Report From Agency

ADMINISTRATIVE RULES
REPORT TO LEGISLATURE
CLEARINGHOUSE RULE 07-095

By the Department of Health Services relating to ch. HFS 83, relating to community-based residential facilities, and affecting small businesses.

Basis and Purpose of Proposed Rule

The Department's authority to prescribe the proposed repeal and recreation of ch. HFS 83 is as follows:

Section 50.02 (1), Stats., requires the Department to promulgate rules for the uniform statewide licensing, inspection and regulation of community-based residential facilities (CBRFs). Section 50.02 (2) (a), Stats., gives the Department the authority to establish and enforce regulations and standards for the care, treatment, health, safety, rights, welfare and comfort of residents in CBRFs. It also authorizes the Department to promulgate and enforce rules consistent with s. 50.02, Stats. Section 50.025, Stats., requires the Department to establish a fee schedule, by rule, for conducting plan reviews of capital construction and remodeling of CBRFs.

Section 227.11 (2) (a), Stats., allows agencies to promulgate rules interpreting the provision of any statute enforced or administered by the agency if the agency considers it necessary to effectuate the purpose of the statute.

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

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

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

Responses to Legislative Council Rules Clearinghouse Recommendations

The Department accepted the comments made by the Legislative Council Rules Clearinghouse and modified the proposed rule where suggested.

Response to the Small Business Regulatory Review Board.

The Department's response to recommendations made by the Small Business Regulatory Review Board (SBRRB) is attached to this report.

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Final Regulatory Flexibility Analysis

The proposed rule will affect CBRFs that are licensed to care for 5 or more unrelated adults. Based on data from the APIS database, as of January 2006, there were 1,373 licensed CBRFs in Wisconsin. The majority of these entities are "small businesses" as the term is defined under s. 227.114 (1), Stats.

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

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

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

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

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

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

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

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

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

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

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

Based on the January 2006 data, it is estimated that 892 CBRFs (65% of all CBRFs) are small business with annual revenue less then $5 million or 25 or fewer employees.

Effect on small business:

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

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

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

CAPITAL EXPENDITURES

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

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

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

See related articles regarding fire safety in the nation's assisted living facilities.
http://www.usatoday.com/news/nation/2005-12-15-fire-safety_x.htm
http://www.iafc.org/associations/4685/files/healthcare.pdf
http://archive.ggao.gov/d15t6/138117.pdf
http://www.gao.gov/new.items/d04660.pdf

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

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

The proposed rule was revised to more clearly state the requirements for small Class C CBRFs licensed as of the effective date of the rule.

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

The cost of a cloth towel dispensing unit is approximately $64. An individual paper towel dispenser costs between $40 and $60. Costs for laundry or paper supplies may cost $150 per year. This requirement doubles the annual per bed housekeeping cost of $174 and $227 from the table of revenues and expenses in the previous section and is ½ of 1% of revenue for one bed.

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

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

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

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

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

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

Stand-by power source.

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

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

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

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

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

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

ONGOING OPERATIONAL

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

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

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

Using data from the Department of Workforce Development and the Wisconsin Technical School System, it is estimated that the increased administrator qualifications could increase beginning salary by $5,000 annually. Fringe benefits would increase from $400 - $2,000 annually depending upon the benefits available from any specific CBRF entity. Market salary conditions, unemployment rates, and regional variances already affect administrator salary and will continue to do so with the increased qualifications. It is anticipated that sole proprietors who continue to administer their own business

would be unaffected as only administrators hired after the rule was enacted will be subject to the new educational requirements. Any facility may request a variance from the Department to this requirement.

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

The Department has revised the requirements at HFS 83.15 relating to administrator qualifications to permit individuals who have a Wisconsin nursing home administrator license and individuals who have completed a Department approved course and who have at least 2 years experience working in a health care related field to be employed as a CBRF administrator. This alternative may result in a $7,000 savings in salary and fringe benefits as this reflects the market value of an associate degree in Wisconsin. Individuals who are currently employed as administrators are not subject to the new requirements. Only administrators hired after the effective date of the rule will be subject to the new requirements.

Staff training including 15 hours annual continuing education.
Over the past several years, the acuity level of resident living in CBRFs has increased steadily. Many residents have complex medical or behavioral needs that require a trained, skilled response. CBRFs often care for residents who, in the past, would have lived in a nursing home and have care needs that require staff assistance with eating, toileting, dressing, supervision, and ambulation. Many residents also have significant medical conditions, such as diabetes, heart and respiratory illnesses, and wound care that requires medical intervention and frequent monitoring by properly trained staff. A strong training program is essential to ensure that staff has the required skills to meet the needs of the residents.

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

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

Program	Hours Required	Avg. Cost Per Person*
Fire Safety	6	$28.24
Standard Precautions	3	$35.40
Medication	8	$63.50

Program	Hours Required	Avg. Cost Per Person*
Dietary	3	$35.00
First Aid	4	$37.00
Resident Rights	The minimum total hours for these 4 training programs are 32 hours.	$48.00
Challenging Behaviors		$42.00
Client Specific Training		$53.00
Needs Assessment		$42.00

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

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

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

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

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

The proposed changes to ch. HFS 83 generally reduce the administrative tasks associated with training staff. Actual training time may increase, but savings in administering the program will redirect limited resources to where these will do the most good for residents. Increased flexibility in obtaining training

will allow CBRFs to meet the specific needs of their residents and obtain savings from being allowed to use training resources currently not available to them. Purchasing training from sources outside of the CBRF will provide savings often available in an open market. Many CBRFs already exceed the minimum Department training requirements and will be unaffected by these changes. Specific costs for any single facility are not readily determined, but should not materially increase operating expenses.

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

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

ONGOING TRANSACTIONAL

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

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

At least annually, a physician, registered nurse, or pharmacist is required to conduct an on-site review of the facility's medication administration and storage system. The on-site review will generally assess

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

Part of the on-going transactional costs for facilities includes an evaluation of each resident's ability to evacuate the facility in case of fire or disaster without any help or verbal or physical prompting from staff. The assessment is standardized by the Department and must be completed by a staff person knowledgeable of the resident's abilities. This evaluation must be completed annually and when there is a significant change in a resident's condition. This assessment generally takes one hour for a newly admitted resident and subsequent evaluations are generally completed in 30 minutes. Existing CBRF staff, or county human services staff, should be able to complete the required evacuation evaluation with no increased cost to the facility. See the following website http://dhfs.wisconsin.gov/forms/DDES/DDE2373.pdf for a copy of the Resident Evacuation Assessment form.

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

Mandatory reporting requirements

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

Start Up Compliance Costs:

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

balance sheet from the available records provided by the CBRF entity. Accountants currently charge $100 - $200 an hour for such services. This potential cost to CBRFs is a one-time startup expense.

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

Changes to the Analysis or Fiscal Estimate

Analysis:

Sprinkler system for small class 'C' facilities.
The cost to install a sprinkler system in a small class 'C' facility is estimated between $13,000 and $23,000 or between $1,625 ($13,000 for 8 beds) and $4,600 ($23,000 for 5 beds) per licensed bed. This estimate is based on plan reviews completed by Department engineers over the past several years. The cost to install a sprinkler system could exceed $23,000 based on facility age, type of construction, facility layout and other variable factors. Based on a Department study, 117 small Class 'C' facilities, or 8.5% of all CBRFs will need to install sprinkler systems. Small Class 'C' CBRFs have 5 years to comply. As a capital purchase spread over 5 years, $920 annually ($4,600/5 years) per bed is 2.6% of the average Wisconsin CBRF gross annual revenue of $34,787 per licensed bed. As a single item, this cost is estimated to be less than the 2005 CPI of 3.4 %.

Increased administrator qualifications.
The Department has revised the requirements at HFS 83.15 relating to administrator qualifications to permit individuals who have a Wisconsin nursing home administrator license and individuals who have completed a Department approved course and who have at least 2 years experience working in a health care related field to be employed as a CBRF administrator. This alternative may result in a $7,000 savings in salary and fringe benefits as this reflects the market value of an associate degree in Wisconsin. Individuals who are currently employed as administrators are not subject to the new requirements. Only administrators hired after the effective date of the rule will be subject to the new requirements.

Staff training including 15 hours annual continuing education.

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

Fiscal Estimate:

Sprinkler system for small class 'C' facilities.
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This estimate is based on plan reviews completed by Department engineers over the past several years. The cost to install a sprinkler system could exceed $23,000 based on facility age, type of construction, facility layout and other variable factors. Based on a Department study, 117 small Class 'C' facilities, or 8.5% of all CBRFs will need to install sprinkler systems. Small Class 'C' CBRFs have 5 years to comply. As a capital purchase spread over 5 years, $920 annually ($4,600/5 years) per bed is 2.6% of the average Wisconsin CBRF gross annual revenue of $34,787 per licensed bed. As a single item, this cost is estimated to be less than the 2005 CPI of 3.4 %.

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Public Hearing Summary

The Department began accepting public comments on the proposed rule on October 18, 2007 when the proposed rule was posted on the Wisconsin Administrative Rules Website. Five public hearings were held, as follows: Green Bay on December 7, 2007; Madison on December 12, 2007, Rhinelander on December 17, 2007; Eau Claire on December 18, 2007 and in Milwaukee on December 19, 2007. A total of 107 people attended the public hearings. The hearing record remained open for public comment until December 26, 2007.

List of Public Hearing Attendees and Commenters

The following is a complete list of the persons who attended the public hearing or submitted comments on the proposed rule, the position taken by the commenter and whether or not the individual provided written or oral comments.

Name and Address		Position Taken (Support or Opposed)	Action (Oral or Written)
1.	Vicky Bergquist PO Box 80277 Saukville, WI 53080-0277	None taken	Observe

2.	Amy Panosh PO Box 514 Two Rivers, WI 54241	None taken	Observe
3.	Julie Button	None taken	Observe
4.	Cheryl Luckenbill Senior Housing Management 3191 Nicolet Drive Green Bay WI 54311	None taken	Observe
5.	Laurie Nolan 1450 S. Military Green Bay WI 54304	None taken	Observe
6.	Ann Coyle Gardenview Assisted Living 1712 Midway Road Menasha WI 54952	None taken	Written
7.	Carla Fus The Gardens of Fountain Way 1050 Fountain Way Menasha WI 54952	None taken	Observe
8.	Diane Steinert Productive Living Systems 300 N. Wood Edge Drive Appleton WI 54914	None taken	Observe
9.	Gerald Timper Productive Living Systems 300 N Woods Edge Drive Suite 103 Appleton WI 54914	None taken	Observe
10.	Mary Flynn 3003-A N Richmond Appleton WI 54911	None taken	Observe
11.	Jenny Renfro 628 Elm Antigo WI	None taken	Observer
12.	Rosalia Gardens 628 Elm Antigo WI	None taken	Observe
13.	John C. Lang Bishop's Court 289 E. St. Joseph Street Green Bay WI 54301	None taken	Observe
14.	Lynn Gibson 2675 Omro Road Oshkosh	None taken	Observe
15.	Susan Williams 1520 Arboretum Drive Oshkosh WI 54901	None taken	Observe
16.	Joel Hernandez 1207 Taylor Street Merrill WI 54452	None taken	Observe
17.	Pamela Daffron Bohlman Manor 401 Center Street Birnamwood, WI 54414	None taken	Observe

18.	Jean M. Norton Community House 520 S. Eastern Ave. Rhinelander, WI 54501	None taken	Observe
19.	Helen J. Hughes Family Faith Group Adult Homes 2821 N. 4th St Suite 307B Milwaukee WI 53212	None taken	Observe
20.	Judith Amorsen Curative Care Network 1000 N. 92nd St. Milwaukee WI 53229	None taken	Observe
21.	Angel Baldwin 5725 N. 96th Street Milwaukee WI 53225	None taken	Observe
22.	Ruby Dillon 5725 N 96 th Street Milwaukee WI 53225	None taken	Observe
23.	Gene R. Hughes Hughes and Associates 5528 N. 52 nd Street Milwaukee WI 53218	None taken	Observe
24.	Maxine May 2800 W. Wright St # 210	None taken	Observe
25.	Desziree Tyson The Gathering Place Residential Living Center 3429 North 15th Street Milwaukee WI 54206	None taken	Observe
26.	Laurie Hintz CCLS,Inc. 916 Clinton St. Waukesha WI 53186	None taken	Observe
27.	Mary Madden Productive Living Systems, Inc. 806 E. Commercial Ave. Whitewater, WI 53190	None taken	Observe
28.	Tom Smith Better Living Family Services, LLC 4115 N 56th St Suite B 188 Milwaukee WI 53216	None taken	Observe
29.	Izhoc Shoer Countryview Group Home 2145 W. Hemlock Road Milwaukee WI 53209	None taken	Observe
30.	Sara Glodeowski-Sandee Bell Therapy – Phoenix Care Systems 5151 W. Silverspring Drive Milwaukee WWWI 53208	None taken	Observe
31.	Edward Tsyrulnyron Countryview Group Home 2145 Hemlock Road Glendale WI 53209	None taken	Observe

32.	Michael Yelin Administrator Countryview Group Homes LLC 2145 W. Hemlock Road Glendale WI 53209	None taken	Observe
33.	Chandra Bronsted Kirkland Crossings Presbyterian Homes and Services 700 Quinlan Drive Pewaukee, WI 53072	None taken	Observe
34.	Kari Ajack Avalon Square 222 Park Place Waukesha WI 53186	None taken	Observe
35.	Kimberly H. Killian 3920 N. 144th Street Brookfield WI 53005	None taken	Observe
36.	Kim Bibb Sterling House W240 N6351 Maple Ave. Sussex WI 53089	None taken	Observe
37.	Lyn Backhous 831 E. Washington St West Bend, WI 53095	None taken	Observe
38.	Jean Schroeder Vitas Hospice 2675 W. Mayfair Road Wauwatosa WI 53226	None taken	Observe
39.	Tracy Head 3250 Kingsly Way Madison WI 53713	None taken	Observe
40.	Leslie Vetter Mallatt Homecare Pharmacy 3250 Kingsley Way Madison WI 53713	None taken	Observe
41.	Kelly Gochenaur 106 S. Beaumont Road Prairie du Chien WI 53821	None taken	Observe
42.	Karen George 3113 W. Beltline Hwy. Madison 53708	None taken	Observe
43.	Debbie Lamb 7550 S. 13th Street Oak Creek WI 53154	None taken	Observe
44.	Julianne Dwyer Independent Living, Inc. 815 Forward Drive Madison WI 53711	None taken	Observe
45.	Lena McCalister 9 Edgartown Ct Madison WI 53719	None taken	Observe
46.	Jennifer Bank 735/737 19th Ave. N. Onalaska WI 54650	None taken	Observe

47.	Jaqueline Pavelski 1715 Meadow Lane Eau Claire WI 54701	None taken	Observe
48.	Sandy Finseth 610 Gibson Street Eau Claire WI 54701	None taken	Observe
49.	Sherri Olson 610 Gibson Street Eau Claire WI 54701	None taken	Observe
50.	Pam Day Lakeview Health Center 902 E. Garland West Salem WI	None taken	Observe
51.	Lori Rud Garlick's CBRF, Inc. W949 County Road R Mondovi WI 54755	None taken	Observe
52.	Karen Zielke Chileda 1825 Victory Street LaCrosse WI 54601	None taken	Observe
53.	Mellica Oliver Chileda 1825 Victory Street LaCrosse WI 54601	None taken	Observe
54.	Jeff Fresia PO Box 1081 Eau Claire WI 54702	None taken	Observe
55.	JoAnn Knutson 538 Woodridge Court Menomonee WI	None taken	Observe
56.	Natalie Spies The ARC of Dunn County, Inc. 538 Woodridge Court Menomonee WI 54751	None taken	Observe
57.	Joel D. Breed Brotoloc Health Care System, Inc. 2710 N. Town Hall Road Eau Claire WI 54703	None taken	Observe
58.	Donna Miller 2221 Sims Place LaCrosse WI 54601	None taken	Observe
59.	Paula J. Fischer Harbor House Merrill 1209 W. Taylor Street Merrill WI 54452	None taken	Observe
60.	Mary Leary Fox Valley Technical College 1825 N. Bluemond Road Appleton WI 54912	None taken	Observe
61.	Jill Forer 3704 Hummingbird Road Wausau WI 54401	Support	Observe

62.	John Crosswaite Presbyterian Homes and Service Kirkland Crossings 700 Quinlan Drive Pewaukee WI 53072	Support	Observe
63.	Nancy L Watts Presbyterian Homes and Services Avalon Square 222 Park Place Waukesha WI 53186	Support	Observe
64.	Marti Sanville Board on Aging and LTC 718 W. Clairemont Ave Eau Claire WI 54701	Support	Observe
65.	Brenda Balsinger 610 Gibson Street Eau Claire WI 54701	Support	Observe
66.	Gregory Griffin Elderspan Management, LLC 1402 Pankratz Madison WI 53704	Support	Observe
67.	Deborah Tatum 7013 W. Green Brook court Milwaukee WI 53223	Oppose	Observe
68.	Margaret Grandberry 8425 N. Meadowside Court Brown Deer WI 53223	Oppose	Observe
69.	Carrie Dendar American Senior Living Centers 3031 W. Fardale Ave. Milwaukee WI 53221	Oppose	Observe
70.	Rose Boron 651 Kris Lane Mosinee WI 54455	None taken	Observe
71.	Darci Knapp Lori Knapp companies 106 S. Bluemont Road Prairiee de Cheien WI 53821	None taken	Oral and Written
72.	Katherine R. Todd 227 Bradley Farm Road Tomahawk WI 54487	Oppose	Oral and Written
73.	Sherri Bond The Jabez Transitional Center 5926 N. Teutonia Ave. Milwaukee WI 53209	Oppose	Written
74.	Andrea Grothe Heartland House 668 W. Cummings Road Wautoma WI 54982	None taken	Written
75.	Donald Grothe Heartland House 668 W. Cummings Road Wautoma WI 54982	None taken	Written
76.	Cindy Paulson	None taken	Written

	5020 S. 107th Street Greenfield WI 53228		
77.	Mary Ellen O'Connell Wisconsin Representatives of Activity Professionals 3011 S. Superior Street Milwaukee WI 53207	None taken	Written
78.	William Donaldson Board on Aging and Long Term Care 1402 Pankratz Street Suite 111 Madison WI	Oppose	Oral and Written
79.	Emily Wirkus Board on Aging and Long Term Care 1402 Pankratz Street Suite 111 Madison WI	Oppose	Written
80.	Brian R. Purtell Wisconsin Health Care Association 121 E. Wilson Street Suite L200 Madison WI 53703	None taken	Written
81.	John Sauer Wisconsin Association of Homes and Services for the Aging, Inc. 204 South Hamilton Street Madison, WI 53703	None taken	Written
82.	J. Bailey Ark Haven for the Elderly 8050 West Appleton Avenue Milwaukee WI 53218	None taken	Written
83.	Jonathan Zinniel Chileda 1825 Victory Street LaCrosse WI 54601	None taken	Written
84.	Sherry Miller Zinzendorf Hall 1148 Bayberry Drive Watertown WI 53098	None taken	Written
85.	Judith Sweet-Rydberg 7 Tri-Park Way Appleton WI 54914	None taken	Oral and Written
86.	Julianne Dweyer Rita Giovannoni Independent Living, Inc. rgiovannoni@indepenliving.com	None taken	Written
87.	Leah Howard 3075 Falcon Ridge Trail Green Bay WI 54313	None taken	Written
88.	Kate Bieberitz 14904 CTH F Valders WI 54245	Oppose	Written
89.	Susan S. Wegener Harmony Living Centers LLC N94 W17900 Appleton Ave. Suite 101	None taken	Written

	Menomonee Falls WI 53051		
90.	Sue Reese Sienna Crest PO Box 45 Oregon WI 53575	None taken	Written
91.	Delbert Vanstone Michalene's 530 N. Union Street Ripon WI 54971	None taken	Oral and Written
92.	Jim Murphy Wisconsin Assisted Living Association 2875 Fish Hatchery Road Madison WI 53713	None taken	Oral and Written
93.	Robert J. Lightfoot II Murphy Desmond S. C. 33 E. Main Street Suite 500 Madison WI 53703	None taken	Oral and Written
94.	Michael Steinhauer Jeff Spitzer-Resnick Survival Coalition of Wisconsin Disability Organizations 2914 Pelham Road Madison WI 53713	Oppose	Oral and Written
95.	Joe Spolowicz jspolowicz@wiscs.org	None taken	Written
96.	Susan Wirtl MATC 211Corroll Street Madison, WI 53703	None taken	Written
97.	Amy A. Forst Homme Heights, Inc. 2901 N. 7th Street Wausau, WI 54403	None taken	Written
98.	Beth Anderson Laureate Group 1805 Kensington Drive Waukesha, WI 53188	None taken	Oral and Written
99.	Robert Krug Luther Manor 4545 N. 92nd Street Wauwatosa, WI 53225	None taken	Written
100.	Richard C. Berling rberling@marc-inc.org	None taken	Written
101.	Michael S. Pochowski Alterra 6737 West Washington Street Suite 2300 Milwaukee, WI 53214	None taken	Written
102.	Judi Sweet JSweet@agapeinc,org	None taken	Written
103.	Janet Stinde jstinde@dungarvin.com Dungarvin Wisconsin, LLC	None taken	Written
104.	Vicki Trebian	Oppose	Oral and Written

	ATTIC Correctional Services, Inc. 1709 South Park Street, Suite 1 Madison, WI 53713		
105.	Lynn Binnie Fairhaven Retirement Community 435 West Starin Road Whitewater, WI 53190	None taken	Written
106.	Carole Eldredge JJC Homes of Rhinelander, Inc. P O Box 1567 Rhindlander, WI 54501	None taken	Observe
107.	Deena Black Aurora Community Services P O Box 68 Menomonie, WI 54751	None taken	Oral
108.	Bonnie Cherwinka 206 North 56th Avenue Wausau, WI 54401	None taken	Oral
109.	Sally Ripley P O Box 220 Birnamwood, WI 54414	None taken	Oral
110.	Jill Noreen E3798 650th Avenue Menomonie, WI 54751	Oppose	Oral
111.	Pamela O'Brien Box 96 Madison, WI	Oppose	Observe
112.	Major Bruce A. Davie, USAR-Ret., MSHR,CBM American Senior Living Centers ABS WI, Inc. H R Office 3031 W. Fardale Avenue Milwaukee, WI 53222	Oppose	Oral
113.	Mary Heiden P O Box 260 314 E. Main Street Watertown, WI 53304	Oppose	Oral and Written
114.	Zvia Shaer Countryview Group Homes LLC. 2145 W. Hemlock road Glendale, WI 53209	None taken	Observe

Public Comments and Department Responses

The number(s) following each comment corresponds to the number assigned to the individual listed in the Public Hearing Attendees and Commenters section of this document.

Rule Provision	Public Comment	Department Response
General	How will the effectiveness of the proposed rule be measured? 100	The Department has a process in place to evaluate the effectiveness of the licensure program and will respond to make necessary program changes.
General	The summary states that cost increases would be less than 1 % of revenue on a single bed. We have 68 residential beds with an average daily bed rate of $69.19. 365 days X $69.19 rate for one bed X 1% = $252.54 X 68 beds = $17,172.72 in additional costs. We are non-profit and locked into a contract for 7 years at a time, where will we find the extra revenue to pay for the additional costs? 104	The formula used by the commenter is not correct. Using published industry standards, the Department estimated the cost of certain proposed requirements based on the percentage of revenue on one bed in a facility, not all beds in the facility. In a 68 bed facility the single item cost of the specific rule would be spread over all 68 beds making the cost of an item 1/68 of one percent of the revenue per bed. CBRFs may request a waiver of a rule from the Department following the provisions in HFS 83.03.
HFS 83.01	An earlier draft of the rule stated, “if a conflict exists between applicable codes, the most restrictive requirement shall apply.” Recommend this language be re-inserted. 94	The Department has determined it is not necessary to continue to include the existing language in the proposed rule because CBRFs must be in compliance with all rules and statutes applicable to a CBRF.
HFS 83.01 (2)	In a Halfway House setting for felons the environment and culture is less homelike and has more elements of a correctional institution. Restrictions on freedom are often used a behavior management tool. Functional independence generally refers to activities of daily living. Our residents typically function at a very high level in that area. Recommend excluding the language: homelike, caregiver, least restrictive and functional independence for facilities that primarily serve correctional population. 95	This language permits providers to develop their program based on the individual needs of the client group. Conditions that are least restrictive will vary depending on the client group served by each CBRF. CBRFs may request a waiver of a rule from the Department following the provisions in HFS 83.03.
HFS 83.02 (1)	Will variances and waivers approved prior to the new regulations be valid under proposed rules or will variances and waivers need to be re-approved? 83	The Department will review existing waivers and variances at the time of the next onsite visit to the CBRF and reissue any waivers or variances under the new rule provision, as necessary, that do not adversely affect the health, safety or welfare of any resident. This provision has been renumbered HFS 83.03 (1).
HFS 83.02	The rule states the	The proposed rule states that the Department may

Rule Provision	Public Comment	Department Response
(3)	Department may rescind a waiver or variance. Recommend replacing the word may with shall. This needs to be a requirement. 78, 79	rescind a waiver or variance if the Department determines the waiver or variance has adversely affected the health, safety or welfare of resident or if the CBRF does not comply with the condition of the waiver or variance. It is intended that the Department have the option to rescind a waiver or variance. In some instances, it may be appropriate to amend the conditions of the waiver or variance, rather than revoke the waiver or variance. This provision has been renumbered HFS 83.03 (3).
HFS 83.03 (1)	For consistency, the definition of "abuse" should be the same as the definition of "abuse" under HFS 13.03(1) The definition should also be included with in the proposed rule, not cross-referenced. 80, 81	The definition of abuse contained in HFS 13.03 (1) (a) 1. is limited to acts committed by a caregiver or a nonclient resident. A nonclient resident is a person who resides in the facility but is not a client of the facility. That definition of abuse does not include acts committed by other residents, family members or the general public. The Department proposes to use the definition of abuse in s. 46.90 (1), Stats. because the definition describes the types of abuse and does not limit abuse by the person committing the act. The Department does not propose to include the actual language under s. 46.90 (1) in HFS 83 due to the length of the definition. Section HFS 83.03 (1) has been renumbered HFS 83.02 (1).
HFS 83.03 (13)	The term "caregiver" does not apply to CBRFs whose clients are all felony offenders. 95	Section 50.065 (1) (c), Stats., covers each facility that is licensed by the Department to provide direct care or treatment services to clients. This includes all CBRFs licensed in Wisconsin. The term "caregiver" applies to CBRFs serving felony offenders. Section 50.065 (1) (ag) 1.a., Stats., defines a "caregiver" to mean a person who is, or is expected to be, an employee or contractor of an entity, who is or is expected to be under the control of an entity, as defined by the Department by rule, and who has, or is expected to have, regular, direct contact with clients of the entity. This provision has been renumbered HFS 83.02 (13).
HFS 83.03 (16)	Suggest revising the definition of CBRF to include the following language"…*and which is suitable to provide a home-like environment for the identified client group…."*. 78, 79	The Department has removed the definition of "CBRF" from the proposed rule as it is inconsistent with the definition found under s. 50.01 (1g), Stats. The Department does not have the legal authority to modify a statutory definition in administrative rule. The requirement for a CBRF to maintain a home-like environment is included in other parts of the rule such as HFS 83.01 (2) and HFS 83.43 (1). HFS 83.03 (16) has been renumbered HFS 83.02 (18).
HFS 83.03	Change the definition of a	HFS 83.03 (20) defines a "dietary supplement" as

Rule Provision	Public Comment	Department Response
(20)	"dietary supplement" to mean a product which is used to treat a medical condition and is taken by mouth. 91, 92, 93, 112, 113	defined in the Dietary Supplement Health and Education Act of 1994 because the definition encompasses the broader concept that dietary supplements such as vitamins, are also taken to enhance well being and not to treat a medical condition. This provision has been renumbered HFS 83.02 (20).
HFS 83.03 (25)	Recommend removing the entire definition of "Intermediate level nursing care". The term is referenced only once. The rule already defines the limits of a CBRF through nursing hours. The term "relatively stable condition" is too subjective to monitor effectively. 91, 92, 93, 98, 112, 113	The term "intermediate level nursing care" is used in the statutory definition of a CBRF and is defined in administrative rule to provide clarity**.** HFS 83.03 (25) defines "intermediate level nursing care" to mean care that is required by a person who has reached a relatively stable condition and is not limited only to the number of nursing hours required by the resident. This provision has been renumbered HFS 83.02 (26).
HFS 83.03 (26) (c)	Residents may be mandated as a condition of correctional supervision to take psychotropic medications. 95	HFS 83.03 (26) (c) is a definition of "involuntary administration of psychotropic medication". There is no provision in the definition or the rule that would interfere with residents under correctional supervision to take psychotropic medication. 83.03 (26) (c) has been renumbered HFS 83.02 (27).
HFS 83.03 (30)	The definition of "neglect" under HFS 83.03(30) should mirror the definition of "neglect" under HFS 13.03(14). 80, 81	The Department proposes to use the definition of "neglect" in s. 46.90 (1) (f), Stats. because the definition is less restrictive and addresses more situations than are addressed by the neglect definition in HFS 13.03 (14). HFS 83.03 (31) has been renumbered HFS 83.02 (31).
HFS 83.03 (39)	Add: "Informed consent" means written permission voluntarily signed, without any form of coercion, by a competent resident or a resident's legal representative who understands the terms and impact of the consent. Temporary oral permission obtained by telephone does not constitute "informed consent". 78, 79	The term informed consent is not used in the rule, except in reference to recording, filming and photographing of residents. A definition is not necessary for the purpose of this rule.
HFS 83.03 (50)	This definition does not apply to correctional programs. Seclusion is often used to manage offender behavior. 95	Section HFS 83.03 (50) only defines the term "seclusion". The definition includes no substantive requirements. As provided under s. 83.32 (3) (intro.), the Resident rights proposed under s. HFS 83.32 do not apply to residents in the custody of the department of corrections, except as determined by the department of corrections. This provision has been renumbered HFS 83.02 (50).

Rule Provision	Public Comment	Department Response
HFS 83.03 (52) (a) (b)	modified to We suggest that HFS 83.03(52) should be amended To ensure that only significant changes trigger the rule's notification and reporting requirements. The natural and fully expected progression of a diagnosed disease should not warrant a change in condition notification. Under HFS 83.03(52)(b), we suggest HFS 83 return to current language, where a change of condition notification is triggered by a decline in 2 or more activities of daily living. Likewise, decline in the ability to comb one's hair or brush one's teeth, taken separately, is part of the natural aging process and not, we subscribe a "significant" change in condition. 81, 84, 99	The Department believes that even though a decline may be attributed to the resident's diagnosis, the resident's physician needs to be informed of the change and therefore, have the opportunity to reassess the resident's treatment plan, including medication regime to determine if alternate treatment is recommended. The resident's legal representative is informed of a significant change in the resident's condition because this person is acting on behalf of the resident and needs to consider whether additional or different treatment is desired. The Department has revised the definition of a "significant change in the resident's condition" to mean a decline in 2 or more activities of daily living. This provision has been renumbered HFS 83.02 (52).
HFS 83.03 (52) (c)	Currently the definition of a "significant change in condition" includes "a pronounced decline in communication or cognitive abilities". Recommend amending to read, a pronounced decline in communication or cognitive abilities unrelated to their diagnosis. 84	The Department did not limit the decline in communication or cognitive abilities only to a decline unrelated to their diagnosis as any pronounced decline, resulting in further impairment of a long term nature, is considered significant. This provision has been renumbered HFS 83.02 (52) (c).
HFS 83.03 (56)	Amend the definition of a therapeutic diet to read: "means a food regimen ordered by a physician or other medical professional directed by the physician." 78, 79	The Department has revised HFS 83.03 (56) as requested by the commenter. This provision has been renumbered HFS 83.02 (56).
HFS 83.03 (59)	Modify the definition of a "volunteer" to mean any person who provides services for resident without compensation except for reimbursement of expenses	The Department has revised HFS 83.03 (59) as requested by the commenter.

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	related to services provided at the CBRF. This would clarify what expenses means. 101	
HFS 83.06 (1) (a)	Amend to include the name of the licensee, the administrator, and the staff position, instead of the actual name of the person in charge when the licensee of administrator is away from the CBRF in the program statement. Due to turnover of direct care staff, to require their name to be listed in the program statement would require frequent unnecessary rewriting, copying and mailing of the program statement to guardians/department (83.06(3)) unless the phrase "away from the CBRF only refers to absence above and beyond normal daily absences, illness, holiday/vacation? 85	The Department has amended HFS 83.06 (1) (a) as requested by the commenter.
HFS 83.06 (1) (f)	Amend the requirements of the program statements to include, "A complete description of the program goals, in the client group or groups to be served." Services and any staff training necessary to meet the needs of each resident 78, 79	HFS 83.06 (1) (f) states that the program statement shall include a complete description of the program goals and services consistent with the needs of the residents. The Department does not believe it is necessary for the CBRF to also include in the program statement the training required by the rule.
HFS 83.07 (2) (c)	No definition or standards for financial stability and viability in this provision. There needs to be some guidelines here, at the very least a minimum ratio of debt to revenue and assets. 78, 79	HFS 83.07 (2) (c) defines financial stability to include financial history and financial viability of the owner or related organizations and outstanding debts or amounts due to the Department or other government agencies, including unpaid forfeitures and fines. The Department believes this information is adequate to determine the financial stability of an applicant. The proposed language gives the Department the flexibility to establish the financial stability of an applicant on a case by case basis.
HFS 83.08	Reinsert language defining and adjudicating the probationary status of a license that was dropped from an earlier draft. The language helped make the	The language regarding adjudicating the probationary status of a license was removed from HFS 83 because this provision in contained in statute. Wisconsin Statutes, Chapter 50.03 (4m) (b) states the department shall inspect the CBRF and issue a regular license if the CBRF meets the requirements for licensure. The

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	probationary status a more distinguishable event. Otherwise we question what the purpose of issuing a probationary license may be. 94	Department chose not to duplicate this information in administrative code.
HFS 83.10 (1) (a)	HFS 83.10 (1) (a) requires the CBRF to notify the Department within 30 days before the final change of ownership of a CBRF. Change notification to 60 days instead of only 30 days. 78, 79	In many instances it would not be realistic to require a CBRF to notify the Department 60 days prior to a final change of ownership because the CBRF is not aware of the change of ownership 60 days in advance of the change. The Department does not believe this rule should be changed.
HFS 83.10 (1) (a)	Since the transferor is required to notify the Department 30 prior to a transfer of a CBRF, the regulation should specifically state the department will issue a license to the transferee with those 30 days. 101	HFS 83.08 (1) requires that the Department either approve or deny a license within 70 days after receipt of a completed license application. This allows the Department adequate time in which to review the application, including the program statement, floor plan, evidence of 60 days of operating funds, fire inspection form and evidence that the applicant has made a good faith effort to establish a community advisory committee and to make the fit and qualified determination in HFS 83.07.
HFS 83.10 (1) (c)	If the transferor has already obtained a waiver or variance, why is it necessary for the transferee to obtain a continuation? 101	The transferee or new licensee would need to obtain the waiver or variance in their name since the original waiver or variance is in the name of the previous licensee and no longer valid. Provisions for applying for a waiver or a variance are contained in HFS 83.03 (2).
HFS 83.10 (1) (e)	The proposed rule states the transferor shall remain liable for all forfeitures assessed against the facility which imposed for violations occurring prior to transfer of ownership. The rule should be amended to be consistent with s. 50.03(13) (d), Wis. Stats., which states that "the transferor shall remain liable for all forfeitures assessed against the facility which are imposed for violations occurring prior to transfer of ownership." 81	The Department has amended HFS 83.10(1) (e) as requested by the commenter to be consistent with s. 50.03 (13) (d), Stats.
HFS 83.11 (1)	Any CBRF that intends to close shall notify the department at least 30 days before closing. Add: "at least 30 days prior to anticipate closing and comply with all."	The rule requires a CBRF that intends to close to notify the Department in writing at least 30 days before closing. The commenter gave no reason for this change to be made. The Department does not believe adding the word "anticipate" changes the meaning of the rule.

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	78, 79	
HFS 83.11 (3)	Add: "The state's long term care ombudsman shall be notified when the facility submits its relocation plan to the department under s. 50.03(14)." 78, 79	The Department's long established relocation process includes notification of the state's long term care ombudsman by the Department when a facility is closing. It is not necessary to require the CBRF to duplicate this notice requirement.
HFS 83.12 (2) (b)	Members had a number of questions concerning the reporting of abuse, neglect or misappropriation by a non-caregiver under HFS 83.12(2) (b). Is this required under HFS 13 or anywhere else in statute or code? Shouldn't the investigation of such an allegation be conducted by the county elder abuse agency? If this investigation is not required under the caregiver misconduct code, members quite frankly would prefer to limit their involvement to notifying the county elder abuse agency when such an allegation arises and letting the agency conduct the investigation. Providers never want to needlessly get involved in fights with the family members of their residents and this requirement certainly could precipitate such encounters. 81, 85	The Department has amended HFS 83.12 (2) to eliminate notification to DQA of an allegation of abuse, neglect and misappropriation of resident by a non-caregiver and direct the provider to follow the Elder Abuse System requirements of s. 46.90 Stats. and the adult-at-risk requirements of s. 55.043 Stats.
	The rule states that misappropriation of resident property by another resident shall be reported. Theft among residents is a frequent reality among correctional environments. The requirement to report this should be changed to internal investigating and documentation placed in resident file. 95 Theft among residents is a frequent reality among	While theft among residents in a correctional environment may be frequent, it is the expectation of the Department that the reporting requirements relative to abuse, neglect or misappropriation of a resident's property be standard for all client groups. CBRFs may request a waiver of a rule provision from the Department following the provisions in HFS 83.03.

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	correctional environments. Recommendation to insert "the reporting requirement for misappropriate of resident's property does not apply to resident under the jurisdiction of correction agencies or person recovering from substance abuse. 95, 104	
HFS 83.12 (4) (c)	Requires a written report to the DHFS within three working days of any "serious" injury which requires hospital admission or emergency room treatment of a resident. The need for a couple of stitches or an X-ray to rule out a fracture do not rise to the level of "serious" and could lead to a slew of reports the provider doesn't want to compile and we assume the DHFS really doesn't want to receive. Members suggest "or emergency room treatment" be stricken from the rule and that the current law language that requires a report following inpatient hospitalization be retained. 81, 84, 97, 99	Currently HFS 83.19 (3) (f) requires CBRFs to notify the department within 3 working days after an incident or an accident occurs resulting in serious injury requiring inpatient hospitalization of a resident. The department proposes to add "emergency room treatment" to this requirement because frequently residents sustain serious injuries that are treated in an emergency room but do not result in hospitalization. Due to the rising acuity level of residents in CBRFs and the trend for a higher standard for inpatient placement in a hospital, the Department believes it is necessary to capture treatment in an emergency room. There are no special reporting requirements or formats to follow to reports the occurrence. The report to the Department may be simple and brief. The CBRF would not be required to report an incident or accident if the resident did not sustain a serious injury, regardless of whether the resident was treated in an emergency room.
HFS 83.12 (5) (a) – (d)	The proposed rule requires the CBRF to provide written notice to a resident or the resident's legal representative of any change that affects the resident. If the change is related to a provided or purchased service, the CBRF shall give notice to any contract agency and any third-party payer. Routinely staff contact the family/legal representative by telephone because this quicker. This is then documented in the resident's chart. If the CBRF sent out written notice of a change in condition, the response could	The Department has amended HFS 83.12 (5) (a) (d) as requested by the commenters to omit the requirement for written notification to report a resident's change in condition to the physician and the resident's legal representative. The Department has also amended HFS 83.12 (5) as requested by the commenters to omit the notice of a change in care or treatment to a third party payor as this standard is set by the CBRF and payor. This provision has been renumbered HFS 83.12 (5) (a) – (c).

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	the more that week rather than the immediate response that a telephone call gets. 82 Members suggest that the requirement that contract agencies or third party payors be notified in writing of changes affecting a resident be deleted; such notification requirements are standard contract provisions which should be negotiated by the CBRF and the contract agencies and/or the third party payors. 81 Replace proposed language with: 5) NOTIFICATION OF CHANGES AFFECTING A RESIDENT. (a) the CBRF shall promptly notify resident's legal representative and resident's physician when there is an injury to the resident or a significant change in the resident's physical or mental condition. (b) the CBRF shall promptly notify resident's legal representative and resident's physician when there is an allegation of physical, sexual or mental abuse, or neglect of a resident. The CBRF shall give notice to resident's legal representative within 72 hours when there is an allegation of misappropriation of a resident's property. (c) the CBRF shall give the resident or the resident's legal representative a 30-day written notice of any change in services available or charges for services that will be in effect for more than 30 days. This simplifies the language	

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	and removes the requirement that the notice be in writing. These are often done over the phone or in person. We suggest deleting the contract agency and third party payor requirements. These entities can impose their own notification requirements by contract – DHFS does not need to get in the middle of it. 85, 91, 92, 93, 98, 112, 113	
HFS 83.13(3)(d)	This rule requires any statement of deficiency, notice of revocation or any other enforcement action to be posted but it does not state for how long. 81	The requirement for the length of time notices are to remain posted are listed in this rule cite. HFS 83.14 (2) (h) requires that a statement of deficiency shall remain posted for one year following receipt. Notices of revocation and other notices of enforcement action shall remain posted until a final determination is made.
HFS 83.14 (2) (d)	The rule requires the licensee to provide to the resident and legal representative a notice of any change in size, class or client group. Eliminate for correctional programs. This notification presumes that resident would have some choice with this notification. This is not the case for our population who are mandated to be here. 95	HFS 83.14 (2) (d) requires CBRFs to notify residents when there is a change in size, class or client group in the CBRF to make residents aware of any changes in their living environment. This requirement does not mean that residents are able to exercise choice in these areas but to be made aware that the size of the facility is changing or that a different client group will be residing in the facility. The Department believes this requirement should be standard for all client groups. CBRFs may request a waiver of a rule from the Department following the provisions in HFS 83.03.
HFS 83.14 (2) (g)	The rule states the licensee shall provide on a format approved by the department information relating to involuntary administration of psychotropic medication to a resident. Please explain in a format approved by the department, will this be a specific department form? 85	The Department will provide a format for reporting this information but a CBRF may use their own format as long as the format is approved by the Department.
HFS 83.14 (2) (h)	83.14(2) (h) states a statement of deficiency shall remain posted for one year following receipt. Members suggest current code remain in effect: Under current HFS 83.07(14) (a), citations of deficiency shall remain posted for 30 days following receipt or until compliance is achieved, whichever is	The Department has amended HFS 83.14 (2) (h) as requested by the commenters and has limited the required posting of statements of deficiencies to 90 days instead of one year as originally proposed. The Department intends for residents, families and the general public to have easy access to complete information regarding a facility's compliance history. The Department's website provides a profile of each CBRF that includes a list of rules violated by subject area but does not include the language on the statement of deficiency explaining how the regulation was violated or

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	longer. Notices of revocation and any other enforcement actions shall remain posted until a final determination is made. It simply is unfair to require a facility to post a statement of deficiency when that deficiency no longer exists. 81 The requirement that a licensee post a statement of deficiency for 1 year following receipt is problematic, as there is no provision allowing for removal after all deficiencies have been corrected. The 1 year requirement is excessive; 90 days would be a reasonable period of time for posting. After 90 days, the statement of deficiency would still be available on the Department's website and to any individual who requested it from the facility. 86, 101 All the information on the any deficiency is listed in the CBRF profile and easily accessible to the consumer. The survey information is already posted for 30 days and a year seems redundant. 82 Change to post for 90 days. This is 3 times longer that the current regulations and the SOD remain on the DHFS website for 2 years. 85,92, 93, 98, 112, 113 Correctional Residents would exploit this posting to try to get out of the program. Suggestion would be to use existing rule that requires posting until violation is abated. 95	the impact the deficiency had on health, safety and welfare of the residents in the CBRF. This information is only available on the statement of deficiency. It is important for residents, families and the general public to be knowledgeable of recent violations at the facility so they are able to monitor that the services they receive meet Wisconsin standards and that their health, safety and rights are being protected. CBRFs may request a waiver of a rule from the Department following the provisions in HFS 83.03.
HFS 83.14	The rule requires the licensee	No change was made to the proposed rule. The

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(2) (i)	to make available the results of all department license renewal surveys, monitoring visits and any complaint investigation for the preceding 2 years when requested by any current or prospective resident or family member. Correctional residents would exploit this to try to get out of the program. 95	Department intends for residents, families and the general public to have easy access to complete information regarding a facility's compliance history for all client groups. CBRFs may request a waiver of a rule from the Department following the provisions in HFS 83.03.
HFS 83.15	Support of the new requirement. 94, 108	No response necessary.
HFS 83.15 (1) (a) and (b)	Replace with the administrator qualifications with the suggested language below. (a) The administrator of a CBRF shall be at least 21 years of age and shall have an associate degree or higher from an accredited college in a health care related field, or (b) The administrator of a CBRF shall be at least 21 years of age and shall have at least a four-year degree from an accredited college in any other field and shall have either at least one-year experience working in a health care related field having direct contact with one or more of the client groups identified in 83.03 (15) or has successfully completed an Assisted Living Administrators Training course according to the department's course content which shall be provided by trainers approved by a department approved entity**,** or Removed business because business undergraduates should also have experience in AL field. Healthcare professionals with at least an associate degree have the needed education. Restate age to make the	The Department has amended HFS 83.15 (1) as requested by the commenters to permit individuals who have a Wisconsin nursing home administrator license and individuals who have completed a Department approved course and at least 2 years experience working in a health care related field to be employed as a CBRF administrator. Individuals who are currently employed as administrators are not subject to the new requirements. Only administrators hired after the effective date of the rule will be subject to the new requirements. This provision would allow an individual who is employed as a qualified administrator on the effective date of the rule to remain a qualified administrator at their current facility and at any other facility in the future. This provision does not apply to persons who are not employed as qualified administrators when the rule becomes effective. The Department chose to only exempt those individuals who are experienced and who have been functioning as an administrator of a CBRF from the requirement. CBRFs may request a waiver of a rule from the Department following the provisions in HFS 83.03.

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	three categories more clear. Added degree in "any other field." This insures that those with a non-healthcare degree also have at least one-year experience or have completed the AL training course. 98 Replace citation: (b above and c below) **…**with one or more of the client groups identified in 83.03 (15). Existing code reference does not exist. Should be 83.03 (15) not 83.05 (15) in each instance. 91, 92, 93, 112, 113 Add language: (c) The administrator of a CBRF shall be at least 21 years of age and have at least two years experience working in a health care related field having direct contact with one or more of the client groups identified in 83.05 (15) and have successfully completed an Assisted Living Administrators Training course according to the department's course content which shall be provided by trainers approved by a department approved entity. 84 The licensee bears the responsibility to insure that a qualified and competent administrator runs the facility. This option allows the licensee to look at the leadership qualities of the candidate rather than the length of their formal education. This provides current staff without degrees an opportunity to move into an Administrators role by	

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	having at least two years experience AND a comprehensive, extended, AL specific training that provides in-depth extensive training to replace college education. Replace current language with: Persons who held the responsibilities of Administrator of a CBRF within three (3) years on or before (revisor to insert date) shall be exempt … Clarification of grandfathering language. 6, 71, 72, 73, 74, 75, 76, 80, 81, 82, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 97, 98, 99, 101, 104, 109, 112, 113 83.15 Relative to grandfathering of individuals for administrative positions, the revisions attempt to address this via a drafting not, which is wholly insufficient given the significance of the issue. As written an individual with years of experience that met the current requirements may find they unable to meet future requirements. While the language proposed would have not impact on an individual while in the current position this may preclude their ability to switch positions to another CBRF or elevate from an assistant administrator position despite their years of expertise. The grandfathering must account for allow individuals who currently meet the requirements to continue to serve as administrators following a revision regardless of whether they remaining the current position or leave to another CBRF.	

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	80, 99 83.15 include a provision permitting qualification based on an individual's training and experience alone, without a post-secondary education requirement. The stated rationale for the education requirement is to improve leadership skills and accountability in the provision of services to residents whose acuity levels are rising. However, no supporting evidence is provided to make the link between higher education and the stated rationale. Home health agencies, for example, provide skilled nursing services to individuals with acute needs, and post-secondary education is not a requirement for an HHA administrator. Under the HHA rule, a person may be an administrator if he or she "has had training and experience in health care administration and at least one year of supervisory or administrative experience in home health care or related health programs." This language could be used in HFS 83.15 to ensure quality administrators for CBRFs. 86 It will be difficult for some small homes to meet the 60 hours of secondary education. 110 The cost of administrator is quite low according to wages and benefits. 113	
HFS 83.15	Reinstate language from the 12/21/06 draft, "The administrator shall have the education, experience and	The Department has amended the rule as requested by the commenter to read, "The administrator of a CBRF shall be at least 21 years of age and exhibit the capacity to respond to the needs of the residents and manage the

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	exhibit the capacity to respond to the needs of the residents and manage the complexity of the program." This catch all language provided DQA and the CBRF industry with necessary guidance to ensure that the general education requirements are actually geared towards persons who are qualified to run CBRF's. 94	complexity of the CBRF. This provision is found at HFS 83.15 (1).
HFS 83.16 (2)	Change the requirement for all resident care staff to be "at least 18 years old" to "at least 21 years old." 78, 79	Eighteen is the age of majority in Wisconsin. The commenter did not provide a reason why this requirement should be changed. Changing the age limit to 21 years of age instead of 18 would reduce the work force pool significantly. This requirement is no different than current rule which states that resident care staff person shall be at least 18 years old. Similar standards exist in other administrative codes for nursing homes and adult family homes. Administrative codes for hospitals and home health agencies have no minimum age limit for direct care staff. There is no age limit in HFS 129, the rules that establish the certification program for training and testing for nurse aides, home health aides and hospice aides for training and testing. Several nurse aide training programs are offered by high schools in Wisconsin.
HFS 83.17 (2)	We support the CBRF required to obtain documentation of communicable disease screening. 91, 92, 93, 112, 113, 114	No response necessary.
HFS 83.17 (2) (b)	Several of our nurse clinicians raised questions with this section of the proposed rule: How is "clinically apparent" defined? How do you determine "likelihood of exposure?" Who is qualified to conduct the required re-screenings? What communicable diseases warrant a re-screening? Taken to its logical (some might say illogical) conclusion, wouldn't anyone with a cough have to be re-screened under this	The term "clinically apparent" describes a disease that is readily seen though direct observation of the person or readily understood though interview with the person (MedilinePlus Merriam-Webster medical dictionary.) There is no standard or prescribed format to use to re-screen for disease. The practitioner can ask the person a list of questions about the person's general health, recent exposure to communicable disease, recent travel, etc. The practitioner would also make general observation of the person. The facility should also check with their local health department to check the prevalence of disease, including tuberculosis in their community.

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	language? Please clarify the language and the intent. 81	
HFS 83.18 (2)	Amend to read "The employee records described in (1) shall be available upon request for review by the department." Rationale: to clarify that the entire employee file is not subject to department review in order to protect the privacy of certain employee information. 80	The type of information that is required to be in the employee record is less prescriptive than current rule. HFS 83.18 (1) proposes to require the CBRF to maintain a separate record for each employee that includes, at a minimum, a job description, begin date of employment, educational qualification for administrator, complete caregiver background check and documentation of training or training exemption. For example, current rule requires the CBRF to include information such as screening for communicable disease, description of any disciplinary action, etc. While the proposed rule does not require the CBRF to maintain the information in the employee record, it may be necessary for the Department to have access to other employee related information to complete survey and licensure responsibilities.
HFS 83.19	Add "Recognizing and responding to a change in condition." to the topics for employee orientation. 78, 79	The Department has amended HFS 83.19 (6) as requested by the commenter.
HFS 83.20	a. We support the concept of the proposed contract with the 3rd party entity. 91, 92, 93, 112, 113	a. No response necessary.
	b. We have questions about the RFP, role of third party entity, process and cost training. 91, 92, 93, 112, 113	b. Over the next several months the Department will be sending additional information to all providers and interested parties regarding the process the Department will use to contract for a Department approved designee to certify trainers to provide Department approved training and to answer specific questions regarding training components and renewal certification classes.
	c. Members conceptually support the new training requirements under HFS 83.20. That support, however, will remain conceptual until the specifics of the program are spelled out (i.e., who will the 3rd party entity overseeing the program be, what costs they will impose, etc.). 81	c. The purchasing process is governed by Wisconsin statutes and policies that are designed to ensure an open and competitive process in the acquisition of goods and services for the Department. The process ensures that contracts for services will procure at the lowest possible price, without sacrifice in quality and that specifications will be written to foster competitive bidding and permit selection of the lowest responsible bidder. In the interim, we encourage providers and interested parties to contact the Department with any specific questions for response.
	d. Will the renewal certification classes be the same as the original class or will these be different renewal	d. Overall the Department anticipates a reduction in the costs for staff training. The training requirements established in the proposed rule allows more flexibility than the existing rule. The proposed rule removes the

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	classes that trainers will attend? 83 d. Role of 3rd party entity regarding training is vague and could be costly. 96 d. There is no cost outlined in the rule, who is the entity? What is the initial fee to be an approved trainer, what will the 2 year re-certification fee be for the trainer? These undefined training costs are now additional training costs that will be a significant burden on our costs. 104 d. The proposed rule regarding department approved training is an unfunded mandate that will tax our already overstrained financial resources. 103, 113	prescribed number of 45 training hours in specified topic areas and allows providers to "provide, obtain or otherwise ensure adequate staff training" in the areas of Resident Rights, Resident Group Specific Training, Responding to Challenging Behaviors, Assessment of Residents, Individual Service Plan Development, Provision of Personal Care, and Dietary. This change allows providers flexibility in meeting the training requirements in these topic areas. Providers now may use in-house staff knowledgeable in a topic area to train other staff without having to seek Department approval for the trainer and the curriculum. Providers who do not have in-house resources may seek out trainers in the private sector to provide this training to staff. This should result in savings to the provider because the private sector trainers do not need to be approved by the Department and train to Department approved curriculum. The overall changes made to the training requirements will create a savings for providers by eliminating the requirement for Department approved trainers and curriculum in these topic areas. The proposed rule requires Department approved training curriculum in the areas of Fire Safety, First Aid, Medications and Standard Precautions. Using the Department's standard curriculum will create savings for providers. Providers will no longer need to expend resources to create their own training programs for separate, departmental approval. Trainers for these topic areas will need to be certified by a Department approved entity using standards established by the Department. Trainers seeking certification from this entity will pay a cost determined by the entity. Trainers must renew their certification every 2 years. CBRFs may request a waiver of a rule provision from the Department following the provisions in HFS 83.03.
	e. The proposed rule states that training shall be approved by the department or department approved entity. Clarify what "Department Approved Entity" means. The costs for the initial and renewal training are not clear. Will a RFP go out? Suggest that DOA do a fiscal impact study to define actual costs. 95	e. Department approved entity means the program the Department contracts with to review and approve training programs and trainers to training standard precaution, fire safety, first aid and choking and medication administration and management. The Department has amended HFS 83.20 (1) to read "by the Department or designee."

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HFS 83.20	What needs to be clarified further is what the NOTE under HFS 83.20(1)(a) means: Does it mean all the training requirements under HFS 83.20, 83.21, 83.22, 83.23, and 83.24 go into effect one year after the effective date of this rule? People are uncertain which, if any, of the new training requirements go into effect immediately upon promulgation of the rule or a year later and during that interim year, which, if any, of the current training requirements remain in effect. An expanded NOTE responding to these uncertainties would be very helpful. 81	The Department has amended HFS 20 (1) and HFS 1183.24 (1) as requested by the commenters to clarify that the effective date for implementation of the training requirements for standard precautions, fire safety, first aid and choking and medication administration and management is one year after the effective date of the rule. Since CBRFs will be given the option to provide their own training or obtain training without department approval for the training areas contained in HFS 83.21 and HFS 83.22, both of these sections, HFS 83.21 and HFS 83.22, will go into effect when the rule becomes effective. HFS 83.23 is not a training requirement. This section of the rule requires CBRFs to directly supervise any employee who has not completed all required training. HFS 83.23 will go into effect when the rule becomes effective.
HFS 83.21 and 22	Currently Certified Nursing Assistants are exempt from most of the CBRF training requirements. The proposed regulation would only exempt them from the Standard Precautions training. I strongly urge that the broad exemptions be retained in the revised regulation. Many CBRFs hire primarily or exclusively certified Nursing Assistants because their training has prepared them well to work in the CBRF setting, and very little additional training is required. Requiring these individuals to take additional training in areas such as resident rights, challenging behaviors, dietary, personal cares and the like would be redundant to their previous training and be burdensome upon both employees and employers. 105	The Department has amended HFS 83.24 (7) and (8) as requested by the commenter to exempt nurse aides in good standing on the Wisconsin Nurse Aide Registry from client group training, resident rights training and challenging behavior training.
HFS 83.21 (4) (b) and	Reinstate current provision in 83.21 (4) (b) regarding the	The Department deleted the language of current HFS 83.21 (4) (c) regarding the resident's right to receive mail

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(c)	resident's right to receive mail and telephone calls 78, 79	because the requirement is contained in ch. 50.09 (1) (a) 1. The proposed rule retained HFS 83.32 (3) (a) 2. which affords residents the right to have at least one non-pay telephone available for resident use. This provision is not contained in ch. 50.09. This provision has been renumbered HFS 83.32 (3) (a).
HFS 83.22 (2)	Per intro to the Initial rule, desired outcomes are the intent of the rule Change: "...development of goals..." to "desired outcomes." 91, 92, 93, 112, 113	The Department has amended HFS 83.22 (2) as recommended by the commenters and has included the term "desired outcomes" in the individual service plan (ISP) development task specific training standards.
HFS 83.23	This rule requires all new staff be under supervision of qualified care staff until all the required training is completed. This provides a financial hardship correctional programs that typically have one staff member on duty during the third shift and weekend hours. We do not have the additional funding available from the department of corrections to do double staffing. It takes about 90 days to have this training completed. We have operated under this staffing pattern for 30 years without any problems. Again, the population we serve is fully capable to act on their own behalf in the event of any emergency. Additionally awake staff is on duty 24/7 and do rounds every 2 hours. Recommendation: New staff in corrections programs will be supervised by a qualified staff member until they receive orientation to all of the facilities fire safety, 1st aid and universal precautions procedures. Within 90 days of hire, all required staff will have the CBRF approved training in those areas. 95	The proposed rule is not a new requirement. Currently the rule requires a CBRF is have at least one qualified resident care staff member present in the facility when one of more residents are in the facility. The Department believes that, at a minimum, at least one qualified staff must be present when a resident is in the facility to respond to emergency situations and to meet the needs of the residents. The Department also believes that the proposed training requirements make training more accessible and allow new staff to become qualified more quickly. CBRFs may request a waiver of a rule from the Department following the provisions in HFS 83.03.

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	This will be a financial hardship for small facilities. Do they need to under direct supervision and have someone with them as all times? 109	No, the administrator or qualified resident staff person would not need to be with the employee who has not completed all required training, but would need to be in the CBRF and immediately accessible to the employee.
HFS 83.24 (1)	The language should read "before [reviser to insert date that is one year after the effective date of the rule]." The additional year is necessary to allow for Department-approved training programs to be established and for facilities to include the cost of such training in their budgets. 86, 91, 92, 93, 98, 112, 113	The Department has amended HFS 83.24 (1) as requested by the commenters to read: "Employees who have completed department approved training in standard precautions, fire safety, first aid and choking, and medication administration and management prior to or within 1 year after [revisor to insert effective date of rule] shall be exempt from the training specified in ss. HFS 83.20(2).
HFS 83.24 (3) (5) (6)	Exempt Certified Medical Assistant as they are already trained in 3, 5, 6 (standard precautions, first aid and choking training, and medication administration and management training). 91, 92, 93 112, 113	The Department did not exempt Certified Medical Assistants (CMT) from meeting the training requirements listed in HFS 20 (2) (a), (c) and (d) regarding standards precautions, first aid and choking and medication administration and management because the course information listed on the American Association Medical Assistant website (Certification/Recertification Examination Content Outline) did not include all of the required training elements included in the CBRF Training Program Approval guideline. CMT programs are typically designed for individuals who work in a physician's office and are supervised by a physician under physician delegation. The CMT program does not include all core competencies required for staff who works independently in a CBRF or under the supervision of a nurse in a CBRF. Individual CMTs who believe they meet the criteria in a certain training area may request an exemption for training from the Department.
HFS 83.24 (6) (a)	HFS 129 is under revision and as proposed will include the Medication Aide requirements. It would seem appropriate to include the reference to this chapter at this time so as to appropriately refer individuals to these requirement given the timing, may be more appropriate to include a Note directing the reader to HFS 129. 80	The Department has amended the proposed rule as recommended by the commenter including a Note referring to the medication aide training contained in HFS 129.
HFS 83.24 (7)	Delete the exemption of the administrator from the	The training requirements in HFS 83.24 (7) include resident rights, client groups and challenging behaviors.

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	minimum training standards in 83.24 (7). Not all administrators are educated in these important minimum standards. 94	CBRF administrators are not exempt from these training standards, only licensed nursing home administrators are exempt from the training requirements because of their licensure standards. Nursing home administrators are required to complete a course of study that includes a program offered by a university or college, accredited by a regional or national accrediting agency recognized by the U. S. Department of Education which leads to an associate, baccalaureate, masters of doctoral degree or an approved course of study and a supervised clinical practicum. In addition to the educational requirements approved by the Board of Regulation and Licensing, licensed nursing home administrators are required to complete 2,000 hours of experience in the field of institutional administration with exposure and knowledge of resident rights, and resident services including, but not limited to social services, resident activities, protection of the interests, safety and well-being of resident and the psychological, physical, medical and social needs of residents.
HFS 83.24 (7) and (8)	Nursing assistants certified under HFS 129 should be exempted from the training requirements noted above as they are under current code. Duplicative training is costly and unnecessary. HFS 83.24(7) and (8) should be expanded to include nursing assistants certified under HFS 129. 81, 84, 97, 99	The Department has amended HFS 83.24 (7) and (8) as requested by commenters to exempt nurse aides in good standing on the Wisconsin Nurse Aide Registry from client group training, resident rights training and challenging behavior training.
HFS 83.24 (9)	Suggest that Certified Dietary Managers should also be exempted from the dietary training. These individuals have received training and have been tested on all of the enumerated areas of dietary training. 105	The Department has amended HFS 83.24 (9) as requested by the commenter.
HFS 83.24 (9)	Would employees who help teach the resident how to cook a meal once or twice a week need to go through the dietary training? 83	Yes, facility staff who help teach residents how to cook a meal once or twice a week would need to complete the dietary training in HFS 83. 22 (4).
HFS 83.25	Continuing education shall be relevant to their job responsibilities and shall include, but not be limited to each of the following. Helps define expectations of the 15 hours of continuing education	The Department has amended HFS 83.25 as requested by the commenter to state that continuing education must include training regarding standard precautions, client group related training, medications, residents rights, prevention and reporting abuse, neglect and misappropriation of property, fire safety and emergency procedures including first aid.

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	to train, at a minimum, in each of these areas each year. 85, 91, 92, 93, 112, 113	
	Clarify, if the continuing education topics must be repeated annually after the initial training. 95 And if so, must this again be done by dept. approved trainer? 95, 104	Yes, it is intended that each of the training topics be conducted annually. This training does not need to be provided by a Department approved trainer. CBRFs may request a waiver of a rule provision from the Department following the provisions in HFS 83.03.
	Is the continuing education required topic medications only for employees with that specific task of administrating medications? 83	Continuing education training, including medications, is intended for all resident care staff and the administrator. Resident care staff is defined to mean employees who supervise resident activities, provide personal care, and plan or conduct activities. The Department believes it is very important that all resident care staff be aware of the side effects of medications in order to report observations of adverse side effects appropriately. The definition excludes employees who work exclusively in food service, maintenance, laundry service, housekeeping, transportation, security or clerical areas.
	The proposed rule regarding the increase of additional training hour 12 to 15 per year is an unfunded mandate that will tax our already overstrained financial resources. The additional cost of hours would be a significant increase in wages/benefits of each employee. 103, 113 Need to include cost of staff to replace training hours of staff in training. Must provide staff coverage while staff is in training. This may be on an overtime basis, doubling the cost estimate. 8, 107	The proposed rule includes a 3 hour increase in continuing education hours from the current 12 hours to 15 hours annually. The current cost of continuing education training is estimated at $114 annually (12 hours x $9.50 per our) per employee. Using this hourly wage of $9.50, it is estimated that the cost to providers would be an additional $28.50 per staff member per year. The increase in the continuing education hours is grounded in the fact that over the past several years, the acuity level of residents living in CBRFs has increased steadily. The Department seeks a modest increase of 3 hours of continuing education hours to ensure CBRF staff received up-to-date information related to topics such as infection control, prevention of resident abuse and neglect, fire safety and emergency procedures. HFS 83 does not require the CBRF to train staff while on duty.
HFS 83.25 (3)	Does medication stated in 83.25 (3) mean medication administration as medication means in the chart on page 14 or does medication refer to general training about medication? 83	HFS 83.25 (3) refers to the 15 hours of continuing education training provided to the administrator and resident care staff each year.
HFS 83.27	The limitations on admissions	The Department has amended HFS 83.27 (1) (b) as

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(1) (b)	in HFS 83.27(1) (b) does not comply with s. 50.035(10) (b) and should be amended to comply with the statute. S. 50.035(10) (b) states a CBRF may not have a total of more than 4 residents, or 10% of the facility's licensed capacity, whichever is greater, with nursing care needs in excess of 3 hours per week unless the facility has obtained a waiver from the department of this limitation or has requested such a waiver and the department's decision is pending. 81	requested by the commenter and to be consistent with s. ch. 50.
HFS 83.27 (2) (a) 6.	Delete the following: 6. Requires care above the intermediate level nursing care, as a reason for non admission. Other stated reasons are sufficient to determine non-admission. 91, 92, 93, 98, 112, 113	The term "care above the intermediate level nursing care" is included in the statutory definition of a CBRF at s. 50.01 (1g). The provision has been renumbered HFS 83.27 (2) (f).
HFS 83.27 (2) (a) 8	This paragraph mixes together the concepts of incapacity and incompetence, as well as powers of attorney for health care and guardianship. It appears that references to chs. 51 and 55 are unnecessary. Amend to read: "Is incapacitated as defined under s.50.06(1), Stats., unless the person has either a health care agent under a valid and properly activated power of attorney for health care under ch.155, Stats, or a court appointed guardian under ch.54, Stats. Exception is made for the admission of an incapacitated individual who does not have such a legal representative, and who is admitted directly from the hospital according to the provision of s. 50.06, Stats. 78, 79	The Department has amended HFS 83.27 (2) (a) 8. as recommended by the commenters to read: "Is incapacitated as defined under s.50.06 (1), Stats., unless the person has either a health care agent under a valid and properly activated power of attorney for health care under ch.155, Stats, or a court appointed guardian under ch. 54, Stats. Exception is made for the admission of an incapacitated individual who does not have such a legal representative, and who is admitted directly from the hospital according to the provision of s. 50.06, Stats." This provision has been renumbered HFS 83.27 (2) (h).
HFS 83.28	Renumber and add to the	The Department has amended the rule as requested by

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(2) (a)	information given at the time of admission: "The facility shall provide written information regarding the names, addresses and telephone numbers of all resident advocacy groups serving the client groups in the facility, including the long term care ombudsman program and the protection and advocacy services of Disability Rights Wisconsin." 78, 79	the commenter and inserted the provision at HFS 83.28 (6).
HFS 83.28 (2) (b)	Create: "The address and telephone number of the nearest regional office of the department's survey and licensing agency." (This agency should be listed separately as it is not an advocacy agency under the pertinent state Statutes.) 78, 79	The Department does not believe it necessary to include this information in the admission agreement since this information is included at HFS 83.33 (1) (a) in the grievance procedure and provided to the resident before or at the time of admission. The Department regional office is distinguished from the advocacy agency by the use of the word "and" between the organizations providing advocacy and the department's regional office.
HFS 83.28 (4) (a) 2	The name for the CDC is the Centers for Disease Control and Prevention. 105	The Department has amended all references to the CDC in this rule to read centers for disease control and prevention.
HFS 83.28 (4) (a) (2)	The code requires CBRFs to use CDC standards when screening for tuberculosis and all immunizations. What health screening standards and immunizations is the Department referring? Specifically stating this in the regulations will alleviate any confusion by a CBRF and allow each CBRF to fully comply with these regulations. 101	The Department did not include specific CDC standards in the proposed rule since the CDC periodically modifies their standards to address current recommendations for screening and immunization. Generally these standards are evaluated and updated annually.
HFS 83.28 (5)	Should there be a cross reference to Chapter HFS 10 (Family Care) regarding the county's responsibility to provide information and referral to the Resource Center? 78, 79 This provision was stricken from the statute by 2007 Act 20 (the 2007-09 budget bill)	The Department added language regarding family care information and referral responsibilities, including the provisions in ch. 50 and HFS 10. These provisions are found at HFS 83.30. This provision was removed from the rule.

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	and should be deleted from HFS 83.28(5). The same suggestion and argument apply to HFS 83.30(1). 81	
	Eliminate for Corrections. Our residents do not qualify for Family Care. 95	While many correctional residents may not be eligible for COP funding, if a person is eligible for Medicaid, they could be eligible for family care. CBRFs may request a waiver of a rule from the Department following the provisions in HFS 83.03.
	Insert "If applicable" to the first sentence of this section for homes that do not participate in the community options program. 101	The new language clarifies that the provisions regarding funding eligibility only apply to facilities where a long-term program is available.
HFS 83.28 (6)	Suggest using a consistent term for the plan. At 83.35(2 it is referred to as "Initial Service Plan," but in 83.35(2) the term "Temporary Service Plan" is used. 105	The Department has amended HFS 83.28 (6) as suggested by the commenter to use the term "temporary" instead of "initial".
HFS 83.28 (8)	Why aren't "do not resuscitate orders" mentioned? 85	The Department has amended HFS 83.28 (8) as recommended by the commenter to include "do-not-resuscitate orders" under chs. 154 or 155.
	Suggest either consistent use of advanced or advance.	The Department has amended the rule to read advanced directives.
HFS 83.28 (8)	Eliminate for corrections. We do not accept residents with major health issues. 95	Advanced directives are not limited to persons with major health issues. An advanced directive provides the health care objectives of the individual, in the event an individual becomes incapacitated. CBRFs may request a waiver of a rule from the Department following the provisions in HFS 83.03.
HFS 83.29 (2)	Change: The admission agreement must be in writing and explained orally in the language of the prospective resident or legal representative. Admission is contingent… Intent is to provide the information orally in their language and this better provides that direction. Understanding is difficult to measure. 85, 91, 92, 93, 98, 112, 113	The Department has amended HFS 83.29 (2) as requested by the commenters.
HFS 83.29 (2) (f)	Suggest that the statement regarding security deposits	The Department has amended HFS 83.29 (2) (f) as requested by the commenter to only require a statement

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	should only be required if the CBRF is collecting a security deposit. 105	regarding a security deposit when a security deposit is collected.
HFS 83.29 (2) (g)	Although the term "bedhold" has commonly been used in the field, using the term "bed" is unnecessarily institutional. Suggest saying, "Terms for holding and charging for the resident's room/space…" 105	The Department has amended HFS 29 (2) (g) as requested by the commenter.
HFS 83.29 (2) (g) (h)	Eliminate for Corrections. Should not apply to corrections. There is no involuntary discharge (g) Does not apply. We do not hold beds (h) Residents often are placed in custody. Advance notice increases flight risk. 95	The Department added language as requested by the commenter to exempt notice requirements for the terms of involuntary discharge, holding and charging for a resident's room and reasons for involuntary discharge or transfer for resident's who are in the custody of the Department of Corrections.
HFS 83.30	Delete for corrections. Our residents do not qualify for COP funding. 95	While many correctional residents may not be eligible for COP funding, if a person is eligible for Medicaid, they may be eligible for family care. CBRFs may request a waiver of a rule from the Department following the provisions in HFS 83.03.
HFS 83.31 (4) (b) 6.	It would be helpful to give a description of what is provided under s. 50.03(5m), Stats. 105	The Department did not include the language at s. 50.03(5m), Stats. regarding resident removal, facility closing and resident relocation because it is duplicative.
HFS 83.31 (5)	The meaning of the statement, "The CBRF shall either move the belongings of a resident who is discharged with the resident or dispose of them under law" is unclear. It sounds like the CBRF bears the responsibility for moving the belongings, which it should not. Which law is the Department referring to? 101, 105	The Department has amended HFS 83.31 (5) as recommended by the commenter to indicate that it is the resident's or the resident's representative responsibility to remove the resident's belongs after discharge.
HFS 83.32 (2)	Recommend deleting the sentence, "When an admission is being made on an emergency basis, the explanation of resident rights, grievance procedure and house rules may be done within 5 days." This statement violates ch. 50.09 that requires this information to be provided on the day of	The Department has deleted the sentence as requested by the commenter.

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	admission. 78, 79	
HFS 83.32 (3) (g)	Include language to state the CBRF is allowed to release resident information as required under applicable state and federal laws, rules and regulations which they are require to abide by. Currently language release is only allowed under certain circumstances and under specific laws. 101	The Department has amended HFS 83.32 (3) (b) as requested by the commenter to read: "Confidentiality of health and personal information and records, and the right to approve or refuse release of that information to any individual outside the CBRF, except when the resident is transferred to another facility or as required by law or third-party payment contracts and except as provided in s. 146.82(2) and (3), Stats." This language is consistent with s. 50.09, Stats. The Department does not know of any other circumstances in which health or personal information or records may be released without consent by the resident. This provision has been renumbered HFS 83.32 (3) (b).
HFS 83.32 (3) (n)	The safeguards listed under current HFS 83.21(4) (n) regarding restraint use need to be iterated here, considering the potential for harm and the lack of ongoing medical supervision of CBRF residents. 78, 79	HFS 83.32 (3) (n) requires Department approval and physician authorization for the use of physical restraints, which ensures ongoing monitoring and supervision of restraint use**.** Since these same rights are found at s. 50.09 (1) (k), Stats., HFS 83.32 (3) (n) has been deleted.
HFS 83.32 (3) (q)	HFS 83.32 (2) (q) gives a CBRF resident the right to choose their pharmacy services provider. While we are not necessarily suggesting this right be eliminated, we are suggesting it might be given further consideration. With the number of medications being taken by CBRF residents rising significantly, the combination of more medications and multiple pharmacies raises concerns about increased medication errors. Consistency of packaging and delivery systems could alleviate those concerns. This is the classic battle between resident rights and resident safety. 81	In addition to HFS 83.32 (2) (q) giving residents the right to choose their pharmacy provider, ch. 50.09 (1) (m) affords this same right to residents in CBRFs. The Department recognizes the concerns of the commenter. HFS 83.37(1) (c) states that any pharmacy selected by a resident whose medications are administered by CBRF employees must meet the medication packaging system chosen by the CBRF. This eliminates the differences between packaging systems. HFS 83.32 (2) (q) has been removed from the rule as this same provision is found in ch. 50.09 (1) (m), Stats.

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HFS 83.32 (3) (t)	The rule states that residents have the right to participate in the religious activities of the resident's choice. Amend to read: "Exercise freely the religion of one's choice, including visits from clergy or lay representatives, with staff facilitating the contacts as needed. No resident may be required to engage in religious activities." 78, 79	The Department does not believe this change is necessary. Section 50.09 (1) (h), Stats., affords residents the right to meet with and participate in activities of social, religious, and community groups at the resident's discretion. HFS 83.32 (3) (t) was eliminated from the rule as the provision is contained in s. 50.09 (1) (h), Stats.
HFS 83.32 (3) (v)	The rule requires informed written consent when taking a resident's picture. Add: … or resident's legal representative for "advertising or public relations purposes" The CBRF may take a photograph for identification "or internal use purposes." Some members feel that internal use would include activities, birthday celebrations, bulletin boards, etc. 91, 92, 93 112, 113	No change was made to this section of the rule. The Department does not intend for residents to be photographed or filmed by the CBRF for any reason, except for identification purposes, without informed, written consent from the resident or from the resident's legal representative. This includes for advertising or public relations purposes, or for any internal use, such as an internal security surveillance system. It is not, however, the Department's intent to preclude or to require written consent for residents, family members or friends to take photographs of residents at birthday celebrations, parties, events, etc. The provision has been renumbered to HFS 83.32 (3) (k).
HFS 83.33 (1) (a)	The rule allows any individual to file a complaint on behalf of a resident. Eliminate other individuals from filing grievance on behalf of correctional residents. Residents are fully capable of acting on their own behalf and would exploit this. 95	Although many correctional clients may be capable of filing a grievance on their own behalf, some correctional clients may not have that ability. The Department believes it is important to retain this provision for those clients who are not capable of acting on their own behalf. CBRFs may request a waiver of a rule from the Department following the provisions in HFS 83.03. CBRFs may request a waiver of a rule provision from the Department following the provisions in HFS 83.03.
HFS 83.33 (3)	Amend: "The facility shall post in a conspicuous location the facility an *unaltered* poster…" 78, 79	The commenter did not provide a reason why the rule should be changed. The Department is not aware of a problem. Consequently no change was made to the rule.
HFS 83.34 (5) (b)	The meaning of the statement, "Employees may not accept donations made by any resident" seems unclear. The earlier sentence implies that the CBRF may accept donations in certain circumstances, but how may those donations be accepted if not by an employee? 105	The Department has amended HFS 83.34 (5) (b) as requested by the commenter.
HFS 83.34	Recommend reversing the	The Department has reversed the order of HFS 83.34 (6)

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(6) (a) and (b)	order of 83.34(6)(a)(b), since (b) clarifies that a security deposit may or may not be collected. 105	(a) and (6) (b).
HFS 83.35 (1) (a)	Change the Scope. The CBRF shall assess each resident's needs, abilities, and physical and mental condition before admission, when there is a significant change in resident's condition, and at least annually.… Proposed language "Before admission" at start of sentence is confusing and bad grammar. "When there is a change" is confusing, ambiguous, and unnecessary—83.03 (52) page 25 defines "significant change". 85, 91, 92, 93, 98, 112, 113	The Department has amended HFS 83.35(1) (a) to read: "The CBRF shall assess each resident's needs, abilities, and physical and mental condition, before admission, when there is a change in needs, abilities and condition, and at least annually." We believe it is necessary to complete an assessment when there is a change in the resident's needs, abilities or condition to ensure the facility has an accurate picture of the resident to use to develop or adjust the individual service plan. The Department believes using the definition of "significant change" is too narrow for the purpose of assessment. For example, the death of a resident's spouse or close loved one may not meet the definition of a significant change in condition. But in many instances this would result in a change in the residents needs, requiring an assessment related to the person's mental and emotional health, social participation, including interpersonal relationships, family contacts and leisure time activities. The results of the assessment may trigger possible adjustment to the service plan to help the resident adjust to their loss.
HFS 83.35 (1) (c)	HFS 83.35(1) (c) 1-10 were the components of the individual service plan (ISP) under current code; now they are part of the assessment. We don't disagree with that change: they simply want to know what will happen to the current ISP form with these changes and will the old ISP form serve as the template for a new assessment form. 81	The Department is currently reviewing the model ISP form to determine whether to revise the form. This is an optional form. There are no plans for the individual service plan to serve as the template for a new assessment form.
HFS 83.35 (3) (a) 1. and 3.	Change: 1. Identify the resident's needs and desired outcomes. Remove: 3. Establish measurable goals with specific time limits for attainment. Focuses on outcome based care which reflects Assisted Living care as well as expansion of managed care philosophy. 91, 92, 93, 98, 112, 113	The Department has amended HFS 83.35 (3) (a) as requested by the commenters. The Department did not accept the second recommendation to substitute the term "desired outcomes" for "establish measurable goals with specific time limits for attainment". It is important for the individual service plan to include goals (desired outcomes) that are measurable with specific time limits for attainment to be able to track the progress an individual is making to reach their goal. By using measurable goals, the resident and staff are able to determine if the approaches used are successful or if different strategies need to be developed to achieve the desired outcome or goal. It is also important that the individual service plan include specific time limits for

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		attainment to be able to track the success of the plan to ensure that the resident is meeting or making progress to achieve their goals within a reasonable time period.
HFS 83.35 (3) (d)	Annually is not enough, we recommend semi annually or quarterly review of the individual service plan. 108	This is an example of a resident specific, outcome standard and the Department does not want to mandate unwarranted tasks. The service plan would need to be reviewed when a resident's needs, abilities or physical or mental condition change and the plan amended to reflect those changes. However, if a resident experiences no changes, additional review may not be needed. Many residents who reside in CBRFs are stable and experience no change in needs or condition making it unnecessary to complete a review of the individual service plan, other than annually
HFS 83.35 (4)	It would be helpful to provide a link to the department satisfaction evaluation form here. 105	The Department has added a link to the form as follows: Note: The form can be found at: http://dhfs.wisconsin.gov/forms1/oqa/oqa2372.pdf
HFS 83.35 (4)	Recommend amending HFS 83.35 (4) to read: At least annually the CBRF shall conduct a resident satisfaction evaluation of the CBRF's services as method of measuring performance and opportunities for improvement. The evaluation shall be completed: (1) On a form developed or approved the department that all residents are provided the opportunity to complete or (2) Through a method that provides statistically recognized valid results of resident satisfaction. With out criticizing the department form, we believe that limiting compliance with this provision to a form developed or approved the department may preclude a provider from using satisfaction tools that are more sophisticated and valuable. There is a growing level of expertise from companies that specialize in LTC resident, family and employee satisfaction surveys that are able to provide	The survey offered by the commenter appears to be completed anonymously and would not provide the resident or guardian with the opportunity to express their level of satisfaction with the services provided by the facility, nor would it give the CBRF the information to respond to individual concerns or requests from the resident or guardian. The Department is open to the development of other types of satisfaction evaluations and will carefully review submissions for approval. The Department's CBRF Resident Satisfaction Evaluation was developed to ensure that each resident and his or her guardian are given the opportunity to express their level of satisfaction with the services provide by the facility and to determine the ability of the facility to identify and meet their needs and preferences for care. The evaluation contains 50 criteria to rate their satisfaction with the services provided by the facility, adequacy and knowledge of the staff, type and preference of activities offered, quality, variety and adequacy of the food served, whether their rights are respected and protected, physical environment, privacy, personal funds and medications. The evaluation asks the resident to evaluate each of these criteria and gives them the opportunity to provide additional thoughts regarding each of these criteria and to provide general comments regarding the facility. The evaluation is not meant to be anonymous. Based on the responses, the CBRF is responsible to follow up on concerns, and requests made by the resident and to meet their needs and accommodate their preferences for care and services.

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	tremendous amount of information for providers to incorporate into their quality improvement efforts. Companies such as MyInnerview are recognized by state and federal authorities as industry leaders in the field. We are concerned that the language of the current provision would preclude a provider from using such products and services to meet this requirement thus obligating them to conduct a minimum of 2 such evaluations. We are concerned that responses rates will be reduced or will be the source of confusion if individual are to complete more that one survey. While we further appreciate the likely intent that every individual resident complete an evaluation the current and proposed methodology actually stifles the provision and collection of valid satisfaction information. Fundamental to the collection of accurate satisfaction date is that it be done in a manner that the individual providing the information be comfortable that their responses are anonymous. 80	
HFS 83.35 (5)	The rule requires facilities to complete an evacuation assessment for all residents. Eliminate for corrections. All of our residents are physically and mentally capable of evacuating admit those who cannot. 95	Although many correctional clients may be physically and mentally capable of evacuating the facility, others may not. It is important for CBRF staff to assess each resident's physical and mental ability to evacuate the facility independently to determine whether any resident will need staff assistance in cases of fire or other emergencies. CBRFs may request a waiver of a rule from the Department following the provisions in HFS 83.03.
HFS 85.36 (2)	Suggest changing the requirements regarding the staffing schedule include each staff position and time	The Department believes it is necessary for the staffing schedule to include staff names and job assignments to identify the individuals who worked in the facility on a particular date and shift, and their assignment. When

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	worked. Remove "job assignment". Staff schedules change frequently due to illness, relief staff filling in for open positions. Having to alter names on every schedule would be time prohibitive and unnecessary. Also the job position dictates the assignment. Our entire direct care staff share in what is needed at any given moment dependent on situation and client. 85	schedules need to be amended due to staff illness, etc., it is acceptable for the CBRF to cross out the name of the individual initially assigned and write in by hand the name of the relief staff.
HFS 83.37 (1) (a)	A member who happens to be a registered dietitian argues dietary supplements are benign and CBRFs should be able to use them without the need for a physician's order similar to what many nursing homes do. 81	Not all dietary supplements are benign and physician involvement is necessary to assess the use of dietary supplements by residents who may have complicated medication regimens. For example, in many cases, it would be a clinical concern for a resident who is taking Coumadin to also be taking Vitamin K. Wis. Admin. Code, HFS 132.60 (5) requires a physician order for all medication and treatment and does not specifically address dietary supplements. However, this provision in ch. HFS 132 has not been updated for several years.
	The rule requires that there be a written practitioner's order for dietary supplements. Change to over-the-counter medication administered… Limits resident's rights when they wish a dietary supplement that the practitioner does not agree with. We have been informed this is a common occurrence. 91, 92, 93, 112, 113	The Department does not believe that this rule interferes with the resident's right to treatment or choice. It is important for the physician to be aware of any dietary supplements used by the resident to be able to monitor for possible adverse interactions. If there is occasion in which a physician does not agree with a resident's choice for a dietary supplement, the resident may consider seeking an alternate physician.
HFS 83.37 (1) (h) and (i)	The proposed rule states that as needed psychotropic medication shall be monitored at least monthly. Change to read: Shall monitor and document at least quarterly. Don't change a time frame system that currently works. Quarterly rather than monthly is sufficient**.** 84, 91, 92, 93, 112, 113 Members offer several	The Department draws a distinction between the uses of scheduled and unscheduled or "as needed" psychotropic medications, and believes that more frequent monitoring of unscheduled psychotropic medications is necessary. The purpose of the monthly review is to determine that psychotropic medication is being given as intended, consistent with the ISP and not for discipline or staff convenience. In addition, unscheduled drugs are often used for acute, changing conditions that require closer monitoring. The monthly review for "as needed" psychotropic medication recognizes the potential for misuse and the need for more frequent monitoring by the administrator or designee. By monitoring the medication

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	suggested changes to this section: 1) Eliminate the distinction between scheduled and PRN psychotropic medication by deleting "Scheduled" under HFS 83.37(1)(h) and deleting HFS 83.37(1)(i); 2) HFS 83.37(1)(i)2 should be added to HFS 83.37(1)(h)1 so it reads: "The results of the assessments shall be documented in the resident's record as required in s. HFS 83.42(1)(n). The administrator or qualified designee shall monitor at least quarterly for the inappropriate use of PRN psychotropic medication, including but not limited to, use contrary to the ISP, presence of significant adverse side effects, use for discipline or staff convenience, or contrary to the intended use."; 3) HFS 83.37(1)(i)1 becomes HFS 83.37(1)(h)3; and 4) HFS 83.37(1)(i)3 becomes HFS 83.37(1)(h)4. Members see no need in making a distinction between the use and the monitoring of the use of scheduled and unscheduled psychotropic medications. They also argue that a quarterly review for the inappropriate use of psychotropic medications is more effective than a monthly review in analyzing on-going usage. 81, 97, 99 Proposed language: The administrator or qualified designee shall monitor for the appropriate use of PRN psychotropic medication on an on-going basis including but not limited to, use contrary to the ISP, presence	administered on a monthly basis, the administrator or designee can determine if the medication is being used as it is intended and if not, can advocate for the resident with the physician to change the treatment and improve the resident's quality of life.

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	of significant adverse side effects, use for discipline or staff convenience, or contrary to intended use. 84	
HFS 83.37 (1) (h) 2.	Change to: Ensure all medication administration staff, instead of all resident care staff, understands the potential benefits and side effects of the medication. No need to educate the whole staff about psychotropic meds if they don't administer them. Replace "all resident care staff" with "all medication administration staff." 91, 92, 93, 112, 113	The Department believes it is very important that all resident care staff be aware of the side effects of medications in order to report observations of adverse side effects appropriately. Resident care staff is defined to mean employees who supervise resident activities, provide personal care, plan or conduct activities. The definition excludes employees who work exclusively in food service, maintenance, laundry service, housekeeping, transportation, security or clerical areas.
HFS 83.37 (1) (j)	Remove: A registered nurse or designee shall audit, sign and date the proof-of-use records on a daily basis, except that in facilities in which a registered nurse is not present. Change: The administrator or designee shall audit, sign and date the proof-of-use records on a daily basis. Administrator should retain responsibility for the audit. Due to the increase of psychotropic usage, we believe the administrator should not delegate their daily responsibility. 91, 92, 93. 98, 112, 113	The Department has amended HFS 83.37 (1) (j) as requested by the commenters to state that the administrator or designee shall audit, sign and date the proof-of-use records on a daily basis.
	Change registered nurse or designee to administrator or designee shall audit sign and date proof of use records on a daily basis. A CBRF using unit dose medication systems is not required to hold the registered nurse accountable for medication supervision. 87,88	The Department has amended HFS 83.37 (1) (j) as requested by the commenter to state that the administrator or designee shall complete proof of use records on a daily basis. The administrator may delegate this task to another individual.
	The administrator doesn't work 7 days a week and this creates a cumbersome burden on the administrator.	Proof-of-use records must be audited on a daily basis according to accepted medication management practices, and as required under the current rule.

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	Usually the administrator is notified of any discrepancies and then gets involved. By having the administrator sign the proof of use sheets on a daily basis negates the routine staff that does the count each shift. 82 Change the RN to administrator or designee…to do it on a quarterly basis not daily, weekly or monthly, continue with current process. 87, 88	
HFS 83.37 (1) (k)	The use of the term "resident refusal to take medication' is paternalistic. I would suggest, "occasions when the resident declines to take medication." 104	The word "refusal" is a commonly understood term used when a resident declines to take medication for a variety of reasons and is not intended to be overly protective.
HFS 83.37 (1) (k) 2.	Add language to require notification to the practitioner, supervising or pharmacist if a self-medicating resident does not take his medication as prescribed sooner than 2 days. A resident could make fatal errors in medication regimen which would not be required to be reported for 2 days. 94	HFS 83.37 (1) (k) 2. applies to all residents, including those individuals who self-medicate. The CBRF must report all medications administration errors and any adverse drug reactions immediately to the licensed practitioner, supervising nurse or pharmacist. The CBRF must also report to the prescribing practitioner, supervising nurse or pharmacist as soon as possible after the resident refuses a medication for 2 consecutive days. It is not necessary to add language to include residents who self administer medications. When a resident chooses to self administer their medication it may be difficult for staff to monitor for all medication errors or refusal to take medication. This is a risk that should be considered, along with other risks and benefits, when a competent resident makes the decision to self administer their own medication.
HFS 83.37 (2) (b) 1.	Remove sentence. Supervision of medication administration may be delegated by the registered nurse or practitioner to a licensed practical nurse. Our nursing advisors say that an RN may not delegate supervision. 91, 92, 93, 112, 113 Recommend removing the sentence: supervision of	The Department has removed the sentence as requested by the commenters.

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	medication administration may be delegated by the RN to the LPN. Nurse Practice Act doesn't allow delegation for supervision. Delegation needs to be understood clearly. RN's do not in general understand delegation. Recommend defining the act of delegation for CBRFs as defined in Chapter N6 referencing the RCAC memo for medication administration Feb 2002. 89	
HFS 83.37 (2)	Please define self-administration somewhere. 85	The common definition of self-administration means a resident who is physically and mentally capable of completing the process of administering their own medication.
HFS 83.37 (2) (c)	Add that a CBRF using unit dose medication systems is not required to hold the registered nurse accountable for medication supervision. As long as unit dose medication systems are used, CBRFs with or without an RN should be held to the same standards. A CBRF may employ RNs for treatments and other nurse tasks without including them in the medication process. 87, 91, 92, 93, 98, 112, 113	The Department has amended HFS 83.37 (2) (c) as recommended by the commenters to state: Medication administration not supervised by a registered nurse, practitioner or pharmacist. When medication administration is not supervised by a registered nurse, practitioner or pharmacist, the CBRF shall arrange for a pharmacist to package and label a resident's prescription medications in unit dose. Medications available over-the-counter may be excluded from unit dose packaging requirements unless the physician specifies unit dose. The individual CBRF may determine what functions the registered nurse will be accountable for.
HFS 83. 37 (2) (e)	Eliminate verbiage: nebulizers and medication treatment or preparations delivered vaginally or rectally. Retain the NOTE: Rational: Resident with COPD has nebulizers order routinely or in an acute situation. For the acute phase a facility without delegating nurse resident will have to go to ER to receive the treatment until a nurse can be hired or contracted. Same would apply to vaginal and rectal medications. 82, 89	The Department has amended HFS 83.37 (2) (e) as recommended by the commenters to state that administration of nebulizers and medications, treatments or preparations delivered vaginally or rectally may be delegated to non-licensed employees pursuant to the Nursing Standards of Practice, s. N 6.03 (3).

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	By requiring a registered nurse this may require smaller CBRF's financial hardship. 85, 108	
HFS 83.38 (1) (c)	The population served under HFS 83 is in need of supportive leisure activity services. These residents often experience difficulty structuring the use of their free time, may lack leisure skills and experience, or require assistance to effectively engage in meaningful activity and/or social interaction. We believe that the support needed is most effectively provided by personnel trained to provide such services. The current proposed re-write does not require the presence of personnel with prior experience or training to provide this service. It does not require that staff be provided with training specific to meeting this need nor does it specify that there be dedicated staff time for the provision of such services. If passed as written it would be incumbent on consumers to seek services from CBRF providers who provide the level of support in this area necessary to meet their current and future needs. The process of choosing residential services often occurs during times of stress with many variables to consider. Frequently decisions are made by individuals unfamiliar with the aging process and the experience of living in a communal living situation. Without regulatory requirement, this market	The Department believes the activity requirements in HFS 83 provide a comprehensive framework for a well balanced activity program that meets the needs and interests of all residents. Many of these requirements focus on positive outcomes for residents rather than on prescribed standards, including specific personnel. The Department agrees that supportive leisure activity services are a key component towards creating an environment that promotes each resident's quality of life. The commenter incorrectly stated that the proposed rule does not require that staff be provided with training specific to meeting resident's activity needs. HFS 83.21 (2) (a) requires CBRFs to train to all staff in the social needs of their residents, including the specific training topic of activities. CBRFs are required to provide a daily activity program designed to meet the interests and capabilities of all residents (HFS 83.38 (1) (c)). Through the resident assessment process outlined in HFS 83.35 (1) (a), the facility is expected to gather information from each resident to determine their needs, interests, abilities and expectations regarding leisure time activities, community contacts and social participation. The CBRF is the required in HFS 83.35 (3) to develop an individual service plan to meet their needs and expectations. CBRFs must also develop and post an activity calendar of events in an area accessible to residents as required in HFS 83.38 (1) (d). Employees are required to encourage and promote resident participation in the facility's activity program. In addition, HFS 83.38 (1) (d) requires facilities to provide residents with information and assistance to facilitate participation in personal and community activities. This includes developing a monthly schedule and notice of community activities and events.

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	driven approach will provide no assurance that the necessary level of leisure & social support will be available and is likely to leave many clients lacking the level of support they require to avoid negative psycho-social outcomes and to maintain their highest level of physical, cognitive, & emotional well being. 77	
HFS 83.38 (1) (f)	The code requires the CBRF to provide services to meet the resident's communications skills. Does this include teaching sign language to the resident? How far does the CBRF need go to meet the needs? 72	The Department has amended HGFS 83.38 (1) (f) to read: The CBRF shall provide services to meet the resident's communication needs. The CBRF is expected to assess the resident's needs and abilities and provide the services to ensure the resident is able to communicate their basic needs. This may include the use of a communication board, obtaining services to teach the resident sign language if the assessment determines that the resident is able to learn sign language or the use of other assistive devices.
HFS 83.38 (1) (g)	What is the meaning of "follow-up physical health examination?" Must this be performed by a physician, or can it be performed by a Registered Nurse or other health practitioner, as is allowed by current regulation? 105	Based on the commenter's question, HFS 83.38 (1) (g) 1 has been clarified to read: "Each resident shall have an annual physical health examination completed by a physician, unless seen by a physician more frequently." Current regulation allows the initial screening for communicable disease to be conducted by a registered nurse. HFS 83.38 (1) (g) 1. relates to the annual health exam, which must be completed by the physician.
HFS 83.38 (1) (g) 2.	Th rule requires the CBRF to observe a resident's food and fluid intake. Removed the word "food and fluid" – revised text is more realistic and most facilities are already monitoring and documenting general intake. The terminology monitoring fluid intake is not consistent with AL standards. Change terminology: from "A resident's food and fluid intake and acceptance of diet…" to "A resident's intake and acceptance of diet" 91, 92, 93, 112, 113 Replace "food and fluid intake" with "intake' rationale:	The Department has amended HFS 83.38 (1) (g) 2. as requested by the commenters to read that when indicated, a resident's food and fluid intake and acceptance of diet shall be observed. This will limit the observation to include only residents for which there is some clinical reason to observe, i.e., to determine is a resident is consuming adequate fluid or calories due to a medical condition.

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	Especially in apartment based CBRF's where resident prepare and eat some meals and snacks in their apartment, the CBRF cannot be responsible for what they do privately. 98	
HFS 83.41 (1) (a) 2.	The rule states that CBRFs shall procure food from sources that meets federal, state and local standards or laws. Delete entire clause. Many CBRF's procure food from local sources, including gardens and farmers markets and this would preclude such access. 91, 92, 93, 112, 113	The Department has amended HFS 83.41 (1) (a) 2. as recommended by the commenters to read: "Food shall be obtained from acceptable sources." This will allow CBRFs to obtain food from local sources such as gardens and farmer's markets.
HFS 83.41 (1) (c)	HFS 83.41(1) (c) requires CBRFs with kitchens serving 21 or more residents to have a commercial type dishwasher. There are several members who would like to see this provision amended to permit the use of residential dishwashers in large CBRFs if the kitchen is routinely used by no more than 20 residents. Residential dishwashers are safer and more home-like in appearance. Our members appreciated the BAL response that a waiver could be sought in this instance but they'd prefer to avoid the stigma that often is attached to the granting of a waiver. 81	HFS 83.41(1) (c)1. has been amended to state: "Residential dishwashers may be used in kitchens serving 20 or less residents. "The proposed rule is intended to allow the use of residential dishwashers in any kitchen serving up to and including 20 residents. This includes small kitchens or kitchenettes on individual units or wings in facilities that serve 20 or fewer residents on the unit or wing. In these instances, it would not be necessary to obtain a waiver if the small kitchen serves 20 or less residents.
HFS 83.41 (1) (c)	The rule states that a three compartment sink is required for all large facilities. Members suggest the proposed rule be amended to grandfather current facilities which have two compartment sinks to minimize the cost implications of this new requirement. 81	This requirement has not changed from the current rule. The requirement for a three compartment sink for new, large CBRFs has been in effect since 1997. At that time existing facilities were "grandfathered" in compliance with the rule. Any existing large facility may request a waiver from this requirement if needed.
HFS 83.42 (1) (d)	The rule states that incident reports would be part of a	The Department has amended HFS 83.42 (1) (d) as requested by the commenter to require the CBRF to

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	resident's record. Although incidents should be documented in a resident's record we don't believe the actual incident report should be files in the resident's record. The incident report is used for QA purposed and should remain confidential by the CBRF. 101	document significant incidents and illnesses, including the dates, times and circumstances, in the resident's record and eliminated language requiring incident reports to be maintained in the resident's record.
HFS 83.42 (1) (o)	The use of the term "resident refusal to take medication" is paternalistic. I would suggest, "occasions when the resident declines to take medication." 105	The use of the word "refusal" is a commonly understood term used when a resident declines to take medication for a variety of reasons and is not intended to be overly protective.
HFS 83.43 (2)	Remove the option for residents in correctional programs from bringing in their own furnishings. We must follow fire codes and consider security risks. 95	All CBRFs are responsible for complying with applicable fire codes and maintaining a safe environment. The CBRF must make a determination about whether any furnishing a resident wishes to bring into the facility represents a fire or security risk and respond accordingly. HFS 83.14 (2) (j) charges the licensee with the responsibility of not permitting the existence of any condition which may create a substantial risk to the health, safety or welfare of any resident. CBRFs may request a waiver of a rule from the Department following the provisions in HFS 83.03.
HFS 83.44 (1) (a)	The rule requires the facility to have an adequate number of laundry appliances available. These requirements seem to ignore the fact that some CBRFs have independent apartments with laundry appliances in those apartments. 81	HFS 83.44 (1) (a) requires the CBRF to have an adequate number of laundry appliances available to residents who choose to do their own laundry. Independent apartments with laundry appliances available meet this requirement.
HFS 83.44 (1) (c)	This provision requires the use of dryer vent tubing. Stated differently, it precludes the use of ventless dryers, which are more convenient, take up less space, are more residential in nature and are common in Europe. We would suggest that the rule permit this flexibility rather than forcing progressive providers to seek a waiver. 81	The Department has amended HFS 83.44 (1) (c) as requested by the commenter to clarify that the type of vent tubing only applies to dryers that have vent tubing, and not ventless dryers.

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HFS 83.45 (5)	There should be some mention in the code that CBRFs should adhere to local recycling ordinances. 81	HFS 83 establishes standards for the care, treatment, health, safety, rights, welfare and comfort of residents as outlined in s. 50.02 (2), Stats. Although CBRFs are required to comply with local recycling ordinances, these types of ordinances are not directly related to the Department's statutory authority and are not included in HFS 83.
HFS 83.46 (1)	The rule states that the heating system shall be capable of maintaining temperatures of 74 degrees in areas occupied by residents. Does this mean that the temperature must be 74 degrees? Our costs are already extremely high. This is not an elderly population. Would like this changed to 68 degrees at night and 70 during the day. 95 "The heating system shall be capable of maintaining temperatures of 74 degrees F. in areas occupied by the residents." This may become uncomfortably warm for many of the individuals that we support. The current rule states that the temperature in habitable rooms shall not be permitted to fall below 70 degrees F during periods of occupancy. Increasing the requirement to 74 degrees F would pose a financial hardship to providers' already overburdened utility expenses. 104 We would propose that the rule state the temperature be maintained at 72 degrees F with the ability to set the temperature to 68 degrees overnight. Licensing specialists should look for evidence of extra blankets available to all who are in need or who would request them. 103	HFS 83.46 (1) requires that the heating system be capable of maintaining temperatures of 74 degrees but the CBRF is able to keep air temperatures at a higher or lower level based client preferences, similar to the current rule. The rule does not require CBRFs to keep air temperatures at 74 degrees, and allows flexibility to keep temperatures higher or lower, based on the client group served and/or individual client preferences. CBRFs may request a waiver of a rule from the Department following the provisions in HFS 83.03. Under the proposed rule a CBRF is able to maintain air temperatures at 72 degrees and set the temperature to 68 degrees overnight. The CBRF is able to keep air temperatures at a higher or lower level based on the client group served and/or individual client preferences. No change in the rule is necessary. CBRFs may request a waiver of a rule from the Department following the provisions in HFS 83.03.

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HFS 83.46 (2) (a)	The rule says that all rooms and areas should be well ventilated. Shouldn't "well ventilated" either be defined or reference a standard? 81	Well ventilated is defined in federal nursing home interpretative guidelines as an acceptable level of movement or circulation of air. This can be determined by checking for good air movement, acceptable air temperatures, and humidity and odor levels.
HFS 83.47 (2) (d)	The rule states that the facility shall conduct at least quarterly with both employees and residents. Does this mean that all employees must participate in quarterly drills at minimum? 85	No, all employees are not required to participate in quarterly drills, only those employees working at the facility at the time of the drill must participate in the drill. Other employees, who are not working in the facility at the time of the drill, are not expected to participate in the drill. The facility is not required to schedule drills to ensure that all employees participate in at least one drill.
HFS 83.47 (3)	Support annual fire inspections for all CBRFs. 91, 92, 93, 112, 113	No response necessary.
HFS 83.48 (1) (b)	The rule requires that smoke detectors be tested according to manufacturer's recommendations. Some of our readers are taking this to mean that the bi-monthly testing must be done by certified personnel, not staff. Can facility staff do this, or only tested by certified personnel per 83.48 (3) (a) and NFPA 72? 92	The Department has amended HFS 83.48 (1) (b) as requested by the commenters to clarify that smoke detectors may be tested by facility personnel.
HFS 83.48 (8)	Support all class C facilities required to have sprinkler systems, existing facilities have 5 years to install sprinklers. 91, 92, 93, 112, 113	No response necessary.
HFS 83.48 (8)	States that "all class C facilities are required to have sprinkler systems". While we support this requirement as a health and safety measure, it is an un-funded mandate that will cause undue financial hardship for many providers. Although providers are given 5 years to comply with this requirement, the cost to install a sprinkler system is approximately $13,000 – $23,000. This is an astounding dollar amount in an environment where rates are being cut year after year.	The commenter is incorrect in that the proposed rule requiring sprinklers only affects small Class C facilities. Sprinkler requirements have been in effect for medium and large Class C facilities for several years. Small Class C facilities are facilities that serve between five an eight person with a physical or cognitive impairment that prevents these residents from responding to an alarm and escaping a fire without assistance. The proposed rule is aimed at protecting vulnerable residents who, because of a physical or mental disability, are not able to take action independently to preserve their life. In general, because these facilities are small, the majority have only one person on duty during the evening and throughout the night. If residents are not in need of continuous care, the staff person may be asleep. In addition, many of these facilities are older, private homes with aging mechanical and electrical systems, increasing

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	103,	the need for fire protection. An analysis of federal data and public news accounts shows that there are at least two fires a day in the nation's assisted living facilities. These fires generally result in one fatal fire a month.
	This will be a financial challenge for small homes to meet the requirements. 110 Installation of sprinkler system costs closer to $30,000 – 40,000 with the cost of plumbing, refit, re-drywall and other post installation repair for a facility in existence. 107, 113	Installing a sprinkler system may be a financial hardship for some small class 'C' CBRFs but there are alternatives available. Facilities may choose to change the classification of their licensure to serve persons who are physically and mentally capable of taking life-sustaining action. A CBRF could reduce capacity and become a four-bed adult family home, not subject to ch. HFS 83. However, both options would most likely result in some decreased revenue, either from fewer residents or providing services to residents with fewer health needs at a lower rate. A CBRF can request a waiver from the Department. The Department may grant a waiver of the requirement if the facility submits alternate ways to meet the rule that would not jeopardize the health, safety, and welfare of its residents.
	Suggest a grandfather clause be available for currently licensed facilities. 107	Public safety concerns dictate not using a grandfather provision. CBRFs have 5 years to comply with the sprinkler requirement allowing substantial time to budget for the associated costs.
HFS 83.54 (4) (a) and (b) and (c)	Room size. Is grandfathering possible for existing bedrooms that do not meet the size requirements, or only by variance? This may have great impact on smaller providers. 91, 92	The room size requirements have not changed from the current code. Facilities may request a waiver of this requirement from the Department.
HFS 83.55 (1) (a)	The code identifies the ratio of bath, sink, shower and toilets per resident. Is grandfathering possible for existing bathrooms that do not meet this requirement, or only by variance? This may also have great impact on smaller providers. 91, 92	The ratio of toilets, sinks, bathtub and showers was amended to be consistent with Department of Commerce requirements which are less prescriptive than current code. Facilities may request a waiver of this requirement from the Department.
HFS 83.55 (3)	The code specifies that all sinks shall have dispensers for single use paper towels or clothe towel dispensers. Add "All sinks in common areas" to promote clarity. 91, 92, 93	Due to the importance of hand washing to prevent the spread of infection, the proposed rule requires that all sinks be provided with single use hand drying materials, except for those sinks accessed directly from a resident's bedroom.
HFS 83.57 (1)	Members would argue that this continued reliance on physical separation between	The physical separation between different types of occupancy is necessary for the safety of the occupants of each building. "Aging in place" can still occur, but

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	the different types of occupancies is an anachronism and precludes "aging in place." We have long argued in support of multiple licensures in single settings. 81	within each of the different types of occupancies**.**
HFS 83.59 (2) (f)	The rule states that staff must have a means of opening all locks on all doors in the CBRF. Does this include administrative offices? We need to keep employee files locked. This needs to be clarified. 108	Yes, for fire safety purposes, the staff member in charge must have a means of opening all doors in the CBRF, including doors to administrative offices. In cases of fire, it may be necessary for staff to have access to administrative offices. However, employee files could be placed in a locked file cabinet.
HFS 83.59 (7)	Support exit hallways and stairs required to have emergency lighting with a stand by power source. 91, 92, 93, 112	No response necessary.
HFS 83.63 (4)	Support increase in fees for plan review. 91, 92, 93, 112	No response necessary.
HFS 83.64 (5)	Our smaller providers are not aware of what a smoke compartment is and there is no definition in 83.03. Would that help them understand this requirement? 91, 92	This requirement does not apply to small facilities, and only applies to facilities with a capacity of 9 or more residents which are required to be constructed in compliance with Department of Commerce rule. Wis. Admin. Code ch. Comm 61 defines a smoke compartment as a space within a building enclosed by smoke barriers on all sides, including the top and bottom. Architects, contractors and builders understand this terminology and these rules.