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## **REGULATION OF NURSING HOMES AND ASSISTED LIVING FACILITIES**

In fiscal year (FY) 2000-01, 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.

The Department of Health and Family Services regulates both nursing homes and assisted living facilities, and inspections are its principal regulatory tool. In FY 2000-01, 215.7 full-time equivalent staff in the Department's Bureau of Quality Assurance were involved in the regulation of both types of long-term care facilities. The Department's expenditures for regulatory staff in five regional offices, including those who conduct inspections and investigate complaints, totaled \$12.5 million.

### **More Citations Are Being Issued, Particularly for Assisted Living Facilities**

Long-term care facilities that violate state or federal regulations are cited by the Department's inspectors. During the period we reviewed, 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. In contrast, the number of citations issued to assisted living facilities increased by 140.3 percent, from 1,865 to 4,482. The increase in assisted living facility citations is nearly nine times greater than the 15.9 percent increase in the number of these facilities providing care during this period. It can be attributed, in part, to implementation of new state regulations. Levels of severity are not specified for assisted living facility citations, but 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 matters that typically do not involve direct harm to residents.

Complaints about assisted living facilities increased 82.1 percent during the period we reviewed. In contrast, nursing home complaints decreased 3.0 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 nursing home complaints for which complete data were available. Substantiated complaints against assisted living facilities most commonly involved resident rights and resident abuse, while those against nursing homes most commonly involved quality of care and nursing services.

### **Regulatory Oversight Differs for Nursing Homes and Assisted Living Facilities**

Under federal regulations, nursing homes are subject to routine, unannounced inspections by teams of inspectors that must include at least one registered nurse. Wisconsin nursing homes were inspected, on average, once every 12 months. When both routine inspections and complaint investigations are considered, each nursing home in Wisconsin was visited 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 inspectors for any reason for at least one year, and 13.3 percent had not been visited for more than two years.

Regulations governing the oversight of assisted living facilities are established entirely by the State, and they contain no requirements related to inspection frequency for community-based residential facilities and adult family homes. Under administrative code, residential care apartment complexes are to be inspected at least once every three years. Each assisted living facility inspection typically involves a single inspector who is not required to have medical credentials.

### **All Available Enforcement Options Are Not Used**

Long-term care facilities that have been cited by the Department are subject to an enforcement process that can result in financial penalties, restrictions on admissions, licensure constraints, additional management oversight or control, and criminal charges. The most commonly used enforcement option is the state forfeiture. From FY 1997-98 through FY 2000-01, the Department imposed a total of 864 forfeitures on nursing homes that had violated state regulations, and 578 state forfeitures on assisted living facilities. In FY 2000-01, the average nursing home forfeiture assessment was \$11,246 per citation, and nursing homes were assessed a total of \$1.3 million in state forfeitures. The average forfeiture assessment for assisted living facilities was \$507 per statement of deficiency, and assisted living facilities were assessed a total of \$96,392 in state forfeitures. The Department has documented a procedure for assessing state nursing home forfeitures, but there are no criteria in statutes or administrative code for determining assisted living facility forfeiture amounts.

Although prompt imposition of penalties is considered an effective method of compelling compliance, most state nursing home forfeitures are not assessed in a timely manner, and only a portion of the amount assessed is collected because of statutory discounts. Other penalty options are rarely used. For example, new admissions were restricted in assisted living facilities but not nursing homes during the period of our review. License revocation was used against 29 assisted living facilities, but the Department did not revoke or suspend any nursing home licenses. Management controls that restrict a provider's ability to operate independently have never been applied to assisted living facilities, but state monitoring was imposed on nursing homes three times in FY 2000-01, and one skilled nursing facility has been placed in receivership. The Department of Justice issued criminal complaints against two long-term care facilities from July 1999 through June 2002, and 24 caregivers were charged with criminal resident abuse and or neglect.

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[full report, PDF file \(485KB\)](#)

[letter report on nursing homes in Milwaukee, PDF file \(66KB\)](#)