although a panel of physicians and nurses conducts informal dispute resolution in Michigan, attorneys serve as the decision-makers in Iowa. In Illinois, Indiana, Minnesota, and Ohio, current or former inspectors and supervisors of inspectors conduct informal dispute resolution. These staff are usually registered nurses, social workers, or dieticians.

A more independent process for informal dispute resolution is being tested by the federal government.

According to the federal Centers for Medicare and Medicaid Services, the current informal dispute resolution process, as required by federal regulations, is not universally regarded as an objective process that adequately addresses disagreements about noncompliance with federal regulations. As a result, the Centers for Medicare and Medicaid Services are currently conducting a federally funded pilot project in Iowa and Texas to test the effectiveness of an independent informal dispute resolution process. In this pilot, organizations or individuals not associated with or employed by the state inspection agency or the nursing home industry are responsible for coordinating informal dispute resolution. Results of the project are expected in summer 2003.

Appeals Process

A formal appeals process is available to both assisted living facilities and nursing homes.

Federal regulations allow nursing homes to appeal to the federal Department of Health and Human Services (DHHS) when federal citations result in penalties. Under state regulations, nursing homes and assisted living facilities may appeal both statements of deficiency for state citations and forfeiture amounts they have been assessed for these citations to the Department of Administration's Division of Hearings and Appeals (DHA).

In FY 2000-01:

- 788 statements of deficiency were issued to nursing homes for federal violations, and 10 nursing home providers filed appeals with DHHS;
- 316 statements of deficiency were issued to nursing homes for state violations, and 96 appeals were filed with DHA;
- 116 state forfeitures were assessed against nursing homes, and 14 appeals were filed with DHA; and

- 808 statements of deficiency were issued to assisted living facilities, and 34 of these statements of deficiency and associated forfeitures were challenged in appeals filed with DHA.

It should be noted that appeals filed during FY 2000-01 may reflect citations, statements of deficiency, or forfeiture assessments issued during FY 1999-2000.

Federal citations are appealed to the federal government.

After receipt of a statement of deficiency containing a federal citation, nursing home providers are granted 60 days under federal law to request a hearing before an administrative law judge at DHHS. The decision of this judge may be appealed to the DHHS Appeals Board, which is a panel of three administrative law judges. A nursing home provider has 60 days to file an appeal of the Appeals Board's decision with a federal district court. Appeals Board decisions regarding civil money penalties must be reviewed by the federal court of appeals, rather than a federal district court. Federal law does not allow the federal government to appeal decisions of the DHHS Appeals Board.

For violations of state regulations, Wisconsin law allows nursing home and assisted living providers ten days to file an appeal with DHA after receiving a statement of deficiency or a forfeiture assessment. Wisconsin law gives providers the right to a hearing within 30 days of the date the appeal was filed, but staff in the Department indicate that many providers waive their right to a timely hearing. On appeal to DHA, the State must prove that the factual basis of a citation is valid and that assessed forfeitures were reasonable. Either the State or the provider may appeal decisions issued by DHA to circuit court. Rather than conducting an examination of the validity of the statement of deficiency or forfeiture assessment, the circuit court focuses on whether the DHA judge exceeded his or her legal authority.

From FY 1998-99 through FY 2000-01, 79.1 percent of appeals filed with DHA were closed before hearings were held.

As shown in Table 22, 79.1 percent of appeals filed from FY 1998-99 through FY 2000-01 were closed before hearings were held. Many providers indicate that they file appeals in order to preserve their right to do so while the matter is also examined through the informal dispute resolution process. If providers accept the outcome of informal dispute resolution, they withdraw their requests for appeal to DHA.

Table 22

Appeals Filed with the Division of Hearings and Appeals
FY 1998-99 through FY 2000-01

Timing of Closure	Appeals	Percentage
Appeals closed prior to hearing	405	79.1%
Appeals closed via hearing	21	4.1
Appeals unresolved	86	16.8
Total	512	100.0%

Extending the time to request an appeal to 60 days would parallel the federal appeals process. Since the majority of existing appeals are closed before they are heard but entail administrative costs for providers, the Department, and DHA, *we recommend the Legislature modify ch. 50, Wis. Stats., to create a 60-day time frame for providers to file appeals after receiving statements of deficiency for state violations*.

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Appendix 1

Federal Categories of Scope and Severity for Nursing Home Citations

Federal nursing home citations can be categorized according to the four levels of severity and three scope or frequency measures shown in the first table. Federal nursing home citations are shown by severity level in the second table.

Federal Categories of Scope and Severity

	Scope or Frequency		
Level of Severity	Isolated	Pattern	Widespread
No actual harm but potential for minimal harm	A	B	C
No actual harm but potential for more than minimal harm	D	E	F
Actual harm but not immediate jeopardy	G	H	I
Immediate jeopardy to resident health or safety	J	K	L

Nursing homes are considered in "substantial compliance" with federal regulations for citations issued at levels A, B, and C when no actual harm occurs but there is potential for minimal harm. Citations at levels D through L indicate that a nursing home is "out of substantial compliance."

Nursing homes are determined to have "substandard quality of care" when they receive citations at levels F, H, I, J, K, and L involving resident behavior and facility practices, quality of life, or quality of care.

Federal Nursing Home Citations by Level of Severity
FY 1997-98 through FY 2000-01

Level of Severity	1997-98	1998-99	1999-2000	2000-01	Total
No actual harm but potential for minimal harm	383	408	312	354	1,457
No actual harm but potential for more than minimal harm	2,066	2,266	1,862	2,245	8,439
Actual harm but not immediate jeopardy	190	183	182	142	697
Immediate jeopardy to resident health or safety	2	12	24	23	61
Severity level not available	6	6	5	2	19
Total	2,647	2,875	2,385	2,766	10,673

Appendix 2

State Categories of Severity for Nursing Home Citations

State nursing home citations can be categorized according to the four levels of severity and three statutory classifications shown in the first table. State nursing home citations are shown by severity level in the second table. The third table shows the average number of state nursing home citations issued during routine inspections.

State Categories of Severity

Level of Severity	Statutory Classification	Explanation
Correction orders for no direct threat to resident health, safety, or welfare	Class C	Relates to the operation and maintenance of a home without threat to residents' health, safety, or welfare; issued when the provider has not violated the same statute or administrative rule in the previous two years
No direct threat to resident health, safety, or welfare	Class C	Relates to the operation and maintenance of a home without threat to residents' health, safety, or welfare
Directly threatens resident health, safety, or welfare	Class B	Directly threatens residents' health, safety, or welfare; similar to federal violations with potential for harm or actual harm
Substantial probability for death or serious harm	Class A	Involves death or serious harm, or their substantial probability; similar to federal immediate jeopardy violations

State Nursing Home Citations by Level of Severity
FY 1997-98 through FY 2000-01

Level of Severity	1997-98	1998-99	1999-2000	2000-01	Total
Correction orders for no direct threat to resident health, safety, or welfare	201	228	198	191	818
No direct threat to resident health, safety, or welfare	8	26	20	21	75
Directly threatens resident health, safety, or welfare	180	240	235	230	885
Substantial probability for death or serious harm	11	13	24	21	69
Severity level not available	4	3	2	7	16
Total	404	510	479	470	1,863

Average Number of State Nursing Home Citations Issued During Routine Inspections
FY 1997-98 through FY 2000-01

Region	1997-98	1998-99	1999-2000	2000-01
Northeastern	0.3	0.3	0.2	0.3
Northern	0.3	0.3	0.3	0.6
Southeastern	0.3	0.4	0.5	0.4
Southern	0.1	0.4	0.3	0.2
Western	0.5	0.6	0.5	0.6
Statewide average	0.3	0.4	0.4	0.4

Appendix 3

Nursing Home and Assisted Living Facility Citations by Region

State Nursing Home Citations
FY 1997-98 through FY 2000-01

Region	FY 1997-98	FY 1998-99	FY 1999-2000	FY 2000-01	Total
Northeastern	75	75	51	58	259
Northern	33	31	34	61	159
Southeastern	122	157	192	155	626
Southern	27	67	54	33	181
Western	147	180	148	163	638
Total	404	510	479	470	1,863

Percentage of State Nursing Home Citations by Level of Severity
FY 1997-98 through FY 2000-01

Level of Severity	Northeastern	Northern	Southeastern	Southern	Western	Total
Correction orders for no direct threat to resident health, safety, or welfare	16.3%	5.1%	25.8%	8.4%	44.4%	100.0%
No direct threat to resident health, safety, or welfare	12.0	4.0	22.7	1.3	60.0	100.0
Directly threatens resident health, safety, or welfare	12.0	11.5	42.5	11.2	22.8	100.0
Substantial probability for death or serious harm	7.3	15.9	29.0	13.0	34.8	100.0
Severity level not available	37.5	6.3	12.5	18.7	25.0	100.0

Federal Nursing Home Citations
FY 1997-98 through FY 2000-01

Region	FY 1997-98	FY 1998-99	FY 1999-2000	FY 2000-01	Total
Northeastern	470	298	263	301	1,332
Northern	258	278	249	337	1,122
Southeastern	966	1,005	932	938	3,841
Southern	359	562	467	650	2,038
Western	594	732	474	540	2,340
Total	2,647	2,875	2,385	2,766	10,673

Percentage of Federal Nursing Home Citations by Level of Severity
FY 1997-98 through FY 2000-01

Level of Severity	Northeastern	Northern	Southeastern	Southern	Western	Total
No harm but potential for minimal harm	19.7%	17.2%	20.7%	11.5%	30.9%	100.0%
No harm but potential for more than minimal harm	11.2	9.1	38.2	20.9	20.6	100.0
Actual harm but not immediate jeopardy	13.5	12.8	40.7	13.8	19.2	100.0
Immediate jeopardy to resident health or safety	6.6	22.9	26.2	16.4	27.9	100.0
Severity level not available	0.0	5.3	89.4	0.0	5.3	100.0

Assisted Living Facility Citations
FY 1997-98 through FY 2000-01

Region	FY 1997-98	FY 1998-99	FY 1999-2000	FY 2000-01	Total
Northeastern	252	629	1,060	582	2,523
Northern	32	342	264	1,291	1,929
Southeastern	553	1,394	1,115	1,517	4,579
Southern	843	742	1,421	666	3,672
Western	185	1,285	791	426	2,687
Total	1,865	4,392	4,651	4,482	15,390

Appendix 4

Estimated Medicaid Reimbursement

Some suggest that the percentage of allowable Medicaid costs reimbursed is an indicator of the ability of a nursing home to provide quality care, and nursing home providers and their professional associations have expressed concern over the adequacy of reimbursement they receive through the Medicaid program. However, we updated a Legislative Fiscal Bureau analysis and found, in most cases, no statistically significant relationship between the percentage of allowable costs reimbursed and a number of factors identified as being related to a nursing home's ability to provide quality care.

Estimated Percentage of Allowable Costs Reimbursed

The Department reimburses nursing homes for care provided to Medicaid recipients through payments based on a daily rate, adjusted for resident care levels. The daily rate is contingent upon the amount of funding appropriated by the Legislature for nursing home reimbursement and the estimated costs of nursing homes statewide, based on their prior year costs. In setting the daily rate, state law allows the Department to consider nursing homes' over-the-counter drug expenses but requires that it consider six cost centers, including:

- direct care, which includes the staffing costs of nurses and certified nursing assistants;
- support services;
- administrative and general;
- fuel and other utilities;
- property taxes, municipal services, or assessments; and
- capital.

Because of limited federal and state funding to reimburse facilities, the Department establishes maximum rates of reimbursement for each cost center. In general, as long as a home's costs do not exceed the maximum rates, it will be reimbursed for its expenditures. However, if a home's expenditures exceed the maximum rates, even if its costs are determined to be allowable according to federally established criteria, it will have its expenditures reimbursed only up to the maximum rate.

To quantify the extent to which homes have allowable costs that are not reimbursed, the Wisconsin Health Care Association and the Wisconsin Association of Homes and Services for the Aging employed BDO Seidman, a private consulting firm, to analyze the percentage of allowable costs reimbursed to nursing homes through the State's reimbursement formula. That analysis, released in September 2000, included the skilled nursing facilities, intermediate care facilities, and facilities for the developmentally disabled whose prior-year cost reports were available at the time. It estimated that 17 percent of the 328 nursing homes included in its analysis were reimbursed for all of their allowable Medicaid costs in FY 1999-2000.

In June 2001, the Legislative Fiscal Bureau prepared a similar analysis for the 2001-03 biennial budget deliberations; that analysis also reflected estimated reimbursement in FY 1999-2000 but incorporated additional payments to nursing homes that were not included in the BDO Seidman report, including supplemental payments to county and municipally owned nursing homes and the wage pass-through, which were payments authorized by the Legislature to improve the ability of homes to compensate direct care staff. Additionally, the Legislative Fiscal Bureau included 402 nursing homes in its analysis, 74 more than the 328 included in the BDO Seidman study. The Legislative Fiscal Bureau estimated that 24 percent of the nursing homes included in its analysis were fully reimbursed for their allowable costs, while about 77 percent of homes had an estimated 90 percent or more of their allowable costs reimbursed.

We updated the Legislative Fiscal Bureau analysis to estimate reimbursement in FY 2000-01. However, in order to be consistent with other analyses in this report, we included only skilled or intermediate care nursing homes that were certified to receive funding through the federal Medicaid or Medicare programs. In addition, we excluded facilities with special circumstances, such as a large decrease in licensed beds, which would have made estimates less reliable. As shown in the table that follows, we estimate that 9.9 percent of homes in our analysis had their allowable Medicaid costs fully reimbursed in FY 2000-01, while 61.8 percent had an estimated 90.0 percent or more of their allowable costs reimbursed. Statewide, an estimated 88.6 percent of allowable costs were reimbursed.

Estimated Percentage of Allowable Medicaid Costs Reimbursed
FY 2000-01

Estimated Percentage of Costs Reimbursed	Number of Facilities	Percentage of Facilities
0% to 49%	1	0.3%
50% to 59%	3	0.8
60% to 69%	10	2.7
70% to 79%	45	12.3
80% to 89%	81	22.1
90% to 99%	190	51.9
100% or more	36	9.9
Total	366	100.0%

As was shown in the table, 36 facilities in our analysis received reimbursement of 100 percent or more of their allowable costs. The Department makes a number of additional payments to nursing homes that may increase the estimated percentage of allowable costs reimbursed above 100 percent, including:

- intergovernmental transfers to county-owned nursing homes;
- wage pass-through payments to improve the ability of homes to compensate direct care staff; and
- other programs that provide additional funding for homes with specific characteristics, such as those that have undertaken energy savings projects, those with a high percentage of private rooms, and those with a high percentage of Medicaid or Medicare residents.

It should be noted, however, that even homes receiving reimbursement totaling more than 100 percent of their allowable costs likely have less than 100 percent of their total costs reimbursed, as not all costs incurred by a nursing home are reimbursable under federal Medicaid regulations.

Although the percentage of allowable Medicaid costs reimbursed provides a picture of the degree to which homes have made expenditures recognized as appropriate by the federal government for which they are not reimbursed, it provides an incomplete explanation of a facility's ability to provide quality care. For example, facilities receive other sources of revenue, such as fees from residents who pay for care with their own funds. Additionally, a facility may be reimbursed a lower percentage of its allowable costs because it is spending more on resident care than the maximum reimbursement rate. As such, the quality of care may be better at a facility with a lower percentage of Medicaid costs reimbursed than at a facility with a higher percentage of costs reimbursed, which may be reflective of that facility's inability to provide additional resources beyond those reimbursed through Medicaid.

Relationship to Other Facility Characteristics

To determine whether a relationship existed between the estimated percentage of allowable costs reimbursed through the Medicaid formula in FY 2000-01 and various factors thought to be indicative of quality, we performed statistical analyses. Specifically, we reviewed:

- the number of state and federal citations;
- the number of complaints investigated by the Department;
- the amounts of state forfeitures and federal civil money penalties that were assessed and paid;
- measures of capacity and volume, including the number of licensed beds and total patient days; and
- facility staff turnover, including registered nurses, licensed practical nurses, and certified nursing assistants.

In most cases, we could not establish any statistical relationship between the estimated percentage of costs reimbursed and these facility characteristics. For example, there was no consistent pattern of citations, forfeitures, or turnover among facilities with either a high or low percentage of allowable costs reimbursed. However, we were able to identify a weak statistical relationship between the estimated percentage of allowable costs reimbursed and both the number of licensed beds in a home and the total number of patient days, which is a measure of the volume of residents served each day over the course of the year. Specifically, we identified a weak inverse relationship in both cases, indicating that homes with a higher estimated percentage of allowable costs reimbursed tended to also have a relatively smaller number of licensed beds and total patient days, and vice versa. It should be noted, however, that these analyses do not support a causal relationship.

In addition to performing statistical analyses on the total number of citations, we compared the severity of federal citations to the estimated percentage of allowable costs reimbursed by grouping homes according to the severity of citations received. Of the 366 homes in our analysis:

- 80 homes received at least one actual harm or immediate jeopardy citation and were reimbursed an estimated 90.4 percent of their allowable costs;

- 231 homes did not receive any of the more serious citations but received at least one citation constituting no actual harm and were reimbursed an estimated 88.3 percent of their allowable costs;

- 45 homes received no federal citations and were reimbursed an estimated 86.8 percent of their allowable costs; and

- 10 homes were not inspected in FY 2000-01.

These data indicate that homes with more serious citations were generally reimbursed a higher percentage of their allowable Medicaid costs. This may indicate that the percentage of allowable costs reimbursed is not the most important factor in determining whether a facility is able to provide the level of care that remains in compliance with federal regulations. Conversely, it may indicate that homes with a lower percentage of their allowable costs reimbursed, which may have relatively more revenue from sources other than the Medicaid program, are more able to provide the level of care that remains in compliance with federal regulations.

Appendix 5

Forfeiture Ranges for State Nursing Home Violations

The Department of Health and Family Services developed a document to guide staff in determining the amount of a nursing home forfeiture. The text and tables presented in this appendix were extracted verbatim from that document.

Forfeiture Ranges—Class A Violations

The following ranges may be used in setting forfeiture amounts. The ranges are meant to encompass most violation categories, however, all violations are reviewed for a forfeiture on a case-by-case basis and depending on the overall picture, it may be appropriate to set a forfeiture at an amount outside a listed range. The statutory maximums for forfeitures may not be exceeded for any day of violation.

Mitigating and aggravating circumstances will be weighed to further determine a forfeiture amount. This may include why the deficient practice occurred, what facility system(s) broke down, what measures the facility initiated to ensure the deficient practice would not reoccur; how many residents were affected; what the facility did to prevent the violation; what the facility did to correct; and, what was done in response to the violation. The fact that the facility provided appropriate training, initially and ongoing, or has a quality assurance committee who reviews facility systems and systems' failures, may be considered mitigating evidence in establishing a forfeiture amount. Previous violations and any financial benefit gained by the facility as a result of the deficient practice will be weighed in determining the forfeiture amount.

Forfeiture Ranges—Class A Violations

	Substantial Probability that Death or Serious Harm Will Occur
(3) Death or actual, serious harm. Harm that has occurred compromises resident's ability to attain highest level of functioning and well-being.	$5,000—$10,000
(2) Actual harm. Harm that has occurred does or does not compromise resident's ability to attain highest level of functioning and well-being.	$3,000—$7,000
(1) No harm, but substantial probability that death or serious harm could have occurred.	$0—$5,000

Forfeiture Ranges—Class B Violations

The following ranges may be used in setting forfeiture amounts. The ranges are meant to encompass most violation categories, however, all violations are reviewed for a forfeiture on a case-by-case basis and depending on the overall picture, it may be appropriate to set a forfeiture at an amount outside a listed range. The statutory maximums for forfeitures may not be exceeded for any day of violation.

Mitigating and aggravating circumstances will be weighed to further determine a forfeiture amount. This may include:

- Why the deficient practice occurred
- What facility system(s) broke down
- What measures the facility initiated to ensure the deficient practice would not reoccur
- How many residents were affected
- What the facility did to prevent the violation
- What the facility did to correct
- What was done in response to the violation
- Did the facility provide appropriate training, initially and ongoing
- Does the facility have a quality assurance committee who reviews facility systems and systems' failures
- What are the facility's previous violations
- Did the facility gain any financial benefit as a result of the deficient practice.

Forfeiture Ranges—Class B Violations

Harm Levels	Harm Probability		
	(a) Low probability for harm to have occurred, or for harm to occur, or for more harm to occur	(b) Medium probability for harm to have occurred, or for harm to occur, or for more harm to occur	(c) High probability for harm to have occurred, or for harm to occur, or for more harm to occur
(4) Actual, serious harm. Harm that has occurred compromises resident's ability to attain highest level of functioning and well-being.	$2,500 to $4,050	$3,000 to $4,450	$4,050 to $5,000
(3) Actual harm. Harm that has occurred does or does not compromise resident's ability to attain highest level of functioning and well-being.	$1,800 to $2,700	$2,250 to $3,150	$2,700 to $3,600
(2) No harm, but potential for harm. Harm that may occur could compromise resident's ability to attain highest level of functioning and well-being.	$500 to $1,350	$900 to $1,800	$1,350 to $2,750
(1) No harm, but potential for harm. Harm that may occur will not compromise resident's ability to attain highest level of functioning and well-being.	–	$0 to $500	$250 to $900

Appendix 6

Nursing Home Informal Dispute Resolution Decisions

Informal Dispute Resolution Decisions for Federal Citations
FY 1997-98 through FY 2000-01

Decision	1997-98	1998-99	1999-2000	2000-01	Total	Percentage
No change to citation	189	161	118	113	581	48.6%
Specific wording changed	56	54	45	55	210	17.6
Citation deleted	42	46	39	63	190	15.9
Examples deleted	50	48	23	30	151	12.6
Severity level changed	21	9	6	10	46	3.9
Regulation or code changed	7	2	1	3	13	1.1
Other	1	1	1	1	4	0.3
Total	366	321	233	275	1,195	100.0%

Informal Dispute Resolution Decisions for State Citations
FY 1997-98 through FY 2000-01

Decision	1997-98	1998-99	1999-2000	2000-01	Total	Percentage
No change to citation	49	34	49	43	175	57.9%
Specific wording changed	12	17	11	15	55	18.2
Citation deleted	12	7	5	21	45	14.9
Examples deleted	6	2	2	5	15	5.0
Severity level changed	1	0	0	1	2	0.7
Regulation or code changed	1	0	2	4	7	2.3
Other	1	0	0	2	3	1.0
Total	82	60	69	91	302	100.0%

State of Wisconsin
Department of Health and Family Services

Scott McCallum, Governor
Phyllis J. Dubé, Secretary

December 6, 2002

Janice Mueller, State Auditor
Legislative Audit Bureau
22 West Mifflin Street, Suite 500
Madison, WI 53703

Dear Ms. Mueller:

Thank you for the opportunity to comment on the Legislative Audit Bureau's (LAB) report regarding the regulation of Wisconsin nursing homes and assisted living facilities. The Department of Health and Family Services (DHFS), Bureau of Quality Assurance (BQA), is the state agency responsible for the regulation of nursing homes and assisted living facilities. The Department is committed to ensuring the health, safety and welfare of Wisconsin seniors and individuals with disabilities residing in long term care facilities. It oversees the delivery of quality health care services through the enforcement of state and federal standards in nursing homes, and state standards in assisted living facilities.

The Department agrees with the LAB recommendations contained in the report. We will include them, along with several other initiatives, as part of the Department's action plan for continuous quality improvement in its regulation of Wisconsin nursing homes and assisted living facilities.

The audit recognizes significant resource challenges facing the Department in meeting the workload demands related to imposing state enforcement remedies against deficient nursing homes. The Department agrees state forfeitures should be issued on a more timely basis. At this point, we are hampered by the lack of sufficient staff to carry out this function. Our DHFS biennial budget request contains a non-GPR initiative to expand staff capacity to more timely issue forfeitures. We also agree with the recommendation to explore strategies to use other enforcement remedies more frequently. We agree with the recommended legislative change allowing the Department to retain a portion of the state forfeitures issued against deficient nursing homes as a means of covering the administrative costs incurred by DHFS in determining them.

The Legislative Audit Bureau reviewed records up to 2001. The Department is pleased to note a number of substantial improvements, not reflected in the audit, have been accomplished since 2001:

- In 2000, the Centers for Medicare and Medicaid Services (CMS) reviewed every state survey agency for the quality of surveyor documentation in writing Statements of Deficiencies (SODs). CMS concluded that Wisconsin surveyors needed to improve their performance in this area. The Department responded by requiring training of all BQA surveyors, supervisors, and managers. DHFS legal staff, as well as experts from CMS, conducted training for BQA staff. BQA continues to emphasize principles of documentation training for its staff.

In a report released earlier this year, the same CMS review concluded that 91.5 percent of federal SODs issued by BQA long term care surveyors in 2002 met principles of documentation requirements. This represented a substantial improvement from the 2000 review. Furthermore, CMS conducted 18 on-site reviews of BQA staff during actual nursing home surveys. In the area of deficiency documentation, on a scale of one to five, with five being "extremely effective," BQA received an overall evaluation of 4.6. In this category for the 18 reviews, BQA received a score of 5 on 13 surveys, and 4 on the remaining 5 surveys. This verifies substantial performance improvement from 2000 to 2001.

- In July 2002, the Department created the Assisted Living Section through an internal reorganization of BQA. Staff responsible for the oversight of assisted living facilities was separated from the Resident Care Review Section (which retains nursing home oversight). In completing this reorganization, staff in the new Assisted Living Section is better able to perform its regulatory responsibilities, assure the regulatory compliance of assisted living facilities, and provide the technical assistance necessary to ensure safe, high quality services are delivered to Wisconsin citizens residing in assisted living facilities.

- Given the rapid and continuing growth of the assisted living industry, the Department has approved the reallocation of nine positions within BQA to expand the number of staff who conduct assisted living surveys. The Department will also increase the clinical expertise of assisted living surveyors by including nurses among the assisted living survey staff. This expansion will be GPR cost-neutral, and is predicated on DHFS's ability to capture additional federal Medicaid funds. The Department will provide to the Legislature a progress report as to the success or failure of obtaining these additional federal funds for the staff expansion by March 1, 2003.

While the audit report presents accurate and balanced information, we do not agree with the interpretation of statistics pertaining to regional office patterns in citing deficiencies. The presentation of statistical data, found on pages 23 through 30 of the report, is primarily "cumulative." The report does not provide comparative data on the information relating to the number of facilities by region; average facility size by region; average number of citations by size and by region; number of facility closures; and, inclusion of comparative CMS regional and national nursing home data. This data would offer a more valid analysis of BQA citing patterns. For instance, the table on page 27 indicates that 12% of nursing home citations were issued in the Northern Region, while the Southeastern Region issued 34% of citations. The table omits the fact that 9% of state nursing homes are in the Northern region, while 26% of nursing homes are in the Southeastern Region. Without this comparative information, the reader is left to conclude there is citing inconsistency across regions.

We appreciate the time and effort expended by the LAB staff in performing this audit. Thank you for your consideration of our comments.

Sincerely,

Phyllis J. Dubé
Secretary