



February 1998

## NURSING HOME REGULATION

Wisconsin's 430 nursing homes are subject to thorough regulation because of the vulnerability of the residents they serve and because their services are largely financed with public funds. The Department of Health and Family Services exercises both federal and state regulatory authority through approximately 100 inspectors who are known as surveyors. In the two-year period ending June 30, 1997, the Department's surveyors issued 5,642 federal citations that resulted in a variety of enforcement actions, including federal penalties that totaled \$410,075, as well as 751 state citations that resulted in forfeitures totaling \$334,480. Eleven ombudsmen employed by the independent Board on Aging and Long Term Care have no direct regulatory authority, but they contribute to quality assurance by observing nursing home care, working with families and residents to resolve problems, and providing information to the Department and to nursing home staff.

### **Some Homes Are Unresponsive to Regulatory Actions**

The large majority of nursing homes respond to regulatory action by correcting noted deficiencies and subsequently maintaining quality care. However, we found that a relatively small number of homes have been repeatedly cited with numerous or severe deficiencies. That nursing homes can have such problems without making lasting improvement demonstrates weakness in the regulatory system.

Federal rules, which were recently updated, appear to provide the Department with a sound basis for regulation and a variety of enforcement actions. However, because federal financial penalties are imposed only when a nursing home has not corrected a noted deficiency, state regulations provide the only basis for imposing penalties in some situations.

### **Enforcement of State Regulations Needs to Be More Consistent**

State regulations, however, are outdated and the Department has been slow to propose revisions. Although the Department has long been aware of the need to revise state nursing home administrative code and began efforts to draft a comprehensive revision two years ago, it does not anticipate providing a draft of these new rules to the Legislature before July 1998. Because revision and approval is likely to take at least six months, new nursing home rules are not likely to be in effect before 1999.

We also found that surveyors' citation patterns were inconsistent from region to region and within regions. For example, in the first nine months of 1997, no deficiencies were found in 28.8 percent of the homes surveyed by one of two Milwaukee units; the other Milwaukee unit found no deficiencies in only 2.3 percent of the homes it surveyed, a difference too large to be attributed solely to differences in the quality of the nursing homes surveyed by the two groups.

Furthermore, in some cases when surveyors have issued federal citations for relatively serious violations, they have not also issued state citations, although departmental policy directs that they should do so. To exercise the full range of its enforcement options, the Department needs to take action to ensure that relatively serious violations are cited under both federal and state authority.

### **Available State Penalties Are Not Always Imposed**

The Department narrowly interprets a current statute that allows triple forfeitures to be imposed for repeat violations of the same state rule. If all homes that violated the same section of state rules twice within a two-year period had been

assessed triple forfeitures as permitted by law, 77 homes would have been assessed the higher amount. Triple forfeitures were actually assessed against 38 homes. To promote stricter action against nursing homes that repeatedly violate state regulations, the Legislature could clarify the circumstances under which triple forfeitures are to be imposed, or it could amend the statute to direct, rather than allow, the Department to impose triple forfeitures for repeat violations. To increase the significance of state enforcement efforts, the Legislature could also increase the amounts of forfeitures provided in state statutes, which have not been changed since 1977.

In addition, we found that when nursing homes appeal citations or forfeitures, a significant proportion are reduced or withdrawn. As a result of informal settlement conferences concluded in FY 1995-96 and FY 1996-97, the Department reduced or withdrew 67.0 percent of the appealed forfeitures and withdrew 23.8 percent of appealed statements of deficiency. The Department needs to examine these practices to increase consistency between enforcement actions initiated by its regulatory staff and those supported by its legal staff.

### **Few Ombudsmen Monitor Many Facilities**

Ombudsmen are responsible for monitoring approximately 2,300 facilities in this state that include nursing homes, community-based residential facilities, adult family homes, and facilities for the developmentally disabled, as well as for responding to complaints from individuals participating in the Community Options Program. More than 92,300 individuals are receiving services for which they could request the assistance of an ombudsman.

Wisconsin's ombudsmen cannot perform all the roles assigned to them in federal and state statutes. A national standard recommends 1 ombudsmen for every 2,000 long-term care beds; with 11 ombudsmen, including 3 added by 1997 Wisconsin Act 27, Wisconsin has 1 ombudsmen for every 6,264 beds. The Board has undertaken some efforts to ensure that available ombudsmen work as efficiently as possible, but further steps are needed.

\*\*\*\*\*

[View Full Summary](#)