

ORDER OF THE
DEPARTMENT OF HEALTH AND FAMILY SERVICES
REPEALING, AMENDING, AND REPEALING AND RECREATING RULES

To repeal HFS 15.02 (2), (6) and (8), to amend HFS 15.01, 15.04 and 15.07 (3), and to repeal and recreate HFS 15.03, relating to assessments on occupied, licensed beds in nursing homes and intermediate care facilities for the mentally retarded (ICF-MR.)

Analysis Prepared by the Department of Health and Family Services

2003 Wisconsin Act 33 modified section 50.14 of the Wisconsin statutes, relating to assessments on occupied, licensed beds in nursing homes and intermediate care facilities for the mentally retarded (ICF-MR.)

Under section 50.14 of the Wisconsin Statutes, nursing facilities (nursing homes and ICF-MRs) are assessed a monthly fee for each occupied bed. Facilities owned or operated by the state, federal government, or located out of state are exempt from the assessment. Beds occupied by a resident whose nursing home costs are paid by Medicare are also exempt. The rate, specified in section 50.14 (2) of the statutes, was \$32 per month per occupied bed for nursing homes and \$100 per month per occupied bed for ICF-MRs.

2003 Wisconsin Act 33 made the following changes to section 50.14:

1. It broadened the scope of which types of long-term care facilities must pay a monetary assessment to the Department by:

- eliminating exemptions from being subject to the assessments of facilities owned or operated by the state or federal government, and beds occupied by residents whose care is reimbursed in whole or in part by medicare under 42 USC 1395 to 1395ccc; and
- eliminating the exclusion of unoccupied facility beds from facility bed count calculations.

2. It increased the per bed fee limit the Department may charge subject ICF-MRs, from \$100 per bed to \$435 per bed in fiscal year 2003-04 and \$445 per bed in fiscal year 2004-05.

3. It increased the per bed fee limit the Department may charge subject nursing homes, from \$32 per bed to \$75 per bed.

4. It establishes the requirement that amounts collected in excess of \$14.3 million in fiscal year 2003-04, \$13.8 million in fiscal year 2004-05, and, beginning July 1, 2005, amounts in excess of 45% of the amount collected be deposited in the Medical Assistance Trust Fund.

5. It specifies that facility beds that have been delicensed under section 49.45 (6m) (ap) 1. of the statutes, but not deducted from the nursing home's licensed bed capacity under section 49.45 (6m) (ap) 4. a., are to be included in the number of beds subject to the assessment.

In response to these statutory changes, the Department issued an identical emergency rule effective July 28, 2003 to modify chapter HFS 15 accordingly. Through this proposed order, the Department seeks to make permanent those changes to ch. HFS 15 contained in the emergency order.

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

SECTION 1. HFS 15.01 is amended to read:

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

SECTION 2. HFS 15.02 (2), (6) and (8) are repealed.

SECTION 3. HFS 15.03 is repealed and recreated to read:

HFS 15.03 Facilities not subject to assessment. Facilities located outside the state are excluded from assessments imposed under this chapter and s. 50.14, Stats.

SECTION 4. HFS 15.04 is amended to read:

HFS 15.04 Assessment calculation. (1) ASSESSMENT. Every facility ~~which~~ that is not excluded under s. HFS 15.03 ~~(4)~~ shall pay an assessment per ~~occupied~~ licensed bed as prescribed by s. 50.14, Stats., and as calculated pursuant to this section and s. 50.14, Stats. The amounts of the assessment per ~~occupied~~ licensed bed shall be as specified by s. 50.14, Stats.

(2) CALCULATION. (a) The assessment shall be on the ~~average~~ number of ~~occupied~~, licensed beds of the facility ~~for~~ on the 15th day of the calendar month previous to the month of assessment, ~~based on an average daily midnight census computed and reported by the facility and as verified by the department. Beds for which payment is made by medicare under 42 USC 1395 to 1395ccc shall be excluded from the calculation. A bed occupied by a person who is eligible for both medicare and medicaid, and for which medicare pays a portion of the room and board for the person, is excluded from the calculation.~~

(b) 1. In determining the number of ~~occupied~~, licensed beds, if the number of beds is other than a whole number, the fractional part of the amount shall be disregarded unless it equals 50% or more of a whole number, in which case the amount shall be increased to the next whole number.

2. The number of licensed beds of a nursing home includes any number of beds that have been delicensed under s. 49.45 (6m) (ap) 1., Stats., but not deducted from the nursing home's licensed bed capacity under s. 49.45 (6m) (ap) 4. a., Stats.

(c) In a facility having some beds that are licensed as ICF-MR beds and some beds that are licensed as nursing home beds, separate calculations shall be performed for the ICF-MR beds and for the nursing home beds. ~~The bed of a person with a developmental disability as defined under s. HFS 132.13 (4) or 134.13 (9) who is a resident of a nursing home shall be assessed at that facility's rate, while the bed of a resident who is not developmentally disabled but who is residing in an ICF-MR shall be assessed at the ICF-MR rate.~~

SECTION 5. HFS 15.07 (3) is amended to read:

HFS 15.07 (3) If the department determines that a facility's ~~bed calculation is inaccurate~~ number of licensed beds has changed, the department shall notify the facility of ~~any~~ changes in the number of beds and calculation or assessment and shall send the facility an invoice for the additional amount due or send the facility a refund. Any additional amount due shall be paid by the facility no later than 30 days following the date of the department's notice.

This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register, as provided in s. 227.22 (2) (intro.), Stats.

Wisconsin Department of Health
and Family Services

Dated: January 7, 2004

By: _____
Helene Nelson
Secretary

SEAL: