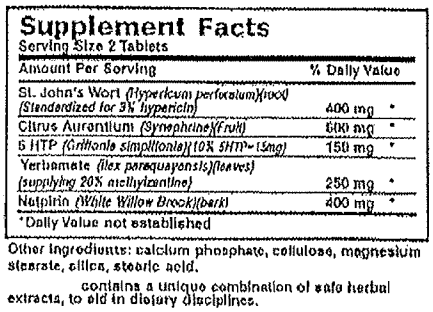
BAL- 10/22/09

DHS 83 Question & Answer Document (related to revisions made effective 4-1-09)

SUBCHAPTER I – LICENSING: DHS 83.01 – DHS 83.03

1. **Question:** Section DHS 83.02(20) defines dietary supplement. How is it determined which dietary supplements require a practitioner's order? Are all dietary supplements sold over-the-counter (OTC)?

   Answer: Section DHS 83.37(1)(a) requires all dietary supplements to have a practitioner's order. Dietary supplements will typically be in pill form like other over-the-counter medications. To identify a supplement you can look at the label. For example, in the labels shown below, the supplement label uses terminology "Supplement Facts", whereas food labels use the terminology "Nutritional Facts".



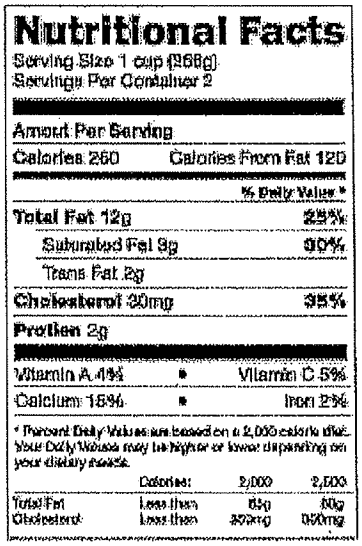
Supplement Facts
Serving Size 2 Tablets

Amount Per Serving	% Daily Value
St. John's Wort *(Hypericum perforatum)(fruit) (Standardized for 3% hypericin)*	400 mg *
Citrus Aurantium *(Synephrine)(Fruit)*	600 mg *
5 HTP *(Griffonia simplifolia)(10% 5HTP= 15mg)*	150 mg *
Yerbamate *(Ilex paraguayensis)(leaves) (supplying 20% caffeine)*	250 mg *
Natpirin *(White Willow Brook)(bark)*	400 mg *

*Daily Value not established

Other ingredients: calcium phosphate, cellulose, magnesium stearate, silica, stearic acid.

contains a unique combination of safe herbal extracts, to aid in dietary disciplines.



Nutritional Facts
Serving Size 1 cup (266g)
Servings Per Container 2

Amount Per Serving	
Calories 260	Calories From Fat 120
	% Daily Value *
Total Fat 12g	22%
Saturated Fat 9g	50%
Trans Fat 2g	
Cholesterol 30mg	35%
Protien 2g	
Vitamin A 4%	Vitamin C 5%
Calcium 15%	Iron 2%

* Percent Daily Values are based on a 2,000 calorie diet. Your Daily Values may be higher or lower depending on your dietary needs.

	Calories:	2,000	2,500
Total Fat	Less than	65g	80g
Cholesterol	Less than	300mg	350mg

SUBCHAPTER II – LICENSING: DHS 83.04 – DHS 83.13

1. **Question:** According to § DHS 83.06, there are some new provisions for the content of the program statement. Do we need to update our program statements and send to the department for approval?

Answer: It is expected that facilities update their program statements to be in compliance with the new rule. Section DHS 83.06(3) requires changes in program statement content to be submitted to the department. Revised program statements that are submitted to the department will be placed in the facility file. Content of the program statement may be reviewed during the next visit to the facility.

2. **Question:** What is the intent of § DHS 83.12(4)(c) for reporting and notification? Is there a form for reporting?

   Answer: There are three (3) elements to this requirement that all have to be met:
   - An incident or accident occurs. The rule does not require reporting for an event that is the natural progression or consequence of a disease or condition.
   - The incident or accident results in a serious injury.
   - There must be a hospital admission or emergency room treatment.

     Example 1: An aging resident with diabetes sustains a heart attack and is admitted to the hospital. This is not reportable because heart disease is a common complication of diabetes.

     Example 2: A resident has increased shuffling due to Parkinson's disease, falls and sustains a hip fracture, requiring hospitalization. This is reportable because the fall itself is not a natural progression of the disease process and is unintended.

     Example 3: A resident falls and hurts their ankle and is taken to the emergency room. Scenario 1 – X-ray reveals no fracture, ankle wrapped and ice applied – not reportable. Scenario 2 – X-ray reveals a fracture, the ankle is casted and the resident returns home – reportable.

   There is no specific form or format for reporting.

SUBCHAPTER III – PERSONNEL: DHS 83.14 – DHS 83.18

1. **Question:** In regard to § DHS 83.14(2)(g), how are CBRFs to report the involuntary administration of psychotropic medications to the department?

   Answer: There is currently no specific form or format for reporting.

2. **Question:** If I met the qualifications to be a CBRF administrator prior to April 1, 2009, but was not the administrator of record at any facility, and do not meet the current administrator qualifications under § DHS 83.15(1), how can I be qualified?

   Answer: Until there is a department approved CBRF administrator's course available, the Bureau of Assisted Living will review requests for individual waivers for those people who would meet the new requirements except for completion of the department approved course. Waivers may be granted with the condition that the individual complete the department approved administrator's course when it is available.

3. **Question:** In order to meet the requirements of § DHS 83.15(1)(b) or (d), does experience with a client group have to be the same client group served by the CBRF where the administrator is employed?

   Answer: No, the experience can be with any of the client groups listed under § DHS 83.02(16).

4. **Question:** If an administrator is either grandfathered under DHS 83.15(2) or receives a waiver of the qualification requirements, can they move from facility to facility and maintain their approval?

   Answer: Yes.

SUBCHAPTER IV – ORIENTATION & TRAINING: DHS 83.19 – DHS 83.26

1. **Question:** Section DHS 83.19(5) requires that new staff receive orientation on the CBRF's policies and procedures. Which policies and procedures must be included?

   Answer: The person must be oriented to any facility policies and procedures that are applicable to their position and their job responsibilities.

2. **Question:** Under § DHS 83.20(1)(a), there are four training areas that require approval by the department. As a currently approved trainer for these courses, will the department provide me with materials to teach or will I have to submit my materials again?

   Answer: Your current approval as a trainer will expire on April 1, 2010. In order to teach any one of these four areas after April 1, 2010, you will need to be approved as a trainer by the department or the department's designee. As an approved trainer, you must then use the department's approved curriculum, which will be provided to you.

3. **Question:** Could the requirements at § DHS 83.21(1), (2) and (3) for all employee training in the areas of Resident Rights, Client Group and Recognizing, Preventing, Managing and Responding to Challenging Behaviors be "scaled down" for a person who only delivers meals to residents?

   Answer: No.

4. **Question:** Can current department approved training programs be used to fulfill the requirements under §§ DHS 83.21 and DHS 83.22?

   Answer: Yes, as long as the curriculum has been revised to include the specific topic areas required by the new rule. However, it is important to note that department approval for training in the areas specified in §§ DHS 83.21 and DHS 83.22 is no longer required.

5. **Question:** Under § DHS 83.21 All Employee Training and § DHS 83.22 Task Specific Training, who is qualified to conduct this training?

   Answer: Anyone who is knowledgeable about the topic area would be acceptable.

6. **Question:** Is there training content that needs to be followed for training required at §§ DHS 83.21 & DHS 83.22?

   Answer: Yes. The rules specify the topics that each training area must include.

7. **Question:** For staff hired between January 1, 2009 and March 31, 2009, how long do they have to complete the required training under §§ DHS 83.20, DHS 83.21 and DHS 83.22(4)?

Answer: Ninety (90) days from April 1, 2009, except for Standard Precautions and Medication Administration.

8. **Question:** Section DHS 83.25 requires that the administrator and all resident care staff receive at least 15 hours of continuing education per calendar year. Can videos be used to meet continuing education requirements? Who is qualified to provide continuing education training?

   Answer: A component of education is to ensure the transfer of knowledge to the learner. The use of videos alone does not ensure this. Videos may be used as a supplement to other teaching methods. Although there are no specific requirements for trainers who provide continuing education, the trainer must have sufficient knowledge and competence to effectively transfer the knowledge to the learner.

9. **Question:** Does § DHS 83.25 require that initial training be repeated in the 6 areas?

   Answer: No. The intent is for refresher training in each of these six areas every year. The entire initial training does not have to be repeated.

10. **Question:** Does § DHS 83.25 require 15 hours of continuing education for the calendar year 2009?

    Answer: Yes.

11. **Question:** Section DHS 83.25 requires 15 hours of continuing education annually and identifies six (6) required topic areas to be covered. Are there a minimum number of hours for training for each of the topic areas listed?

    Answer: No. The areas identified must be included at a minimum for continuing education. Additional training relevant to job responsibilities should also be included in the continuing education training plan.

SUBCHAPTER V – ADMISSION, RETENTION AND DISCHARGE: DHS 83.27 – DHS 83.31

1. **Question:** Under § DHS 83.31, can a CBRF discharge a resident with no 30-day notice on an "emergency basis"?

   Answer: No. Pursuant to § DHS 83.31(2), the facility may temporarily transfer a resident in an emergency situation to a hospital, nursing home or other facility for treatment not available from the CBRF. However, if the resident's condition has stabilized and they wish to return, the CBRF must allow the resident to return to the facility.

   A CBRF may not involuntarily discharge any resident unless the notice and discharge requirements of § DHS 83.31(4) are met, including a 30-day written advance notice.

SUBCHAPTER VII – RESIDENT CARE/SERVICES: DHS 83.35 – DHS 83.42

1. **Question:** There seems to be a contradiction between § DHS 83.34(5)(a)4 and § DHS 83.34(5)(b) with regard to gifts and donations. Please clarify.

   Answer: We agree that there is a contradiction. We will request that the last sentence of § DHS 83.34(5)(b), which states: "No employee may accept personal gift, including monetary gifts, from a resident." be removed from the rule as a technical change. Enforcement of these provisions in the interim will be based upon § DHS 83.34(5)(a)4: "No CBRF licensee, administrator or employee may … accept gifts from a resident except for gifts of nominal value."

2. **Question:** Is the omission of the term "significant change in condition" at § DHS 83.35(3)(d) intentional?

   Answer: Yes. The term "significant change in condition" as defined at § DHS 83.02(52) is only used in reference to § DHS 83.12(5)(a) – Notification to Legal Representative or Physician, and § DHS 83.42(1)(j) – Documentation in Resident Record.

3. **Question:** When does the ISP have to be revised?

   Answer: Per § DHS 83.35(3)(d), at a minimum, the ISP must be revised whenever there is a change in the resident's needs, abilities or physical or mental condition and at least annually..

4. **Question:** Regarding the review of the ISP per § DHS 83.35(3)(b), when is it necessary to obtain input from the resident or legal representative, case manager, resident care staff and other service providers?

   Answer: Reviews of the ISP must include input from the resident or legal representative, case manager, resident care staff, and other service providers **as appropriate.** Professional judgment should be used in determining who would be appropriate to provide input and can assist in the development of the ISP.

5. **Question:** Regarding the review of the ISP per § DHS 83.35(3)(b), when is it necessary to have the resident or resident's legal representative sign the ISP?

   Answer: The department expects, at a minimum, that signatures are obtained annually and when there is a change in the ISP reflecting a major or substantial change in a residents needs, abilities or physical or mental condition.

6. **Question:** Section DHS 83.37(1)(i) requires monthly review of the use of as needed (PRN) psychotropic medications. Does this include PRN antianxiety and antidepressant medications, or just antipsychotic medications?

   Answer: Section DHS 83.02(41) defines "Psychotropic medications" as a prescription drug, as given in § 450.01(20), Stats., that is used to treat or manage a psychiatric symptom or challenging behavior. Consequently, a PRN antianxiety or antidepressant

medication that is used to treat or manage a psychiatric symptom or challenging behavior would require monthly review.

7. **Question:** Under § DHS 83.37(1)(i)2., what is meant by a "qualified designee" in reference to monitoring for the inappropriate use of PRN psychotropic medications?

   Answer: It is the responsibility of the CBRF administrator to determine that the designee is qualified. This would mean that the person has an understanding of PRN psychotropic medications and their intended use, including the behaviors for which the medications are given and potential adverse side effects. The designee must also have the ability to determine that PRN psychotropic medications are used appropriately and not given for discipline or the convenience of staff.

8. **Question:** We have permission to administer nebulizer treatments from the physician. Under § DHS 83.37(2)(e), do we need more to be in compliance?

   Answer: Yes. The code requires that nebulizer treatments be administered by a registered nurse or by a licensed practical nurse within the scope of their license, or via delegation to non–licensed employees. Delegation has four specific components, and the person delegating takes professional responsibility for the delegated act. Delegation requires a RN to train the staff how to administer nebulizer treatments; the staff must show competency in performing the task; the RN must observe and monitor the activities of the staff who gives the nebulizer treatment; and the RN must evaluate the effectiveness of delegated acts performed.

9. **Question:** Under § DHS 83.37(2)(e), can CNAs insert suppositories?

   Answer: Yes, if it has been delegated to the CNA by a registered nurse per § N6.03(3).

10. **Question:** Under § DHS 83.37(3)(b), is it required that an RN delegate or supervise CBRF staff who transfer unit dose medications into another package for residents for use during unplanned events or activities?

    Answer: No. RN delegation or supervision is not required as long as the staff person has completed medication administration training under § DHS 83.20(2)(d).

11. **Question:** Under § DHS 83.41(1)(c)2., am I required to install a 3-compartment sink in the kitchen of my large CBRF, even though I was exempt under the old rule?

    Answer: Yes. A 3–compartment sink for washing, rinsing and sanitizing utensils, with drain boards at each end is required for all large facilities with a central kitchen.

12. **Question:** Is form F62370 – Significant Change in Health Screening Instrument Model form – still applicable?

    Answer: Yes. This form may be used to document a resident's significant change in condition per § DHS 83.42(1)(j), but use of the form is not mandatory.

13. **Question:** Section DHS 83.35(1)(c)2 requires an assessment of the resident's ability to control and self administer medications. What constitutes an adequate assessment?

Answer: The resident's physical and cognitive ability to manage and control medications needs to be assessed. Refer to the Bureau of Assisted Living Medication Management Initiative web site for examples of assessment tools to assist with this process.
http://dhs.wisconsin.gov/rl_dsl/MedManagement/asstlvgMMI.htm

14. **Question:** Section DHS 83.35(1)(c)3 requires an assessment of the presence and intensity of pain. What constitutes an adequate pain assessment? What is an acceptable goal for pain management?

    Answer: Each individual resident experiences pain differently. Facility staff should consider verbal and nonverbal cues from a resident. Pain scales can measure the intensity of pain and may be used as part of the comprehensive pain assessment.
    The goal for pain management should be established by the resident and the interdisciplinary team. Refer to the Bureau of Assisted Living Medication Management Initiative web site on the PRN Medication page under "Other Resources" for information regarding the assessment and management of pain.
    http://dhs.wisconsin.gov/rl_dsl/MedManagement/asstlvgMMI.htm

15. **Question:** Section DHS 83.37(1)(a) requires a practitioner's order for dietary supplements. Does this include products such as Gatorade, Vitamin Water, or other sport drinks?

    Answer: See question #1 under Subchapter I regarding the definition of a dietary supplement. Gatorade has a nutritional label and therefore is not a dietary supplement.

16 **Question:** Section DHS 83.37(1)(c) requires the facility to have a policy that identifies the medication packaging system used. If a resident chooses a packaging system that does not meet facility policy, can the facility require the resident choose a pharmacy that can meet policy packaging requirements?

    Answer: Yes. Per § DHS 83.37(1)(c) "Any pharmacy selected by the resident whose medications are administered by CBRF employees shall meet the medication packaging system chosen by the CBRF."

17. **Question:** Section DHS 83.37(1)(g)3 requires that the facility develop and implement a policy related to the disposal of medication. This rule also states that the facility shall arrange for medications to be destroyed in compliance with standard practices. What is the best practice for disposal of medications?

    Answer: Medication disposition is addressed on the Bureau of Assisted Living Medication Management Initiative web site. Refer to the section titled "Medication Storage and Disposal."
    http://dhs.wisconsin.gov/rl_dsl/MedManagement/asstlvgMMI.htm

18. **Question:** Section DHS 83.37(3)(b) allows employees who have completed medication administration training to transfer unit doses of medications into packages for the resident's use during unplanned events. This may be done without practitioner delegation. What are the requirements for transfer of medications for a planned event vs. an unplanned event?

Answer: For planned events such as day programming or summer camp, the options are:

- Have a pharmacist package and label the medications;
- Have the medications repackaged and labeled by an RN, practitioner or pharmacist;
- Have a staff person who has completed medication training transfer and label the medication under the delegation of a practitioner.

For unplanned events, such as an unanticipated outing with family, the options also include:

- Unlicensed personnel who have completed medication administration training may repackage only unit dosed medications. This does not require delegation.

SUBCHAPTER VIII – PHYSICAL ENVIRONMENT: DHS 83.43 – DHS 83.46

1. **Question:** Does § DHS 83.43(2) require a CBRF to provide bedroom furnishings at no cost?

   Answer: Yes.

2. **Question:** Under § DHS 83.43(2), can a CBRF require that a resident provide their own bedroom furnishings?

   Answer: No.

3. **Question:** Section DHS 83.44(1)(c) requires a one-hour fire resistive rated enclosure for any clothes dryer that exceeds 37,000 Btu. Is a 45-minute rated door acceptable for this enclosure?

   Answer: Yes, this is acceptable.

4. **Question:** Section DHS 83.45(3) requires that CBRFs ensure that cleaning compounds, polishes, insecticides and toxic substances are labeled and stored in a secure area. Does "secured" mean locked?

   Answer: This will vary for each facility depending upon the cognitive and physical abilities of the persons served. In this requirement, "secure" means that residents are protected from the dangers of toxic substances. In some cases, "secure" would mean locked.

5. **Question:** Section DHS 83.46(1)(g) requires the CBRF enclose any open flame combustible fuel-burning device within a one-hour fire rated assembly when sharing a common floor with a habitable room. Is a 45-minute rated door acceptable for this enclosure?

   Answer: Yes, this is acceptable.

6. **Question:** Section DHS 83.46(1)(g) requires the CBRF enclose any open flame combustible fuel-burning device within a one-hour fire rated assembly when sharing a common floor with a habitable room. Does a closet area housing the furnace and having 2 single doors meet this requirement? Would 2 single doors with an astragal strip meet this requirement?

Answer: Only if both doors are 45-minute rated doors that are able to close, latch and seal.

7. **Question:** Section DHS 83.46(2)(b) states that a CBRF may not have transom, transfer grill or louvers in bedroom walls or doors opening directly to a corridor. Can a boiler room door opening directly to a corridor have a vent in it?

   Answer: No.

SUBCHAPTER IX – SAFETY: DHS 83.47 – DHS 83.51

1. **Question:** Section DHS 83.47(2)(a)1. requires written "procedures for any resident who refuses to follow evacuation or emergency procedures." Does the department have expectations as to what specific actions a facility should take in this event?

   Answer: The facility should assess residents for evacuation [§ DHS 83.35(5)] and identify steps for staff to follow for those residents who refuse to follow emergency procedures, including verbal or physical prompting, teaching and positive reinforcement. In the event that the person's life is in danger, it is expected that the facility take whatever steps are necessary to remove the resident from danger.

2. **Question:** At § DHS 83.47(3), what is a certified fire inspector?

   Answer: Certified fire inspectors undergo training beyond that of a certified fire fighter. Upon completion of the training and passing a skills exam, a person is awarded certification to be a fire inspector.

3. **Question:** Section DHS 83.48(4)(f) requires a smoke detector in "all non-resident living areas." Does this include staff offices?

   Answer: Yes. "Non-resident living areas" includes staff offices as well as staff living quarters.

4. **Question:** Section DHS 83.48(7) requires audio, visual or vibrating notification alarms to be located in each common area used by residents. This seems to be a major change, but was not mentioned in the DQA web cast.

   Answer: Common areas is new, but replaces "and on each floor level used by the resident." DQA did not see this as a significant difference, and it is an important requirement for facilities serving persons with impaired hearing or vision. Consultation with department engineers indicates that these devices can be added to existing systems with minimal cost.

5. **Question:** Table 83.50 allows only 2 habitable floors in a sprinklered type VB construction. Can the lower 2 floors of a 3 story building be used for a licensed class CNA CBRF if the 3rd floor remains an RCAC?

   Answer: No. Wood frame unprotected construction allows only 2 habitable floors for class CNA CBRFs.

SUBCHAPTER X – BUILDING DESIGN: DHS 83.52 – DHS 83.61

1. **Question:** Does § DHS 83.55(3) require that single use paper towels be dispensed from enclosed towel dispensers? Does this refer to all sink areas such as kitchen and utility room, or only bathrooms?

   Answer: Section DHS 83.55(3) applies to bath and toilet areas and requires all sinks in those areas to have enclosed dispensers for single use paper towels, enclosed cloth towel dispensing units or electric hand dryers. Section DHS 83.41(3)(a)2 prohibits the use of a common towel in the kitchen.

2. **Question:** Per § DHS 83.59(2)(b), "Enclosed furnace and laundry areas shall have self-closing solid core wood doors or an equivalent fire resistive door when located on a common area with resident bedrooms." Section DHS 83.44(1)(c) requires that "The CBRF shall enclose any clothes dryer having a rated capacity of more than 37,000 Btu/hour in a one-hour fire resistive rated enclosure." Does this mean that any laundry area on a level with resident bedrooms must be enclosed and have solid core wood doors?

   Answer: Yes. Based on the department engineer's review, any furnace or laundry area on the same level as resident bedrooms must be enclosed with rated walls (at least a 20-minute rating) and a self-closing solid core wood door. If there is a large gas-fired dryer (37,000Btu/hr), it must be enclosed with 1 hour rated walls and at least a 45 minute rated door.

3. **Question:** Section DHS 83.59(2)(b) requires "solid core wood doors" or equivalent fire resistive doors. Does the solid core wood door have to be labeled with a metal tag?

   Answer: No.

4. **Question:** If the furnace is enclosed and has a self closing solid core wood door or equivalent per DHS 83.59(2)(b), is a solid core wood door still required at the interior stair between the basement and first floor?

   Answer: Yes. The only exception is for a split level home, where enclosed furnace and laundry areas with self closing doors may substitute for the self closing solid core wood door between the first and second level.

5. **Question:** What is the status of § DHS 83.59(2)(e) – "Toilet room doors shall not swing into a toilet room unless equipped with 2-way hardware?"

   Answer: A request has been submitted to eliminate this provision. Until this change takes place, we will issue a statewide waiver.

6. **Question:** Section DHS 83.59(2)(f) requires that the staff member in charge on each shift have a means of opening all locks or security devices on all doors in the CBRF. I am concerned about allowing staff access to confidential documents. Please clarify.

Answer: This rule is not intended to include private offices or areas that contain confidential documents that staff would not otherwise have access to. However, staff must be able to access all resident records at all times.

7. **Question:** Section DHS 83.59(7)(a) requires that all exit passageways and stairways be provided with emergency egress lighting with a standby power source. Please clarify.

   Answer: The intent of this rule is that when a facility's power source is lost, lighting in exit passageways and stairways will automatically be restored by a battery or generator operated emergency lighting system or device.

8. **Question:** Section DHS 83.59(7)(b) requires that all required exit signs shall be lighted at all times. Please clarify.

   Answer: The intent of this rule is that all exit signs that are required by the Department of Commerce be lighted at all times.

Miscellaneous:

1. **Question:** When the rule states that a requirement is to be done quarterly, semi-annually, or annually, how will the department look at the timing of these? For example, for quarterly requirements, must it be done every 90 days, or at least once within the quarter (Jan-March, April-June, July-Sept, Oct-Dec)?

   Answer: Our interpretation is that these are to be done every 90 days, every 6 months, every year, etc., rather than "within" the quarter, 6 months or year. The Bureau of Assisted Living will allow a 2-week time period before or after the required due date. For example, a quarterly drill was conducted on January 15th. Ninety (90) days later would be April 15th. The facility would have to complete the next required drill between April 1st and April 30th to meet this requirement.