

HFS 83 RE-WRITE CODE REVISION REQUEST (E-Form)

Part 2 – September 2004

Request Number: 09-009

(To be assigned by re-write workgroup)

WALA Note – Part 2 - These are the WALA comments submitted September 2004. Included also are the BQA comments October 19, 2004. Some pagination changed to try and get response on one page.

Code reference: 83.03 (61) Definitions

Describe: This definition states that a “Qualified resident care staff is a person who has... successfully passed the relevant competency testing.”

At this point, there is no competency testing defined and we understand that no decision has yet been made on competency. Do we understand this correctly?

WALA later note after the September 14 A L Forum. I guess there was a decision made after all!

Submitted by:

Name: Jim Murphy, Agency: WALA, Wisconsin Assisted Living Association

Date: 9/27/04

The form may be e-mailed to Laurie Arkens at arkenlj@dhfs.state.wi.us

Or mail to: Laurie Arkens

200 North Jefferson, Suite 211

Green Bay, WI 54301

Review by workgroup:

Date: 10-4-04

Action: At the time draft subchapters I-III were forwarded to the CBRF advisory group, a decision had not been made by the current workgroup regarding competency testing. This definition originated from the draft from a couple of years ago. As the current workgroup continued work on the draft, it was not noticed that competency testing was part of the “qualified resident care staff” definition.

Rationale: Based on the competency testing determination, definitions and other related areas may need updating as appropriate.

Thank you.

HFS 83 RE-WRITE CODE REVISION REQUEST (E-Form)

Part 2 – September 2004

Request Number: 09-010

(To be assigned by re-write workgroup)

Code reference: 83.04 (2) (d) 2. Applications and Processing

Current HFS 83 Rule Draft Order

Addition

Change

Delete

Describe: We feel that this item is unnecessary as it has little potential to affect resident care. Therefore we suggest that the item be deleted, or add the words “that has direct resident contact” to the end of the sentence so that it reads “In a limited liability company, removing, adding, or substituting any member that has direct resident contact.”

Submitted by:

Name: Jim Murphy

Agency: WALA, Wisconsin Assisted Living Association

Date: 9/27/04

The form may be e-mailed to Laurie Arkens at arkenlj@dhfs.state.wi.us

Or mail to: Laurie Arkens

200 North Jefferson, Suite 211

Green Bay, WI 54301

Review by workgroup:

Date: 10-4-04

Action: No change made to the proposed draft language.

Rationale: The intent of this requirement was not related to resident care, but rather to change of ownership requirements.

Thank you.

HFS 83 RE-WRITE CODE REVISION REQUEST (E-Form)

Part 2 – September 2004

Request Number: 09-011

(To be assigned by re-write workgroup)

Code reference: 83.04 (2) (d) 2 Application and Processing

Current HFS 83 Rule Draft Order

Addition Change Delete

Describe: We feel that with sending an informational letter with a limited liability company removes, adds or substitute any member is excessive.

Our reading of this requirement feels like overkill.

Submitted by:

Name: Jim Murphy

Agency: WALA, Wisconsin Assisted Living Association

Date: 9/27/04

The form may be e-mailed to Laurie Arkens at arkenlj@dhfs.state.wi.us

Or mail to: Laurie Arkens
200 North Jefferson, Suite 211
Green Bay, WI 54301

Review by workgroup:

Date: 10-4-04

Action: No change made to the proposed draft language.

Rationale: The re-write workgroup feels this requirement is necessary due to numerous situations where licensees have added or substituted members who have operated / managed facilities that have been in serious non-compliance or serious enforcement action.

Thank you.

HFS 83 RE-WRITE CODE REVISION REQUEST (E-Form)

Part 2 – September 2004

Request Number: 09-012

(To be assigned by re-write workgroup)

Code reference: 83.04 (10) (b) 4 Change of Ownership or License

Current HFS 83

Rule Draft Order

Addition

Change

Delete

Describe: Typo “All l forfeitures...” should read “All forfeitures...”

We all love typoos.

Submitted by:

Name: Jim Murphy

Agency: WALA, Wisconsin Assisted Living Association

Date: 9/27/04

The form may be e-mailed to Laurie Arkens at arkenlj@dhfs.state.wi.us

Or mail to: Laurie Arkens

200 North Jefferson, Suite 211

Green Bay, WI 54301

Review by workgroup:

Date: 10-4-04

Action: Change made. (Upon completion, this draft will be reviewed by a rules writing specialist and others for content, formatting, typos, etc...)

Rationale: Thank you.

HFS 83 RE-WRITE CODE REVISION REQUEST (E-Form)

Part 2 – September 2004

Request Number: 09-013

(To be assigned by re-write workgroup)

Code reference: 83.04 (10) (1) etc and (2) etc

Current HFS 83

Rule Draft Order

Addition

Change

Delete

Describe:

Our concerns relate to the 30 day notice to the department and residents. Sometimes a transaction is contingent upon some event, such as approval of financing or completion of an environmental review. In some cases, these events delay closing until the event occurs but then closing occurs immediately. Many assisted living providers are reluctant to notify residents about the sale to a new owner until all contingencies are removed and closing is imminent because sales can fall apart at the last minute while buyers complete due diligence and wait for financing – if the sale fell apart, the owner may have unnecessarily notified the residents and their families and may have caused some distress with residents, particularly in home-like atmosphere common in CBRFs.

We suggest that more flexibility in (10) (b) 1 requiring 30 days notice to residents could help prevent unnecessary emotional concern by residents. We propose changing the 30 day requirement in the following way:

1. Modify the seller's requirement to notify the department at the earlier of (a) 30 days in advance of the transfer of ownership, or (b) upon submission of the buyer's license application.
2. Keep the seller's requirement to notify contracted entities 30 days in advance.
3. Modify the seller's requirement to notify residents or their legal representatives at the later of (a) 30 days in advance of the transfer of ownership, or (b) when all contractual conditions precedent to closing and the transfer of ownership have been satisfied but in no event less than 7 days in advance of the transfer of ownership.
4. Add a provision to protect residents that if there is less than 30 days notice of a transfer of ownership, then neither the current licensee nor proposed licensee may enforce any advance notice requirement for discharge. This will allow residents to choose, without penalty, whether they wish to continue living in the facility after the transfer of ownership.

We believe these changes would help protect residents and their families from the often emotional time when a facility is sold, and also protect those residents right to choose providers without penalty.

Submitted by: Name: Jim Murphy Agency: WALA, Wisconsin Assisted Living Association

Date: 9/27/04

Review by workgroup:

Date: 10-4-04

Action: No change made to the proposed draft language.

Rationale: It is appropriate to provide a 30 day notice to residents / families and the department for a change of ownership. A 30 day notice is consistent with rental and other similar type agreements.

Thank you.

HFS 83 RE-WRITE CODE REVISION REQUEST (E-Form)

Part 2 – September 2004

Request Number: 09-014

(To be assigned by re-write workgroup)

Code reference: 83.04 (10) (5) (c)

Current HFS 83 Rule Draft Order

Addition Change Delete

Describe: We request clarification on who is responsible for correcting and verifying reported deficiencies prior to issuing a license to the buyer.

“...deficiencies reported in the departmental inspection be corrected and verified by (whom???) prior to issuing a license to the buyer.”

Submitted by:

Name: Jim Murphy

Agency: WALA, Wisconsin Assisted Living Association

Date: 9/27/04

The form may be e-mailed to Laurie Arkens at arkenlj@dhfs.state.wi.us

Or mail to: Laurie Arkens

200 North Jefferson, Suite 211

Green Bay, WI 54301

Review by workgroup:

Date: 10-4-04

Action: No change made to the proposed draft language.

Rationale: The intent is not for the department to determine who corrects noted violations, but only to ensure that violations are corrected. The broad language allows the seller and buyer to use their own discretion regarding the correction of violations.

Thank you.

HFS 83 RE-WRITE CODE REVISION REQUEST (E-Form)

Part 2 – September 2004

Request Number: 09-015

(To be assigned by re-write workgroup)

Code reference: 83.11 (2) (f) Licensee Responsibilities

Current HFS 83 Rule Draft Order

Addition Change Delete

Describe: The current rule requires posting of citation and enforcements for 30 days following receipt or until compliance is achieved, whichever is longer and upon request for 12 months.

We do not understand the reason for this major change. We feel that the regulations for assisted living should NOT be more prescriptive - as we read them - than the Nursing Home regulations and that the 30 days is sufficient.

In addition, in the new Provider Profiles on-line with BQA, they will be available for a much longer length of time for those interested.

As you know, most A L providers take a survey and deficiencies to heart and we suggest that this is not in the spirit of “teamwork” with BQA but would be arbitrary, putative and regressive.

Submitted by: Name: Jim Murphy

Agency: WALA, Wisconsin Assisted Living Association

Date: 9/27/04

The form may be e-mailed to Laurie Arkens at arkenlj@dhfs.state.wi.us

Or mail to: Laurie Arkens

200 North Jefferson, Suite 211

Green Bay, WI 54301

Review by workgroup:

Date: 10-4-04

Action: No change made to the proposed draft language.

Rationale: In order to inform consumers, it is felt that posting of deficiencies for 1 year is reasonable. The provider profiles will not identify the same level (detail) of information as the statement of deficiency or the plan of correction.

Thank you

HFS 83 RE-WRITE CODE REVISION REQUEST (E-Form)

Part 2 – September 2004

Request Number: 09-016

(To be assigned by re-write workgroup)

Code reference: 83.11 (2) (g) Licensee Responsibilities

Current HFS 83 Rule Draft Order

Addition

Change

Delete

Describe: The current regulations state that results for the preceding 12 months must be made available upon request.

What is the rationale behind the change to two years? Again, we suggest that this is not in the spirit of “teamwork” with BQA but would be also arbitrary, putative and regressive.

Submitted by:

Name: Jim Murphy

Agency: WALA, Wisconsin Assisted Living Association

Date: 9/27/04

The form may be e-mailed to Laurie Arkens at arkenlj@dhfs.state.wi.us

Or mail to: Laurie Arkens

200 North Jefferson, Suite 211

Green Bay, WI 54301

Review by workgroup:

Date: 10-4-04

Action: No change made to the proposed draft language.

Rationale: In the interest of the department wanting a well informed consumer, it is felt that information must be available for 2 years which reflects the length of time between survey visits.

Thank you.

HFS 83 RE-WRITE CODE REVISION REQUEST (E-Form)

Part 2 – September 2004

Request Number: 09-017

(To be assigned by re-write workgroup)

Code reference: **83.11 (4) Administrator Responsibilities**

Current HFS 83 Rule Draft Order

Addition

Change

Delete

Describe: Typo: “ADMINISTRATIOR RESPONSIBILITIES” should be “ADMINISTRATOR RESPONSIBILITIES”

To addition, we support these minimal additional qualifications in (3).

Submitted by:

Name: Jim Murphy

Agency: WALA, Wisconsin Assisted Living Association

Date: 9/27/04

The form may be e-mailed to Laurie Arkens at arkenlj@dhfs.state.wi.us

Or mail to: Laurie Arkens

200 North Jefferson, Suite 211

Green Bay, WI 54301

Review by workgroup:

Date: 10-4-04

Action: Change made.

Rationale: Thank you.

HFS 83 RE-WRITE CODE REVISION REQUEST (E-Form)

Part 2 – September 2004

Request Number: 09-018

(To be assigned by re-write workgroup)

Code reference: 83.13 (2) Resident Health

Current HFS 83

Rule Draft Order

Addition

Change

Delete

Describe: This document leaves discretion up to facility as determined by their risk group. It does require admission/on-hire screening and then follow-up according to risk group. So the new rule is less prescriptive. We were surprised there was no reference to OSHA guidelines as original order referred to.

After further investigation into HOSE and the core curriculum we believe each facility has decisions to make regarding screening based on factors related to their county population exposure as well as facility exposure.

In conclusion we would be curious to know why the switch from OSHA to CDC Core Curriculum. We are for less prescriptive language; however we have some serious concerns about how facilities will interpret or even understand what the Core Curriculum is.

NOTE - If BQA does use CDC Core Curriculum, the link should be listed in the code at this point to make cross reference easier.

Submitted by:

Name: Jim Murphy Agency: WALA, Wisconsin Assisted Living Association

Date: 9/27/04

The form may be e-mailed to Laurie Arkens at arkenlj@dhfs.state.wi.us

Or mail to: Laurie Arkens

200 North Jefferson, Suite 211

Green Bay, WI 54301

Review by workgroup:

Date: 10-4-04

Action: For clarification, OSHA requirements refer only to employee health and safety issues. Center for Disease Control (CDC) identifies standards related to communicable disease issues. We would agree that each facility needs to set additional screening decisions based on the factors related to their specific area. The rule simply has been updated to reflect current CDC standards.

After checking with a representative from the department of health, we were unable to identify your reference to HOSE. If you could provide further information / clarification, it may be appropriate for our group to consider additional information regarding communicable disease requirements.

Rationale: Thank you.

HFS 83 RE-WRITE CODE REVISION REQUEST (E-Form)

Part 2 – September 2004

Request Number: 09-019

(To be assigned by re-write workgroup)

Code reference: **83.16 (3) (a) Other Reporting**

Current HFS 83 Rule Draft Order

Addition

Change

Delete

Describe: Typo: “When a resident’s whereabouts is unknown, “(extra period) the facility...” should be “When a resident’s whereabouts is unknown, the facility...”

Submitted by:

Name: Jim Murphy

Agency: WALA, Wisconsin Assisted Living Association

Date: 9/27/04

The form may be e-mailed to Laurie Arkens at arkenlj@dhfs.state.wi.us

Or mail to: Laurie Arkens

200 North Jefferson, Suite 211

Green Bay, WI 54301

Review by workgroup:

Date: 10-4-04

Action: Change made. Thank you.

Rationale: Since the original draft had been sent to the CBRF advisory committee, an additional language change has been made to this rule. Current draft reads: “When a resident is missing, the facility shall notify the local law enforcement authority. This does not apply to residents under the jurisdiction of government correction agencies.”

HFS 83 RE-WRITE CODE REVISION REQUEST (E-Form)

Part 2 – September 2004

Request Number: 09-020

(To be assigned by re-write workgroup)

Code reference: **83.17 (b) Record Retention**

Current HFS 83

Rule Draft Order

Addition

Change

Delete

Describe: Our research shows different time frames for different types of records. We suggest that you request BQA legal counsel to research, if they have not already done so. If resident records retained for 7 years and employee records for 3 years, please indicate why these time frames were chosen.

Submitted by:

Name: Jim Murphy

Agency: WALA, Wisconsin Assisted Living Association

Date: 9/27/04

The form may be e-mailed to Laurie Arkens at arkenlj@dhfs.state.wi.us

Or mail to: Laurie Arkens

200 North Jefferson, Suite 211

Green Bay, WI 54301

Review by workgroup:

Date: 10-4-04

Action: Currently under review by the Office of Legal Council.

Rationale: Thank you.

HFS 83 RE-WRITE CODE REVISION REQUEST (E-Form)

Part 2 – September 2004

Request Number: 09-021

(To be assigned by re-write workgroup)

Code reference: 83.21 (2) (a) 4.d. Admission and Retention Limits

Current HFS 83 Rule Draft Order

Addition Change Delete

Describe: **We approve of your change to.** “A facility may not have more than a total of more than 4 residents or 10% of the facility’s licensed capacity, whichever is greater, who qualify for care.”

Submitted by:

Name: Jim Murphy

Agency: WALA, Wisconsin Assisted Living Association

Date: 9/27/04

The form may be e-mailed to Laurie Arkens at arkenlj@dhfs.state.wi.us

Or mail to: Laurie Arkens

200 North Jefferson, Suite 211

Green Bay, WI 54301

Review by workgroup:

Date: 10-4-04

Action: Thank you.

Rationale: _____

HFS 83 RE-WRITE CODE REVISION REQUEST (E-Form)

Part 2 – September 2004

Request Number: 09-022

(To be assigned by re-write workgroup)

Code reference: **83.22 (1) (a) Notification of Services**

Current HFS 83

Rule Draft Order

Addition

Change

Delete

Describe: **Thank you for your attention to this matter. We approve of your change.**

Submitted by:

Name: **Jim Murphy**

Agency: **WALA, Wisconsin Assisted Living Association**

Date: **9/27/04**

The form may be e-mailed to Laurie Arkens at arkenlj@dhfs.state.wi.us

Or mail to: Laurie Arkens

200 North Jefferson, Suite 211

Green Bay, WI 54301

Review by workgroup:

Date: 10-4-04

Action: Thank you.

Rationale: _____

HFS 83 RE-WRITE CODE REVISION REQUEST (E-Form)

Part 2 – September 2004

Request Number: 09-023

(To be assigned by re-write workgroup)

Code reference: **83.23 Information Required Prior to Admission**

Current HFS 83 *Rule Draft Order*

Addition *Change* *Delete*

Describe: **There is some confusion on what paperwork is required for pre-admission or COP assessments. We encourage you to bring this up for discussion at the next Assisted Living Forum.**

The preadmission assessment under 46.27 is the CBRF Preadmission Assessment, NOT COP assessment. They are two different assessments. Some counties may be doing them as the same time but they are different. This addition certainly clarifies what the facility responsibilities are. At 83.23(2) - shouldn't it read: For CBRFs that are "ineligible" for COP.....

The NOTE at the bottom of the page clarifies that the CBRF Preadmission Assessment under 46.27 must be done in order for residents to be eligible for COP assessment or funding. It goes on to say the Family Care program preadmission consultation is under another statute.

So in conclusion, although this is new, it is something we all should have been doing for some time, as this became effective January 1, 1999.

Submitted by:

Name: Jim Murphy *Agency:* WALA, Wisconsin Assisted Living Association

Date: 9/27/04

The form may be e-mailed to Laurie Arkens at arkenlj@dhfs.state.wi.us

Or mail to: Laurie Arkens

200 North Jefferson, Suite 211

Green Bay, WI 54301

Review by workgroup:

Date: 10-4-04

Action: This section has been referred to Carrie Molke for review. We believe that 46.27 is the correct reference requirement for COP assessment. A note has been added to this section for additional clarification which reads: "Note: The Community Options Program (COP) requires a pre-admission assessment under s. 46.27 (7)(cg) 3.a. and s. 20.435 (7)(bd) and (im). The Family Care Program requires a pre-admission consultation under s. 50.035 (4m) and (4p). The CBRF assessment is required under 83.42(1).

Rationale: Thank you.