

Chapter DHS 89

RESIDENTIAL CARE APARTMENT COMPLEXES

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Note: This chapter was titled Assisted Living Facilities before December 1, 1998. Chapter HFS 89 was renumbered to chapter DHS 89 under s. 13.92 (4) (b) 1., Stats., and corrections made under s. 13.92 (4) (b) 7., Stats., Register November 2008 No. 635.

Subchapter I — General Provisions

DHS 89.11 Authority and purpose. This chapter is promulgated under the authority of s. 50.034, Stats., to establish standards and procedures for the certification or registration of residential care apartment complexes in order to promote the health and safety of persons residing in and receiving services from those facilities. This chapter is intended to ensure that all residential care apartment complexes provide each tenant with an independent apartment in a setting that is home-like and residential in character; make available personal, supportive and nursing services that are appropriate to the needs, abilities and preferences of individual tenants; and operate in a manner that protects tenants' rights, respects tenant privacy, enhances tenant self-reliance and supports tenant autonomy in decision-making including the right to accept risk.

Note: Before September 6, 1997, residential care apartment complexes were called "assisted living facilities." The name change was made by 1997 Wisconsin Act 13.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; am. Register, November, 1998, No. 515, eff. 12-1-98.

DHS 89.12 Applicability. (1) This chapter applies to the department and to all residential care apartment complexes operating in Wisconsin.

(2) This chapter does not apply to nursing homes, community-based residential facilities or hospitals or to congregate housing or housing for the elderly.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; am. Register, November, 1998, No. 515, eff. 12-1-98.

DHS 89.13 Definitions. In this chapter:

(1) "Residential care apartment complex" or "facility" means a place where 5 or more adults reside that consists of independent apartments, each of which has an individual lockable entrance and exit, a kitchen, including a stove, and individual bathroom, sleeping and living areas, and that provides, to a person who resides in the place, not more than 28 hours per week of services that are supportive, personal and nursing services. "Residential care apart-

ment complex" does not include a nursing home or a community-based residential facility, but may be physically part of a structure that is a nursing home or community-based residential facility.

(2) "Residential care apartment complex services" means services provided by a residential care apartment complex, either directly or under contract, to meet needs identified in a tenant's service agreement, to meet unscheduled care needs or to provide emergency services 24 hours a day.

(3) "Bathroom" means a room with floor to ceiling walls and a door which contains a toilet, a sink and a bathtub or shower.

(4) "Community-based residential facility" has the meaning specified in s. 50.01 (1g), Stats.

(5) "Comprehensive assessment" means a systematic procedure for identifying an individual's physical, health and social needs; preferences; and capacity for self-care.

(6) "Congregate housing" means multi-unit rental housing which offers limited social support for tenants, including meals in a common dining room and space for group social and recreational activities.

Note: Congregate housing may become a residential care apartment complex if it chooses to offer supportive, personal and nursing services.

(7) "Contract" means all written agreements between the tenant and the residential care apartment complex, including the service agreement, the risk agreement and any rental or sales contract.

(8) "Department" means the Wisconsin department of health services.

(9) "Designated representative" means anyone identified by a tenant to represent the tenant in relation to the tenant's residential care apartment complex. A designated representative may be a family member, friend, health care agent, guardian or other person named by the tenant.

(10) "Emergency assistance" means aid provided in the event of a situation that creates an imminent risk of serious harm to the health or safety of the person if he or she is not helped immediately.

(11) "Functionally distinct area" means a space that can be distinguished from other areas within the apartment by its actual or intended use. A functionally distinct area need not be a separate room.

(12) "Health monitoring" means the assessment of physical, functional and cognitive status to detect changes that may indicate health problems and to facilitate appropriate intervention. Health monitoring includes assessment of nutritional status, confusion, unsteady gait, urinary incontinence, edema of extremities, fever, hypertension and other conditions.

(13) "Hospice care" means medical or support services for management of a terminal illness furnished by a hospice as defined in s. 50.90 (1), Stats.

(14) "Housing for the elderly" means multi-unit rental housing that is specially designed for and marketed to older people but does not offer supportive services, personal services and nursing services to its tenants.

Note: Housing for the elderly may become a residential care apartment complex if it chooses to offer supportive, personal and nursing services.

(15) "Incapable of making care decisions" means unable to understand one's own needs for supportive, personal or nursing services; to choose what, if any, services one wants to receive to meet those needs; and to understand the outcome likely to result from that choice. The term refers to the ability to make a decision and not to the content or result of the decision.

(16) "Independent apartment" means an individual living unit that has its own individual lockable entrance and exit, kitchen, bathroom, sleeping and living areas.

(17) "Individual lockable entrance and exit" means a door that provides access to an independent apartment and is equipped with an individually keyed lock which is operable from both inside and outside the unit and which the tenant can open, close and lock to ensure privacy.

(17m) "Involuntary administration of psychotropic medication" means any of the following:

(a) Placing psychotropic medication in an individual's food or drink with knowledge that the individual protests receipt of the psychotropic medication.

(b) Forcibly restraining an individual to enable administration of psychotropic medication.

(c) Requiring an individual to take psychotropic medication as a condition of receiving privileges or benefits.

(18) "Kitchen" means a visually and functionally distinct area within the living unit which is intended to be used exclusively for food preparation and which contains a stove, a refrigerator, a sink, counter space for food preparation and a place for storage of utensils and supplies.

(19) "Living area" means a visually and functionally distinct area within the living unit which is intended for general use and which is not a bathroom, kitchen or sleeping area.

(20) "Medical assistance" means the assistance program under ss. 49.43 to 49.475 and 49.49 to 49.497, Stats., and chs. DHS 101 to 108.

(21) "Medication administration" means giving or assisting tenants in taking prescription and nonprescription medications in the correct dosage, at the proper time and in the specified manner.

(22) "Medication management" means oversight by a nurse, pharmacist or other health care professional to minimize risks associated with use of medications. Medication management includes proper storage of medications; preparation of a medication organization or reminder system; assessment of the effectiveness of medications; monitoring for side effects, negative reactions and drug interactions; and delegation and supervision of medication administration.

(23) "Nursing home" has the meaning specified in s. 50.01 (3), Stats.

(24) "Nursing services" means nursing procedures, excluding personal services, which, according to the provisions of ch. 441, Stats., the nurse practice act, must be performed by a registered

nurse or as a delegated act under the supervision of a registered nurse.

(25) "Personal services" means direct assistance with activities of daily living, including dressing, eating, bathing, grooming, toileting, transferring and ambulation or mobility.

(25g) "Protest" means make more than one discernible negative response, other than mere silence, to the offer of, recommendation for, or other proffering of voluntary receipt of psychotropic medication. "Protest" does not mean a discernible negative response to a proposed method of administration of the psychotropic medication.

(25r) "Psychotropic medication" means a prescription drug, as defined in s. 450.01 (20), Stats., that is used to treat or manage a psychiatric symptom or challenging behavior.

(26) "Recuperative care" means services provided for a period of 90 days or less which are intended to assist a person in recovering from an illness, injury, surgery or other acute condition or to stabilize the health or functioning of the individual.

(27) "Risk agreement" means a binding stipulation identifying conditions or situations which could put the tenant at risk of harm or injury and the tenant's preference for how those conditions or situations are to be handled.

(28) "Service agreement" means a binding stipulation between the tenant and the facility which specifies services the facility will provide and the tenant will accept.

(29) "Sleeping area" means a visually and functionally distinct area within the living unit which is intended to be used for sleeping. A sleeping area does not include a bathroom, kitchen or living area.

(30) "Stove" means a cooking appliance that is a microwave oven of at least 1000 watts or that consists of burners and an oven.

(31) "Supportive services" means assistance with tasks which the tenant cannot perform for himself or herself as a result of functional limitations, or one-on-one supervision of the tenant. Supportive services include meals, housekeeping, laundry, arranging for transportation and arranging for access to medical services.

(32) "Tenant" means an individual who resides in and has a service agreement with a residential care apartment complex.

(33) "Unscheduled care need" means any need for supportive, personal or nursing services the timing of which cannot be predicted, such as incontinence care. Unscheduled care needs do not include the need for emergency assistance.

(34) "Visually distinct area" means a space which can be distinguished from other areas within the apartment by sight. A visually distinct area need not be a separate room.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; am. (30), Register, November, 1998, No. 515, eff. 12-1-98; CR 07-042: cr. (17m), (25g) and (25r) Register October 2007 No. 622, eff. 11-1-0; corrections in (8) and (20) made under s. 13.92 (4) (b) 6. and 7., Stats., Register November 2008 No. 635.

DHS 89.14 Registration or certification requirement. All residential care apartment complexes shall be either registered or certified by the department under this chapter.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; am. Register, November, 1998, No. 515, eff. 12-1-98.

DHS 89.15 Limitation on use of name "residential care apartment complex". As provided in s. 50.034 (5), Stats., an entity that does not meet the definition of residential care apartment complex under s. 50.01 (1d), Stats., may not designate itself as a residential care apartment complex or use the words "residential care apartment complex" to represent or tend to represent the entity as a residential care apartment complex or services provided by the entity as services provided by a residential care apartment complex.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; am. Register, November, 1998, No. 515, eff. 12-1-98.

Subchapter II — General Requirements for Operation

DHS 89.21 Applicability. The provisions of this subchapter apply to all residential care apartment complexes.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; am. Register, November, 1998, No. 515, eff. 12-1-98.

DHS 89.22 Building requirements. (1) COMPLIANCE WITH APPLICABLE CODES. A residential care apartment complex shall comply with all applicable statutes, rules and regulations.

Note: The Wisconsin department of safety and professional services considers residential care apartment complexes to be multifamily dwellings subject to the code in effect at the time of construction.

(2) APARTMENTS. (a) Independent apartments. All living units in a residential care apartment complex shall be independent apartments.

(b) Physical features. Each independent apartment shall have at least the following:

1. An individual lockable entrance and exit. A single door may serve as both entrance and exit. Keys to the door to the independent apartment and to the residential care apartment complex shall be supplied to the tenant.

2. A kitchen. The kitchen shall be a visually and functionally distinct area within the apartment. The refrigerator shall have a freezer compartment. The sink shall have hot and cold running water. The stove shall be designed so that it can be disconnected, if necessary, for tenant safety.

3. An individual bathroom. The bathroom shall not be shared with or accessed from any other living unit.

4. Sleeping and living areas. The sleeping and living areas shall each be visually and functionally distinct areas within the apartment but need not be separate rooms. These areas shall contain sufficient space so that the tenant does not have to either sleep in the living area or use the sleeping area for eating, socializing or other general living uses and so that the tenant has the ability, if he or she so wishes, to arrange furniture in a way that provides some visual privacy for the sleeping area.

(c) Size and configuration. 1. Each apartment shall contain a minimum of 250 square feet of interior floor space, excluding closets.

2. Each independent apartment shall be of adequate size and configuration to permit tenants to carry out, with or without assistance, all the functions necessary for independent living, including sleeping; sitting; dressing; personal hygiene; storing, preparing, serving and eating food; storing clothing and other personal possessions; doing personal correspondence and paperwork; and entertaining visitors.

(d) Multiple occupancy. Multiple occupancy of an independent apartment shall be limited to a spouse or a roommate chosen at the initiative of the tenant.

(e) Variances. 1. In this paragraph, “variance” means permission to meet a requirement by an alternative means. A variance granted under this paragraph shall not exempt a facility from any other applicable rule, regulation or ordinance.

2. The department may grant a variance to the minimum floor space requirement under par. (c) 1. provided that the variance does not reduce the minimum floor space requirement under par. (c) 1. by more than 10%.

3. A variance may be granted only when a building or portion of a building constructed or under construction prior to the effective date of this rule is converted to a residential care apartment complex and the variance does not adversely affect the ability of the residential care apartment complex to meet the tenants’ needs and does not jeopardize the health, safety or independence of the tenants.

4. A request for a variance shall be submitted to the department in writing and shall identify the requirement from which the

variance is requested, the justification for the variance, and the alternative means by which the facility will meet the intent of the requirement. The department shall respond in writing to a request for a variance.

Note: A request for a variance should be sent to: Bureau of Quality Assurance, Division of Disability and Elder Services, P.O. Box 7851, Madison, WI 53707.

(3) ACCESSIBILITY OF PUBLIC AND COMMON USE AREAS. All public and common use areas of a residential care apartment complex shall be accessible to and useable by tenants who use a wheelchair or other mobility aid consistent with the accessibility standards contained in ch. SPS 362. All areas for tenant use within the facility shall be accessible from indoors.

(4) DISTINCT PART FACILITIES. (a) Physical and programmatic separation. A residential care apartment complex shall be both physically and programmatically distinct from any nursing home, community-based residential facility or hospital to which it is attached or of which it is a part.

Note: This does not require separation between a residential care apartment complex and congregate housing, housing for the elderly or other purely residential use. For example, residential care apartment complex apartments may be interspersed with non-assisted living apartment units in the same building and a residential care apartment complex may share dining room and other common space with an attached apartment building.

(b) Physical separation. Tenants shall not be required to first enter or pass through a portion of the health care facility or community-based residential facility in order to enter a residential care apartment complex. Similarly, people shall not be required to pass through the residential care apartment complex in order to enter a health care facility or community-based residential facility. A residential care apartment complex may share a common lobby and access area of a multipurpose building and may be entered via elevator from the lobby or access area. A dining room or activity area may be shared, provided it is not scheduled for concurrent use by residents of the health care facility or community-based residential facility and tenants of the residential care apartment complex.

(c) Program separation. Residential care apartment complex services shall be made available in the residential care apartment complex. Tenants of the residential care apartment complex shall not be required to go to a community-based residential facility or health care facility to receive supportive, personal or nursing services included in the service agreement. Nor shall tenants of a health care facility or community-based residential facility be required to receive services in a residential care apartment complex.

Note: This requirement does not prohibit voluntary sharing of activities; sharing of other services, such as physical therapy; sharing of administrative functions; or sharing of the space devoted to such activities, services or functions with the attached facility. Neither does it restrict sharing of space or activities with congregate housing, housing for the elderly or other purely residential uses.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; am. Register, November, 1998, No. 515, eff. 12-1-98; correction in (3) made under s. 13.93 (2m) (b) 7., Stats., Register December 2004 No. 588; correction in (3) made under s. 13.92 (4) (b) 7., Stats., Register January 2012 No. 673.

DHS 89.23 Services. (1) GENERAL REQUIREMENT. A residential care apartment complex shall provide or contract for services that are sufficient and qualified to meet the care needs identified in the tenant service agreements, to meet unscheduled care needs of its tenants and to make emergency assistance available 24 hours a day.

(2) SUFFICIENT SERVICES. (a) Minimum required services. 1. In this paragraph, “capacity to provide” means that the facility is able to provide the minimum required services to any tenant who needs or develops a need for those services.

Note: A residential care apartment complex should be able to respond to changes in its tenants’ need for the minimum required services by revising the service agreements and, if necessary, by either adjusting its staffing plan or contracting for services from other providers.

2. A residential care apartment complex shall have the capacity to provide all of the following services to all tenants, either directly or under contract:

a. Supportive services: meals, housekeeping in tenants' apartments, laundry service and arranging access to medical services. In this subparagraph, "access" means arranging for medical services and transportation to medical services.

b. Personal services: daily assistance with all activities of daily living which include dressing, eating, bathing, grooming, toileting, transferring and ambulation or mobility.

c. Nursing services: health monitoring, medication administration and medication management.

3. A residential care apartment complex shall ensure that sufficient services are available to meet care needs identified in each tenant's service agreement.

4. Services above the minimum required levels may be made available at the option of the facility.

5. A facility is not required to provide or be staffed to provide services which are not needed, are not included in the service agreements or are above the minimum required levels.

(b) *Staff to meet tenant needs.* 1. The number, assignment and responsibilities of staff shall be adequate to provide all services identified in the tenants' service agreements.

2. Staff assignments shall include sufficient time necessary to permit staff to assist tenants with unscheduled care needs.

(c) *Emergency assistance.* A residential care apartment complex shall ensure that tenant health and safety are protected in the event of an emergency and shall have the capacity to provide emergency assistance 24 hours a day. A residential care apartment complex shall have a written emergency plan which describes staff responsibilities and procedures to be followed in the event of fire, sudden serious illness, accident, severe weather or other emergency and is developed in cooperation with local fire and emergency services.

(3) **SERVICE QUALITY.** (a) Residential care apartment complex services shall be provided by qualified staff, consistent with the requirements under sub. (4).

(b) Services shall be provided in the type, amount and frequency identified in the service agreements.

(c) Services to meet both scheduled and unscheduled care needs shall be provided in a timely manner.

(d) Services shall be appropriate to the needs, abilities and preferences of tenants as identified in the comprehensive assessment, service agreement and risk agreement.

(e) Services shall be provided in a manner which respects tenant privacy, enhances tenant self-reliance and supports tenant autonomy in decision-making, including the right to accept risk.

(f) Meals and snacks served to tenants shall be prepared, stored and served in a safe and sanitary manner.

(4) **PROVIDER QUALIFICATIONS.** (a) *Service providers.* 1. Residential care apartment complex services shall be provided by staff who are trained in the services that they provide and are capable of doing their assigned work. Any service provider employed by or under contract to a residential care apartment complex shall meet applicable federal or state standards for that service or profession.

2. Nursing services and supervision of delegated nursing services shall be provided consistent with the standards contained in the Wisconsin nurse practice act. Medication administration and medication management shall be performed by or, as a delegated task, under the supervision of a nurse or pharmacist.

Note: The nurse practice act is published as "Wisconsin Statutes and Administrative Code Relating to the Practice of Nursing" and is available from the Department of Safety and Professional Services, Board of Nursing, P.O. Box 8935, Madison, WI 53708.

3. Personal and supportive services shall be provided by staff who have documented training or experience in needs and techniques for assistance with tenant care and activities of daily living, such as bathing, grooming, skin care, transfer, ambulation, exer-

cise, meal preparation and eating assistance, dressing, and use of adaptive aids and equipment.

(b) *Service manager.* 1. Each residential care apartment complex shall have a designated service manager who shall be responsible for day-to-day operation of, including ensuring that the services provided are sufficient to meet tenant needs and are provided by qualified persons; that staff are appropriately trained and supervised; that facility policies and procedures are followed; and that the health, safety and autonomy of the tenants are protected. The service manager shall be capable of managing a multi-disciplinary staff to provide services specified in the service agreements.

2. A person shall be designated to be in charge of the facility whenever there is not a service manager present. The person in charge shall be competent to supervise staff of the residential care apartment complex. The person in charge shall be available to the residential care apartment complex and shall be identified to and easily reachable by all tenants and staff. In this subdivision "available" means accessible and able to ensure that services are provided to tenants as required under sub. (1). The person in charge is available if he or she is either present in the facility or present, awake and on duty in an attached or adjacent residential, health care or other similar facility and able to be physically present in the facility on short notice.

(c) *Freedom from abuse, neglect and exploitation.* A residential care apartment complex shall ensure that tenants are free from abuse, neglect or financial exploitation by the facility or its staff. A residential care apartment complex shall not employ an individual who has been convicted of a crime that is substantially related to the circumstances of the job or for whom there is a substantiated finding of abuse or neglect or misappropriation of property in the department's registry for nurse aides, home health aides and hospice aides. The facility shall conduct a criminal records check with the Wisconsin department of justice and shall check with the department's registry for nurse aides, home health aides and hospice aides when hiring a service manager, service providers and other persons to work in the facility or have contact with tenants.

Note: Substantiated findings of client abuse or neglect or misappropriation of client property are recorded in the department's registry which can be accessed 24 hours a day by calling (608) 266-5545. See ch. DHS 12 for required background checks including a criminal record check.

(d) *Staff training.* 1. All facility staff shall have training in safety procedures, including fire safety, first aid, universal precautions and the facility's emergency plan, and in the facility's policies and procedures relating to tenant rights.

2. Staff providing residential care apartment complex services to tenants shall have documented training or experience in the following areas:

a. Physical, functional and psychological characteristics associated with aging or likely to be present in the tenant population and their implications for service needs.

b. The purpose and philosophy of assisted living, including respect for tenant privacy, autonomy and independence.

c. Assigned duties and responsibilities, including the needs and abilities of individual tenants for whom staff will be providing care.

(5) **DOCUMENTATION.** A residential care apartment complex shall document that the requirements for provider qualifications have been met.

(6) **WRITTEN STAFFING PLAN.** A residential care apartment complex shall maintain an up-to-date, written staffing plan which describes how the facility is staffed to provide services that are sufficient to meet tenant needs and that are provided by qualified staff. The facility shall inform current and prospective tenants and their representatives about the existence and availability of the staffing plan and shall provide copies of the plan upon request.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; am. Register, November, 1998, No. 515, eff. 12-1-98.

DHS 89.24 Hours of service. (1) LIMIT ON HOURS OF SERVICE PROVIDED. A residential care apartment complex shall provide not more than 28 hours per week of supportive, personal and nursing services to each tenant. There is no limit on the type or amount of other services, activities or amenities which the facility provides.

Note: Some individuals may initially need little or no service but, over time, may need more services up to the full 28 hours per week.

(2) AMOUNT OF SERVICE PROVIDED TO INDIVIDUAL TENANTS. (a) Services provided by the residential care apartment complex. The amount of supportive, personal and nursing service which a facility provides to a tenant, either directly or under contract, shall be determined by the tenant's needs and preferences, as documented in the service agreement. A residential care apartment complex shall not limit the hours of service it makes available for an individual tenant to less than 28 hours per week if needed by the tenant.

(b) Services from providers other than the residential care apartment complex. 1. A tenant may contract for additional services not included in the service agreement from providers of the tenant's choice, so long as the tenant informs the facility, complies with applicable facility policies and procedures and agrees to have the arrangements reflected in the risk agreement. Except as limited by a facility under subd. 3., there is no restriction on the amount or type of service which a tenant may receive from providers other than the facility.

2. A residential care apartment complex may approve the provider of supportive, personal or nursing services for any particular tenant and require that providers of these services comply with established facility standards and policies.

3. A residential care apartment complex may only limit the amount of supportive, personal and nursing service a tenant purchases from outside providers when the total amount of supportive, personal and nursing services that the tenant receives from all paid providers exceeds 28 hours per week. A facility may not limit the amount of hospice care a tenant receives or the amount of unpaid services provided by the tenants family or friends. A facility may not limit the amount of recuperative care which a tenant receives, provided the recuperative care will not raise the total service level above 28 hours per week for more than 90 days.

(3) COMPUTING HOURS OF SERVICE. (a) Purpose. A residential care apartment complex shall compute hours of service provided to an individual tenant when necessary for the purpose of determining whether the 28 hour per week limit on services under sub. (1) has been reached and making related decisions about the appropriateness of continued residency in the facility. The computation may be initiated by the facility or at the request of the tenant, the tenant's family or other representative, or the department. Facilities are not required to continually document the amount of time spent in providing services to each tenant.

Note: This requirement is intended solely for the purpose of determining whether a person can appropriately reside in a residential care apartment complex. It is not intended for the purposes of documenting or billing for services provided or for determining facility staffing levels.

(b) Method for computing hours of service. 1. Only staff time that is directly attributable to providing or arranging supportive, personal and nursing services to a tenant shall count toward the 28-hour per week limit on services. Hours of service include time devoted to nursing assessment, documentation and consultation, stand-by assistance for activities of daily living and any other services directly attributable to an individual tenant.

2. Congregate services such as meals served in a common dining room, housekeeping in common areas of the facility, laundry and social and recreational activities which would be typically available in a hotel or in unlicensed housing for the elderly shall not be counted toward the 28-hour per week limit on services.

3. Time spent in meeting a tenant's unscheduled care needs shall be included in the 28 hours.

4. Services arranged directly by an individual tenant from a provider other than the residential care apartment complex shall not count toward the limit on the amount of services provided by a facility under sub. (1).

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; am. Register, November, 1998, No. 515, eff. 12-1-98.

DHS 89.25 Schedule of fees for services. (1) Residential care apartment complexes shall have a written schedule of fees for services which includes all of the following:

(a) Separately identified charges for rent, meals and services. The schedule of fees for services shall clearly identify those services which are included in any base service rate or rates and those for which there will be separate charges.

(b) The amount of any application fee, entrance fee or security deposit.

(c) The facility's refund policy regarding application and entrance fees, security deposits and monthly rent, meal and service charges in the event of death or termination of the contract between the tenant and the facility.

(2) The schedule of fees for services shall be presented in language and a format that make it possible for tenants to readily identify the cost of the components of the service agreement and to be able to make informed choices about the services they receive.

(3) A copy of the schedule of fees for services shall be given to each prospective tenant and to the prospective tenant's family or designated representative, where appropriate, along with public information materials on assisted living if provided by the department. Copies of revised fee schedules shall be provided to current tenants and their families or representatives, where appropriate, at least 30 days in advance of an increase in fees.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; am. Register, November, 1998, No. 515, eff. 12-1-98.

DHS 89.26 Comprehensive assessment.

(1) REQUIREMENT. A comprehensive assessment shall be performed prior to admission for each person seeking admission as a basis for developing the service agreement under s. DHS 89.27 and the risk agreement under s. DHS 89.28.

(2) CONTENTS. The comprehensive assessment shall identify and evaluate the following factors relating to the person's need and preference for services:

- (a) Physical health.
- (b) Physical and functional limitations and capacities.
- (c) Medications and ability to self-administer medications.
- (d) Nutritional status and needs.
- (e) Mental and emotional health.
- (f) Behavior patterns.
- (g) Social and leisure needs and preferences.
- (h) Strengths, abilities and capacity for self-care.
- (i) Situations or conditions which could put the tenant at risk of harm or injury.
- (j) Type, amount and timing of services desired by the tenant.
- (k) Frequency of monitoring which the resident's condition requires.

(3) PARTICIPATION IN THE ASSESSMENT. (a) A comprehensive assessment shall be performed with the active participation of the prospective tenant. That person's family or designated representative shall also participate in the assessment, if desired by the person.

(b) Persons performing the comprehensive assessment shall have expertise in areas related to the tenant's health and service needs. Portions of the comprehensive assessment relating to physical health, medications and ability to self-administer medications shall be performed by a physician or a registered nurse.

(c) A comprehensive assessment shall be performed or arranged for by:

1. The residential care apartment complex for tenants whose bills are paid for from private resources or by third party payers.
2. The county department or aging unit designated to administer the medicaid waiver for those tenants whose services are paid for under s. 46.27 (11) or 46.277, Stats.

(4) ANNUAL REVIEW. A tenant's capabilities, needs and preferences identified in the comprehensive assessment shall be reviewed at least annually to determine whether there have been changes that would necessitate a change in the service or risk agreement. The review may be initiated by the facility, the county department designated under sub. (3) (c) 2., or at the request of or on the behalf of the tenant.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; am. Register, November, 1998, No. 515, eff. 12-1-98.

DHS 89.27 Service agreement. (1) REQUIREMENT. A residential care apartment complex shall enter into a mutually agreed-upon written service agreement with each of its tenants consistent with the comprehensive assessment under s. DHS 89.26.

(2) CONTENTS. A service agreement shall identify all of the following:

(a) *Services.* 1. The type, amount and frequency of the services to be provided to the tenant, including services which will be available to meet unscheduled care needs.

2. Any additional services which are available for purchase by the tenant.

3. The activities and social connections the tenant will be assisted in maintaining.

(b) *Fees.* 1. The charge for the services covered by the service agreement, both individually and in total, and the time and amount of any fee increase that will occur during the period covered by the service agreement. Facilities shall remind tenants of any fee increase by written notice 30 days in advance of the effective date.

2. Any supplemental fees for services not covered in the service agreement or other agreement between the facility and the tenant.

(c) *Policies and procedures.* 1. 'Additional services.' a. Types of additional services which the facility would make available or which the facility would assist in arranging for a tenant during acute episodes, following release from the hospital or during other periods when the tenant may experience temporary needs.

b. Policies and procedures regarding services which the tenant arranges to receive from providers other than the residential care apartment complex.

2. 'Termination or transfer.' Grounds for termination of the contract between the tenant and the facility or relocation of the tenant to another residence and the procedure for tenant participation in decisions regarding termination and relocation. Conditions for termination contained in the service agreement shall not be contrary to the requirements relating to contract termination contained in s. DHS 89.29 (3).

3. 'Tenant's rights.' The residential care apartment complex's policies relating to tenant rights, including at a minimum, the rights identified in subch. III.

4. 'Dispute resolution.' The facility's internal grievance procedure for resolving tenant complaints.

(3) OTHER SPECIFICATIONS. (a) Only services selected and agreed to by the tenant may be included in the service agreement.

(b) A service agreement may not waive any of the provisions of this chapter or other rights of the tenant.

(c) The service agreement shall be presented in language and a format that make it possible for tenants to readily identify the type, amount, frequency and cost of services they receive, the

qualifications of the staff providing those services and whether the services are provided directly by the facility or by subcontract.

(d) The initial service agreement and any renewals of the service agreement shall be dated and signed by a representative of the facility; by the tenant or by the tenant's guardian, if any, and all other persons with legal authority to make health care or financial decisions for the tenant; and by the county for a tenant whose services are funded under s. 46.27 (11) or 46.277, Stats. The facility shall provide a copy of the service agreement to all parties who signed the agreement.

Note: Persons with legal authority to make health care or financial decisions for the tenant include agents designated under an activated power of attorney for health care under ch. 155, Stats., and durable power of attorney under ch. 244, Stats.

(e) The service agreement shall be completed by the date of admission.

(4) REVIEW AND UPDATE. The service agreement shall be reviewed when there is a change in the comprehensive assessment or at the request of the facility or at the request or on behalf of the tenant and shall be updated as mutually agreed to by all parties to the agreement.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; am. Register, November, 1998, No. 515, eff. 12-1-98.

DHS 89.28 Risk agreement. (1) REQUIREMENT. As a protection for both the individual tenant and the residential care apartment complex, a residential care apartment complex shall enter into a signed, jointly negotiated risk agreement with each tenant by the date of occupancy.

(2) CONTENT. A risk agreement shall identify and state all of the following:

(a) *Risk to tenants.* 1. Any situation or condition which is or should be known to the facility which involves a course of action taken or desired to be taken by the tenant contrary to the practice or advice of the facility and which could put the tenant at risk of harm or injury.

2. The tenant's preference concerning how the situation is to be handled and the possible consequences of acting on that preference.

3. What the facility will and will not do to meet the tenant's needs and comply with the tenant's preference relative to the identified course of action.

4. Alternatives offered to reduce the risk or mitigate the consequences relating to the situation or condition.

5. The agreed-upon course of action, including responsibilities of both the tenant and the facility.

6. The tenant's understanding and acceptance of responsibility for the outcome from the agreed-upon course of action.

(b) *Unmet needs.* Any needs identified in the comprehensive assessment which will not be provided for by the facility, either directly or under contract.

(c) *Notice regarding enforcement in registered facilities.* For registered facilities only, notice that the department does not routinely inspect registered facilities or verify their compliance with this chapter and does not enforce contractual obligations under the service or risk agreements.

(3) NO WAIVER OF RULES OR RIGHTS. A risk agreement may not waive any provision of this chapter or any other right of the tenant.

(4) OBLIGATION TO NEGOTIATE IN GOOD FAITH. Neither the tenant nor the facility shall refuse to accept reasonable risk or insist that the other party accept unreasonable risk.

(5) SIGNED AND DATED. The risk agreement shall be signed and dated by both an authorized representative of the residential care apartment complex and by the tenant or the tenant's guardian and agents designated under an activated power of attorney for health care under ch. 155, Stats., and durable power of attorney under ch. 244, Stats., if any.

(6) UPDATING. The risk agreement shall be updated when the tenant's condition or service needs change in a way that may affect risk, as indicated by a review and update of the comprehensive

assessment, by a change in the service agreement or at the request of the tenant or facility.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; am. Register, November, 1998, No. 515, eff. 12-1-98; correction in (5) made under s. 13.92 (4) (b) 7., Stats., Register July 2011 No. 667.

DHS 89.29 Admission and retention of tenants.

(1) **ADMISSION.** No residential care apartment complex may admit any of the following persons, unless the person being admitted shares an apartment with a competent spouse or other person who has legal responsibility for the individual:

(a) A person who has a court determination of incompetence and is subject to guardianship under ch. 54, Stats.

(b) A person who has an activated power of attorney for health care under ch. 155, Stats.

(c) A person who has been found by a physician or psychologist to be incapable of recognizing danger, summoning assistance, expressing need or making care decisions

Note: This requirement is included because tenants need to be competent to understand and express their needs and preferences, enter into a service agreement and understand and accept risk.

(1m) **FAMILY CARE INFORMATION AND REFERRAL.** If the secretary of the department has certified that a resource center, as defined in s. DHS 10.13 (42), is available for the residential care apartment complex under s. DHS 10.71, the residential care apartment complex shall provide information to prospective residents and refer residents and prospective residents to the aging and disability resource center as required under s. 50.034 (5m) to (5p), Stats., and s. DHS 10.73.

(2) **RETENTION.** (a) A residential care apartment complex may retain a tenant whose service needs can be met by the facility or can be met with services made available by another provider.

(b) A residential care apartment complex may retain a tenant who becomes incompetent or incapable of recognizing danger, summoning assistance, expressing need or making care decisions, provided that the facility ensures all of the following:

1. That adequate oversight, protection and services are provided for the individual.

2. That the tenant has a guardian appointed under ch. 54, Stats., or has an activated power of attorney for health care under ch. 155, Stats., or a durable power of attorney under ch. 244, Stats., or both. The activated power of attorney for health care or durable power of attorney shall, either singly or together, substantially cover the person's areas of incapacity.

3. That both the service agreement and risk agreement are signed by the guardian and by the health care agent or the agent with power of attorney, if any.

Note: Facilities are permitted the option of retaining tenants who become incompetent or incapable of recognizing danger, summoning assistance, expressing need or making care decisions because familiar surroundings and routines are an important component of dementia care and in order to accommodate aging in place.

(c) No owner, operator, staff member or family member of a person connected with a residential care apartment complex may serve as a guardian, representative payee or other financial conservator for a tenant of the facility.

(3) **TERMINATION OF CONTRACT.** (a) *Reasons.* A residential care apartment complex may terminate its contract with a tenant when any of the following conditions apply:

1. Except as provided under par. (b), the tenant's needs cannot be met at the level of service which facilities are required to make available to tenants under s. DHS 89.23 (2).

2. Except as provided under par. (b), the time required to provide supportive, personal and nursing services to the tenant exceeds 28 hours per week.

3. Except as provided under par. (b), the tenant's condition requires the immediate availability of a nurse 24 hours a day.

4. The tenant is adjudicated incompetent under ch. 54, Stats., has an activated power of attorney for health care under ch. 155, Stats., or has been found to be incapable of recognizing danger,

summoning assistance, expressing need or making care decisions by 2 physicians or by one physician and one licensed psychologist who have personally examined the tenant and signed a statement specifying that the person is incapable.

5. The tenant's behavior or condition poses an immediate threat to the health or safety of self or others. Mere old age, eccentricity or physical disability, either singly or together, are insufficient to constitute a threat to self or others.

6. The tenant refuses to cooperate in an examination by a physician or licensed psychologist of his or her own choosing to determine his or her health or mental status for the purpose of establishing appropriateness for retention or termination.

7. The tenant's fees have not been paid, provided the tenant and the tenant's designated representative, where appropriate, were notified and given reasonable opportunity to pay any deficiency.

8. The tenant refuses to enter into a negotiated risk agreement or refuses to revise the risk agreement when there is a documented and significant medical reason for doing so.

9. The presence of any condition identified as grounds for termination in the service agreement, provided that these grounds are not inconsistent with requirements contained in subds. 1. to 8.

(b) *Supplemental services as an alternative to termination.* A residential care apartment complex shall not terminate its contract with a tenant for a reason under par. (a) 1. to 3. if the tenant arranges for the needed services from another provider consistent with s. DHS 89.24 (2) (b) and any unmet needs or disputes regarding potentially unsafe situations are documented in a risk agreement.

(c) *Procedures for termination.* 1. a. Except as provided under subd. 2., a residential care apartment complex shall provide 30 days advance notice of termination to the tenant and the tenant's designated representative, if any. If there is no designated representative, the facility shall notify the county department of social or human services under s. 46.21, 46.22 or 46.23, Stats.

b. Notice of termination shall include the grounds for termination and information about how to file a grievance consistent with the termination and grievance policies and procedures contained in the service agreement.

c. The 30-day notice period required for termination may include the period covered by a notice of nonpayment of fees and opportunity to pay any deficiency as required under par. (a) 7., provided that notice of termination is included with the notice of non-payment of fees.

2. No 30-day notice is required in an emergency. In this subdivision, "emergency" means an immediate and documented threat to the health or safety of the tenant or of others in the facility.

(d) *Failure to meet requirements of this chapter.* If the requirements of this chapter are violated by either the facility or the tenant, the party which is not in violation may terminate the contract on 30 days written notice without financial penalty.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; am. Register, November, 1998, No. 515, eff. 12-1-98; corrections in (1) (a), (2) (b) 2. and (3) (a) 4. made under s. 13.93 (2m) (b) 7., Stats., Register October 2007 No. 622; correction in (1m) made under s. 13.92 (4) (b) 7., Stats., Register November 2008 No. 635; correction in (2) (b) 2. made under s. 13.92 (4) (b) 7., Stats., Register July 2011 No. 667.

DHS 89.295 Variance for demonstration projects in family care pilots. (1) In this section, "variance" means permission to meet a requirement of this subchapter by an alternative means.

(2) The purpose of a variance granted under this section is to demonstrate efficient ways of delivering and assuring the quality of supportive, personal and nursing services in conjunction with delivery of the family care benefit as defined in s. 46.2805 (4), Stats.

(3) The department may grant a variance to a requirement of this subchapter when it is demonstrated to the satisfaction of the

department that granting the variance is consistent with the purpose of the demonstration and will not jeopardize the health, safety, welfare or rights of any resident in the residential care apartment complex. The department may place a time limit and conditions on the variance.

(4) A request for variance shall be submitted to the department in writing and shall include all of the following:

(a) The efficiencies and quality assurance approaches to be demonstrated through the variance.

(b) Identification of each requirement from which the variance is requested.

(c) A description of the alternative means by which the facility will meet the intent of the requirements to be varied.

(d) A plan for meeting the care needs and ensuring the health, safety and welfare of tenants.

(e) An agreement to provide information to and to cooperate with the department in monitoring and evaluating the quality and cost effectiveness of the demonstration.

(f) A letter of support for the variance from the care management organization as defined in s. 46.2805 (1), Stats., serving the area where the facility is located.

(g) Documentation that the facility has a contract with a care management organization, as defined in s. 46.2805 (1), Stats., for services to its enrollees.

History: Cr. Register, October, 2000, No. 538, eff. 11-1-00.

Subchapter III — Tenant Rights

DHS 89.31 Applicability. The provisions of this subchapter apply to all registered and certified residential care apartment complexes.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; am. Register, November, 1998, No. 515, eff. 12-1-98.

DHS 89.32 Facility policies and procedures. A residential care apartment complex shall establish written policies regarding tenant rights. Facility policies shall be consistent with and include all of the rights contained in this subchapter.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; am. Register, November, 1998, No. 515, eff. 12-1-98.

DHS 89.33 Explanation of tenant rights. A residential care apartment complex shall explain and provide copies of the tenant rights under this subchapter and of any related facility policies and procedures to the tenant and to his or her designated representative before the service agreement or any other written agreement between the tenant and the facility is signed. A copy of the rights and related policies shall be posted in a public place in the facility where they will be visible to tenants, visitors and staff.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; am. Register, November, 1998, No. 515, eff. 12-1-98.

DHS 89.34 Rights of tenants. A tenant of a residential care apartment complex shall have all the rights listed in this section. These rights in no way limit or restrict any other rights of the individual under the U.S. Constitution, civil rights legislation or any other applicable statute, rule or regulation. Tenant rights are all of the following:

(1) **COURTESY AND RESPECT.** To be treated with courtesy, respect and full recognition of the tenant's dignity and individuality by all employees of the facility and all employees of service providers under contract to the facility.

(2) **PRIVACY.** To have privacy in his or her independent apartment and when receiving supportive, personal or nursing services.

(3) **SELF-DIRECTION.** To make reasonable decisions relating to activities, daily routines, use of personal space, how to spend one's time and other aspects of life in the residential care apartment complex.

(4) **MANAGEMENT OF FINANCIAL AFFAIRS.** To manage his or her own financial affairs unless the tenant delegates, in writing, responsibility for financial management to someone of the tenant's choosing or the tenant is adjudicated incompetent, in which case the guardian shall be responsible.

(5) **SERVICE CHOICE.** To choose which services are included in the service agreement, including the right to refuse services provided that the refusal would not endanger the health or safety of the other tenants.

(6) **CHOICE OF HEALTH CARE PROVIDERS.** To the facility's non-interference with the tenant's choice of his or her physician and providers of other medical, mental health and pharmaceutical services. A tenant shall not be required to use medical, mental health or pharmaceutical providers who are employed by or affiliated with the facility or to whom the tenant is referred by facility staff. A tenant's choice of providers of supportive, personal and nursing services from providers other than the residential care apartment complex is subject to the requirements of s. DHS 89.24 (2) (b).

(7) **FURNISHINGS AND POSSESSIONS.** To furnish his or her independent apartment and to maintain personal possessions as space permits as long as the tenant does not unreasonably interfere with the other tenants' choices or endanger the health or safety of the other tenants.

(8) **ASSOCIATION.** To receive visitors, meet with groups or participate in activities of the tenant's choice, including organizing and participating in tenant or family councils or groups provided that the health or safety of the other tenants is not endangered.

(9) **MAIL.** To receive and send sealed, unopened mail, including packages. The residential care apartment complex shall give mail to tenants on the day it is received or as soon as possible thereafter.

(10) **TELEPHONE.** To have a private telephone properly installed in his or her independent apartment.

(11) **RELIGION.** No tenant may be required to engage in any religious activity.

(12) **CONFIDENTIALITY OF RECORDS.** To have his or her medical, personal and financial records kept confidential consistent with all applicable federal and state statutes, rules and regulations. For the purposes of registration, certification and administration, staff of the residential care apartment complex, the department, and any county department or aging unit designated to administer the medicaid waiver for those tenants whose services are paid for under s. 46.27 (11) or 46.277, Stats., shall have access to a tenant's records without the tenant's consent, but may not disclose the information except as permitted by law.

(13) **ACCESS TO RECORDS.** A tenant or tenant's designated representative may inspect, copy and challenge the accuracy of the tenant's records.

(14) **DISCLOSURE OF PERSONAL INFORMATION.** To have necessary discussion by facility employees regarding one's physical, mental or medical condition, services, payment sources and other personal affairs conducted discreetly, and to not have facility employees, staff or any service provider under contract with the facility indiscreetly disclosing personal information about oneself to other tenants.

(15) **RECEIPT OF SERVICES.** To receive services consistent with the service agreement and risk agreement.

(16) **MEDICATIONS.** Except as provided for in the service agreement or risk agreement, to have the facility not interfere with the tenant's ability to manage his or her own medications or, when the facility is managing the medications, to receive all prescribed medications in the dosage and at the intervals prescribed by the tenant's physician and to refuse a medication unless there is a court order.

(17) **SAFE ENVIRONMENT.** To a safe environment in which to live.

(18) FREEDOM FROM ABUSE. To be free from physical, sexual or emotional abuse, neglect or financial exploitation or misappropriation of property by the facility, its staff or any service provider under contract with the facility.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; am. Register, November, 1998, No. 515, eff. 12-1-98.

DHS 89.35 Grievances. (1) A residential care apartment complex shall have a written grievance procedure and shall provide a copy to each tenant and tenant's designated representative, where applicable. Tenants of a residential care apartment complex may file complaints with the department. The grievance procedure shall include information about how to file a complaint with the department.

Note: Complaints may be filed with the Department by writing or phoning the Bureau of Quality Assurance, Division of Disability and Elder Services, P.O. Box 7851, Madison, WI 53707, (608) 266-0120.

(2) Any person assigned by the residential care apartment complex to investigate the facts associated with a grievance shall not have had any involvement in the issues leading to the grievance.

(3) The residential care apartment complex shall provide a written summary of the grievance, findings, conclusions and any action taken as a result of the grievance to the tenant, the tenant's designated representative, if any, and, for tenants whose services are funded under s. 46.27 (11) or 46.277, Stats., the county department or aging unit designated to administer the medical assistance waiver.

(4) Tenants of a residential care apartment complex may file complaints with the department. The department shall maintain a record of all complaints.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; am. Register, November, 1998, No. 515, eff. 12-1-98.

DHS 89.36 Coercion and retaliation prohibited. Any form of coercion to discourage or prevent a tenant or the tenant's guardian or designated representative from exercising any of the rights under this subchapter or from filing a grievance or complaint is prohibited. Any form of retaliation against a tenant for exercising his or her rights or filing a grievance or complaint, or against an employee or service provider who assists a tenant in exercising his or her rights or filing a grievance or complaint, is prohibited.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; am. Register, November, 1998, No. 515, eff. 12-1-98.

Subchapter IV — Registration

DHS 89.41 Applicability. The provisions of this subchapter apply to a facility which is applying to the department for registration as a residential care apartment complex or which is registered by the department as a residential care apartment complex.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; am. Register, November, 1998, No. 515, eff. 12-1-98.

DHS 89.42 Information requirements, application procedure and form. An applicant shall submit a completed application form to the department to initiate the registration process. The application shall be on a form supplied by the department that is signed and dated by the applicant and shall include assurances that the applicant meets the definition and all the requirements for a residential care apartment complex contained in this chapter as well as all applicable federal, state and local statutes, ordinances, rules and regulations.

Note: To obtain a copy of the application form, contact the Bureau of Quality Assurance, Division of Disability and Elder Services, P.O. Box 7851, Madison, WI 53707. Phone: (608) 266-0120.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; am. Register, November, 1998, No. 515, eff. 12-1-98.

DHS 89.43 Issuance. (1) The department shall issue a statement of registration upon receipt of a completed application and assurances.

(2) Registration shall be issued only for the residential care apartment complex location, owner and operator identified in the application form and is not transferable to any other residential care apartment complex, owner or operator.

(3) The department may, without notice to the facility, visit the facility at any time to determine if the facility meets the requirements of this chapter. The owner or operator shall be able to verify compliance with this chapter and shall provide the department access to the residential care apartment complex and its staff, tenants and records.

(4) A registered residential care apartment complex shall notify tenants that, for registered facilities, the department does not routinely inspect facilities or verify compliance with the requirements for residential care apartment complexes and does not enforce contractual obligations under the service or risk agreements.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; am. Register, November, 1998, No. 515, eff. 12-1-98.

DHS 89.44 Termination and revocation. (1) A residential care apartment complex's registration terminates whenever any of the following occurs:

- (a) There is a change in ownership.
- (b) The facility discontinues operation.

(2) A residential care apartment complex shall immediately report to the department any change which would invalidate its registration under sub. (1).

(3) The department may revoke the registration of a residential care apartment complex which fails to comply with one or more of the requirements of this chapter. In the event of revocation, the department shall provide the residential care apartment complex with prior written notice of the proposed action, the reasons for the action and notice of the opportunity for appeal under s. DHS 89.45.

(4) A residential care apartment complex shall immediately notify all tenants and tenants' designated representatives, where appropriate, of any notice of revocation and the reasons for the revocation.

(5) No person may engage in any form of coercion to prevent a tenant, employee or service provider from filing a complaint about a residential care apartment complex or any form of retaliation against a tenant, employee or service provider for filing a complaint.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; am. Register, November, 1998, No. 515, eff. 12-1-98.

DHS 89.45 Appeals. (1) If the registration of a facility is revoked under s. DHS 89.44 (3) or, under s. DHS 89.62 (3), the application for registration is denied, the facility may request a hearing on that decision under s. 227.42, Stats.

(2) A request for a hearing shall be in writing and shall be filed with the department of administration's division of hearings and appeals within 10 days after the date of notice of enforcement action under s. DHS 89.44 (3) or 89.62 (3). An appeal is filed on the date that it is received by the division of hearings and appeals.

Note: A request for a hearing should be submitted to the Division of Hearings and Appeals, P.O. Box 7875, Madison, Wisconsin 53707.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97.

Subchapter V — Certification

DHS 89.51 Applicability. The provisions of this subchapter apply to a facility which is applying to the department for certification as a residential care apartment complex for purposes of medical assistance reimbursement or is certified by the depart-

ment as a residential care apartment complex for purposes of medical assistance reimbursement.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; am. Register, November, 1998, No. 515, eff. 12-1-98.

DHS 89.52 Standards for operation. A certified residential care apartment complex shall comply with the following standards for operation:

(1) The certified residential care apartment complex shall have a contract with the county agency which administers the medical assistance waiver under s. 46.27 (11) or 46.277, Stats., if it receives those funds.

(2) The certified residential care apartment complex shall comply with all other applicable requirements of the Medicaid Community Waivers Manual.

Note: For a copy of the Medicaid Community Waivers Manual, contact Department of Administration Document Sales at (608) 266-3358.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; am. Register, November, 1998, No. 515, eff. 12-1-98.

DHS 89.53 Certification procedures. (1) APPLICATION. A facility shall apply to the department to initiate the certification process. The application shall be in writing and shall include the following:

(a) A completed application form provided by the department.

(b) Approvals, permits or other documentation that the residential care apartment complex is in compliance with all applicable federal, state and local licensing, building, zoning and environmental statutes, ordinances, rules and regulations.

(c) Any other documentation requested by the department to determine whether the applicant complies with this chapter.

Note: To obtain a copy of the application form, contact the Bureau of Quality Assurance, Division of Disability and Elder Services, P.O. Box 7851, Madison, WI 53707. Phone: 608-266-0120.

(2) REVIEW, APPROVAL AND ISSUANCE. (a) The department shall review the completed application form and supporting documents and may conduct on-site visits of the facility to determine if the facility meets the definition of residential care apartment complex and the requirements of this chapter.

(b) If the requirements of this chapter are met, the department shall certify the facility as a residential care apartment complex.

(c) If the requirements of this chapter are not met, the applicant shall be issued a notice of denial. The department may deny certification for any applicant whose residential care apartment complex registration or certification has previously been revoked or who has a record of violating applicable statutes and regulations of the United States or of this or any other state in the operation of a residential or health care facility, or in any other health or human service related activity.

(d) The department shall issue the certification or notice of denial within 70 days after receiving the complete application and supporting documentation and completing the site visit. A notice of denial shall give the reasons for the denial and shall notify the applicant that the decision may be appealed under s. DHS 89.59.

(e) Certification shall be issued only for the residential care apartment complex location, owner and operator identified in the application and is not transferable to another facility, owner or operator.

(3) CERTIFICATION FEE. There shall be an annual fee for certification in an amount determined by the department. A facility's certification shall lapse if the fee is not paid within a period of time established by the department. A residential care apartment complex operated by the Wisconsin Veterans Home at King shall be exempt from the fee.

(4) RENEWAL. (a) The initial certification of a residential care apartment complex shall be effective for up to 12 months and renewals shall be effective for up to 36 months.

(b) Certification shall be renewed if the owner or operator continues to comply with the provisions of this chapter, submits an

application for renewal at least 30 days before the certification expires and pays the required certification fee. If an application for renewal is denied, the owner or operator shall be given written notice of the denial which shall include the reasons for denial and notice of opportunity to appeal the decision under s. DHS 89.59.

(c) The licensee shall provide, in a format approved by the department, information required by the department to assess the facility's compliance with s. 55.14, Stats., relating to involuntary administration of psychotropic medication to a tenant.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; am. Register, November, 1998, No. 515, eff. 12-1-98; CR 07-042: cr. (4) (c) Register October 2007 No. 622, eff. 11-1-07.

DHS 89.54 Reporting of changes. A certified residential care apartment complex operator shall report to the department any change which may affect its compliance with this chapter, including change in the residential care apartment complex ownership, administration, building or continued operation, 30 days prior to making the change. The department may require that the facility reapply for certification when any of these changes take place.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; am. Register, November, 1998, No. 515, eff. 12-1-98.

DHS 89.55 Monitoring. (1) The department shall conduct periodic inspections of residential care apartment complexes during the period of certification and may, without notice to the owner or operator, visit a residential care apartment complex at any time to determine if the facility continues to comply with this chapter. The owner or operator shall be able to verify compliance with this chapter and shall provide the department access to the residential care apartment complex and its staff, tenants and records.

(2) The department may require that the facility provide proof of building, fire, health, sanitation or safety inspection of the facility and premises to document the facility's compliance with this chapter and with other applicable statutes, ordinances, rules and regulations. Such an inspection shall be performed by a Wisconsin registered engineer or architect, a department of safety and professional services certified commercial building inspector or other appropriate professional as determined by the department.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; am. Register, November, 1998, No. 515, eff. 12-1-98; correction in (2) made under s. 13.92 (4) (b) 6., Stats., Register January 2012 No. 673.

DHS 89.56 Intermediate sanctions and penalties.

(1) NOTICE OF VIOLATION. The department shall issue a written notice of violation when it finds that a certified residential care apartment complex is in violation of this chapter. The notice shall explain the grounds for the notice of violation, the sanctions or penalties to be imposed, if any, and the process for appeal.

(2) PLAN OF CORRECTION. A residential care apartment complex shall submit a written plan of correction to the department within 30 days after the date of the notice of violation. The department may specify a time period of less than 30 days for submittal of the plan of correction when it determines that the violation may be harmful to the health, safety, welfare or rights of tenants.

(3) SANCTIONS. The department may order one or more of the following sanctions:

(a) That the facility stop violating the applicable provisions of this chapter.

(b) That the facility submit, implement and comply with a plan of correction for violations, subject to department review and approval. The department may require the plan of correction to be submitted and implemented within a time period specified by the department and may require modifications to the facility's proposed plan of correction.

(c) That the facility comply with a plan of correction developed and imposed by the department.

(d) That the facility stop admissions until the violations are corrected.

(e) That the facility provide or secure training for its service manager or other staff in areas specified by the department.

(f) That medical assistance or medical assistance waiver reimbursement for new admissions to the facility be denied until all violations are corrected.

(g) That payment be disallowed for services provided during the period of noncompliance.

(h) That a residential care apartment complex cease operations if it is without a valid certification.

(i) That the facility's certification be summarily suspended following procedures in ch. 227, Stats., when the department finds that public health, safety or welfare requires emergency action.

(4) PENALTIES. The department may directly assess a forfeiture of from \$10 to \$1,000 per violation per day for violations which it determines to be harmful to the health, safety, welfare or rights of tenants.

(5) DISCLOSURE. A certified residential care apartment complex shall make the results of the most recent department monitoring visit and of any complaint investigation or enforcement action within the current certification period available on request to tenants and prospective tenants and their families or representatives. A residential care apartment complex shall immediately notify all tenants and tenants' designated representatives, where appropriate, of any notice of summary suspension under sub. (3) (i) and the reasons for the summary suspension.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; am. Register, November, 1998, No. 515, eff. 12-1-98.

DHS 89.57 Revocation. **(1) REVOCATION.** The department may revoke a residential care apartment complex's certification whenever the department finds that the residential care apartment complex has failed to maintain compliance with one or more of the requirements set forth in this chapter. In the event of revocation, the department shall provide the residential care apartment complex with prior written notice of the proposed action, the reasons for the action and notice of opportunity for appeal under s. DHS 89.59.

(2) NOTIFICATION. A residential care apartment complex shall immediately notify all tenants and tenants' designated representatives, where appropriate, of any notice of revocation under sub. (1) and the reasons for the revocation.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; am. Register, November, 1998, No. 515, eff. 12-1-98.

DHS 89.58 Coercion and retaliation prohibited. No person may engage in any form of coercion to prevent a tenant, employee or service provider from filing a complaint about a residential care apartment complex or any form of retaliation against a tenant, employee or service provider for filing a complaint.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; am. Register, November, 1998, No. 515, eff. 12-1-98.

DHS 89.59 Appeals. **(1)** Any facility for which an application for certification is denied or not renewed, for which certifi-

cation is revoked or summarily suspended or which is subject to an order for sanctions or penalties may request a hearing on that decision under s. 227.42, Stats. The hearing on a summary suspension order shall be limited to whether the reason for the order continues.

(2) A request for a hearing shall be in writing and shall be filed with the department of administration's division of hearings and appeals within 10 days after the date of the notice under s. DHS 89.53 (2) (c) or (4) (b), 89.56 (1) or 89.57 (1) or within 10 days after the date of the order under s. DHS 89.56 (3). An appeal is filed on the date that it is received by the division of hearings and appeals.

Note: A request for a hearing should be submitted to the Division of Hearings and Appeals, P.O. Box 7875, Madison, Wisconsin 53707.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; am. Register, November, 1998, No. 515, eff. 12-1-98.

Subchapter VI — Approval of Partial Conversion of a Nursing Home or Community-Based Residential Facility

DHS 89.61 Submission of additional information.

An applicant for registration or certification seeking to convert a separate area of a nursing home or community-based residential facility to a residential care apartment complex shall submit all of the following information with the application:

(1) A description and floor plan or sketch demonstrating physical separation as required in s. DHS 89.22 (4) (b).

(2) A description of the programmatic separation required in s. DHS 89.22 (4) (c).

(3) The number of licensed nursing home beds which the applicant agrees to delicense.

Note: Section 50.034 (4), Stats., requires that a nursing home agree to reduce its licensed nursing home beds by the corresponding number of living units proposed for the conversion. The Wisconsin Veterans Home at King is exempt from this requirement.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; am. Register, November, 1998, No. 515, eff. 12-1-98.

DHS 89.62 Application review and approval. **(1)** The department shall review the additional information submitted under s. DHS 89.61 with the application and may conduct site visits to determine whether the facility meets the requirements for distinct part facilities under s. DHS 89.22 (4).

(2) If the requirements of this chapter are met, the department shall issue a statement of registration or certification to the applicant.

(3) If the requirements of this chapter are not met, the department shall issue a notice of denial to the applicant.

(4) The department shall issue the registration or certification or notice of denial within 70 days after receiving the additional information required under s. DHS 89.61 and completing any site visit. A notice of denial shall include reasons for the action and notice of opportunity for appeal under s. DHS 89.45 or 89.59.

(5) There shall be a fee for application review in an amount determined by the department.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97.