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WISCONSIN LEGISLATURE ALTERS STATE'S ENFORCEMENT AUTHORITY FOR NURSING HOME VIOLATIONS

Wisconsin Act 70 makes major changes to Wisconsin Statutes that regulate nursing homes and facilities that serve individuals with developmental disabilities. Signed into law on November 16, 2011 and effective December 2, 2011, the Act benefits federally certified nursing homes in the form of reduced fines and all nursing homes and facilities serving the developmentally disabled in the form of increased time to appeal violations. However, the statutory changes also increase the state's authority to impose liability upon federally certified nursing homes that repeatedly violate federal nursing home regulations.

Previously, the Department of Health Services ("DHS") could issue federally certified nursing homes duplicate penalties for a single infraction, one penalty for violating state rules and another for violating the federal rules. Under the revised Section 50.04(4)(am), DHS cannot issue a notice of violation under the state laws if it has already cited the nursing home for the violation under federal law requirements. State officials estimate that this could reduce nursing home forfeitures by up to $1.5 million per year.

Additionally, the Act increases the amount of time a nursing home or facility serving individuals with developmental disabilities has to contest a notice of violation or an assessment of forfeiture, increasing the amount of time from 10 days to 60 days. The Act also places a limit on the amount of time DHS has to send the nursing home or facility notice of their assessed forfeiture. DHS must issue the notice of forfeiture within 120 days after the nursing home receives the notice of a violation or they cannot assess a penalty for that violation.

Revised Section 50.04(4)(a)2.b. also increases the scope of incidents in which DHS may use its discretion not to issue a violation. Under the revised law, DHS is not required to issue a notice of violation if the nursing home or facility serving people with developmental disabilities self-reports a violation and has already corrected it. Previously, if the nursing home or facility self-reported a violation and had taken reasonable efforts to prevent and correct it, but the violation occurred and remained uncorrected due to circumstances outside the nursing home's control, DHS could choose not to serve notice of a violation. This revision allows DHS to use its discretion in favor of nursing homes that are proactive in reporting and correcting violations.

However, not all the provisions are beneficial to nursing homes. The Act increases DHS's authority to address noncompliant federally certified nursing homes. Under the Act, DHS can now bring a suit against a nursing home for repeated violation of federal regulations relating to the operation of nursing homes. Previously, the State could only bring suit for violation of state laws. Similarly, DHS can now consider violations of federal nursing home regulations, in addition to state law violations, in determining whether to issue a probationary or conditional license, transfer ownership of a nursing home, place a monitor in the nursing home, suspend admissions, suspend or revoke a license or issue an injunction.

If you have any questions, please do not hesitate to contact Daniel Miller or Anne Ruff at 414-721-0442 or your regular Hall Render attorney.

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