



State of Wisconsin
Department of Health and Family Services

Jim Doyle, Governor
Kevin R. Hayden, Secretary

February 22, 2008

Richard E. Petershack, Chairman
Governor's Small Business Regulatory Review Board
Wisconsin Department of Commerce
201 W. Washington Avenue, 5th Floor
Madison, WI 53707

Dear Mr. ^{Rick}Petershack:

Thank you for the opportunity for Department personnel to appear before the Small Business Regulatory Review Board (SBRRB) concerning the Department's efforts to assess the economic impact chapter HFS 83, relating to community-based residential facilities (CBRFs), may have on small businesses. The Department is mindful of the fiscal effect that any proposed rule may have on small businesses, and aspires to promulgate cost-effective standards without compromising the Department's mission to promote and safeguard the health, safety, and welfare of residents living in CBRFs.

Department staff have reviewed the comments and recommendations made by the SBRRB. The following are the Department's responses.

The SBRRB encourages the Department to clearly state in the final rule the variance and waiver criteria permitted by the Department instead of allowing a case-by-case approval of requests for variances.

Under current and proposed rule, a CBRF may submit to the Department a written request for a waiver or variance to any requirement that the CBRF believes alternative measures would meet the intent of the requirement. The Department may grant a waiver or a variance to the CBRF if the Department determines that the exemption or alternative will not jeopardize the health, safety, or welfare of any resident, as demonstrated by the CBRF. The Department believes that any additional specificity of criteria would impede innovation and flexibility for both the CBRF and the Department to enhance the health, safety, or welfare of individuals residing in CBRFs.

Administrator Qualifications

The proposed rule requires the administrator of a CBRF 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.

After reviewing the recommendations made by the SBRRB and CBRF providers commenting at the public hearings, the Department will revise the requirements under § HFS 83.15 (1) relating to administrator qualifications. The Department now proposes 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.

Staff Training Requirements – Inability of small business owners to absorb the mandated training costs in the proposed rule.

Department staff re-evaluated the cost associated with the increased staff training and continuing education requirements and believes these costs will be offset by the increased flexibility in the rule allowing CBRFs to use training resources not available in the current rule and eliminating the mandated number of hours for initial staff training.

The current rule requires CBRFs to provide 45 hours of initial training to new employees in 9 program areas. All training must be provided by Department-approved trainers using a Department-approved curriculum. Initial training in 4 program areas must be completed by the employee within 6 months after starting employment. Initial training in the other 5 program areas must be completed within 90 days or prior to assuming certain job responsibilities.

The proposed training requirements seek to provide greater flexibility by eliminating the prescribed 45 hours of initial training and allowing CBRFs to use in-house staff or outside instructors to train staff in all but 4 key program areas. In-house staff or outside instructors should be able to provide this initial training at a reduced cost due to the lifting of the Department approval requirements. Accordingly, CBRFs should realize a reduction in overall training costs associated with this change.

In the proposed rule, the majority of initial staff training is to be completed within 90 days after starting employment. As is in the current rule, training in some program areas must be completed prior to assuming certain job responsibilities. The Department recognizes that compressing the training time from 6 months in the current rule to 90 days in the proposed rule shifts the training costs upfront, which may pose a concern to providers; however, as already indicated, by alleviating the burden associated with obtaining training course and instructor approvals from the Department, and allowing CBRFs to provide more than half of the required training by in-house staff substantially reduces the overall training costs for providers.

It is important to recognize that the proposed training standards were developed in conjunction with CBRF providers who urged the Department to shift to a more outcome-oriented standard. These changes represent a “deregulation” of the current training requirements by eliminating the prescribed number of training hours, along with eliminating

Department approved trainers and curriculum, and instead focuses on resident outcomes to evaluate the quality of care provided by CBRF staff, and the quality of life experienced by the residents.

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 hour) 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. Many residents have complex medical and behavioral needs that require a trained, skilled response. Some of the most medically fragile and behaviorally challenged residents reside in small CBRFs, a strong training program is essential to ensure that staff has—and maintains—the required skills to meet the needs of the residents. The Department seeks a modest increase of 3 hours of continuing education hours to ensure CBRF staff receives up-to-date information related to topics such as infection control, medication administration, prevention of resident abuse and neglect, and fire safety and emergency procedures. The Department also believes the costs associated with the 3 hour increase in continuing education will be offset by eliminating the mandated 45 hours of initial training and required use of Department approved instructors and curriculum.

The Department considered the methods under § 227.114 to minimize training costs on small CBRFs and, as stated previously, determined that due to the rise in the acuity level of residents over the last several years, it would be infeasible and contrary to the objectives under § 50.02 to establish standards for the care, treatment, health, safety, rights, welfare, and comfort of CBRF residents.

Capital Expenditures – Fire Sprinkler Systems

Department staff has reviewed the SBRRB comments related to sprinkler provisions and have re-evaluated the impact of the rule on small businesses. The proposed rule requires small Class C CBRFs to have a NFPA 13D residential sprinkler system within five years from the date the rule is promulgated. This provision covers both existing and new small Class C facilities. Small Class C CBRFs are facilities that serve between five and eight persons with physical or cognitive impairments that prevent these residents from responding to an alarm and escaping a fire without assistance. This 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. This requirement does not apply to facilities that provide care to individuals who are physically and mentally able to respond to a fire alarm and exit the facility. 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, these staff persons may be asleep. In addition, many of these facilities are older, private homes with aging mechanical and electrical systems, increasing 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.

The cost to install a sprinkler system in a small Class 'C' facility is estimated at 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 will affect about 117 facilities, which represents approximately 8.5% of all CBRFs. It is important to stress that small Class C CBRFs have 5 years after the effective date of the rule to comply with the proposed rule. 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 SBRRB expressed concern regarding the economic impact that the fire sprinkler compliance requirements will have on small businesses that currently do not have fire sprinkler systems and that the costs small businesses will incur for updating sprinkler systems that may exceed the Department's estimate, due to additional costs that are imposed by local municipalities. The SBRRB also pointed out that in many cases local municipalities have established requirements that are much higher than those recommended by the Department. The SBRRB asked that we work with the Department of Commerce's Safety and Buildings Division's Fire Protection Program to identify and offer alternative fire sprinkler technology options that can be incorporated in the final rule.

In collaboration with staff from the Department of Commerce, we have verified that the NFPA 13D is the most cost-effective fire suppression system available. While there are foam-based fire suppression systems available on the market, the cost of such a system is substantially higher. The National Fire Protection Association's (NFPA) fire suppression system is the nation's uniform industry standard for fire protection. NFPA identifies three sprinkler systems; NFPA 13D for private homes and 1-2 family structures; NFPA 13R for use in apartment-type buildings; and NFPA 13 for commercial facilities. There is no other fire suppression standard available.

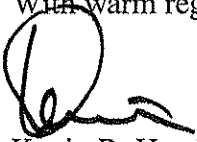
The proposed rule requires CBRFs licensed for 16 or fewer residents to use a NFPA 13D residential sprinkler system when each room in the CBRF requires no more than two sprinkler heads. This includes the majority of small Class C facilities. The NFPA 13D is the minimum standard and the most cost effective. For local municipalities with ordinances requiring a higher sprinkler standard, such as the NFPA 13R, the Department would accept the higher standard in lieu of the NFPA 13D. Based on our discussions with staff from the Department of Commerce, we realize the proposed rule may not clearly reflect the standard for existing small Class C CBRFs. We will revise the proposed rule to more clearly state the requirements for small Class C CBRFs licensed as of the effective date of the rule.

As with all requirements in the proposed rule, the Department may grant a waiver of the requirement if the facility's alternative measures for meeting the requirement do not jeopardize the health, safety, welfare, or rights of any residents.

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Thank you again for the opportunity to appear before the Small Business Regulatory Review Board and address the potential economic impact of ch. HFS 83. As required under Wis. Stat. § 227.19(3), the Department will consider public comments, and include a copy of this response to the SBRRB's recommendations with the final proposed rule that will be sent to the legislature.

With warm regards,



Kevin R. Hayden
Secretary

CC: Ron Sklansky, Joint Legislative Council
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