

**Division of Quality Assurance
Chapter 50 Recommendations for Change
By Category ***

	Chapter 50 citation/Change sought	Rationale for change	AB 842	House Health Care Bill
I. ENFORCEMENT				
1. (4)	<p>CBRF and Nursing Home Amend 50.03 (4) to give DQA the authority to consider whether a licensee continues to be fit and qualified after a license is granted. This would include:</p> <ul style="list-style-type: none"> • Statutory authority to consider whether any licensee convictions are substantially related to the operation of a nursing home. • Statutory authority to request from an operator information about its plans to ensure the health, safety, and welfare of residents when the department has reason to believe the facility is facing financial difficulties. • Require more than 6 months of financial solvency at initial licensure and require demonstrating continued financial solvency. • Require nursing homes that demonstrate a pattern of non-compliance or serious non-compliance show that they are fit and qualified to continue operation. 	<p>Current statute allows the Department to make a determination of "Fit and Qualified" only at the time of initial licensure. The ability of the licensee to meet these standards may change over time. DQA seeks the authority to request information from the licensee and make the determination of "Fit and Qualified" when there is a change in status such as compliance record, financial viability, etc.</p> <p>Recommend 12 months of financial solvency for nursing homes and less than 6 months for small CBRFs.</p>		

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2. (7)	<p>CBRF and Nursing Home</p> <p>Amend 50.03 (14) to require a facility to provide written notice at least 120 days before the facility is closing, to each resident and to each resident's guardian, if any, and to a member of the resident's family, unless the resident requests that notice to the family be withheld. Require the facility to provide written notice to the Department at least 120 days before the facility is closing.</p>	<p>The requirements in ch. 50 for facilities to notify residents, guardians and the Department that a facility is closing are convoluted. Facilities are required to provide 30 days notice to residents and their guardians prior to relocation. Facilities may not close the facility for up to 90 to 120 days, depending on the size of the facility. DQA seeks to clarify the notice requirements by requiring facilities to notify residents, guardians and the Department at least 120 days prior to the date of closure.</p> <p>The Department seeks to increase the notice time to allow adequate time to successfully relocate residents and to mitigate the effects of relocation stress.</p>		
3. (13)	<p>CBRF and Nursing Home</p> <p>Amend 50.05 (4) to change the time that the court may extend the period of receivership from 30 to 120 days.</p>	<p>Often it takes several months to close a facility and relocate residents. This will eliminate the need for DHS and DOJ to prepare for and request a monthly extension of the receivership from the court.</p>		
4. (14)	<p>CBRF and Nursing Home</p> <p>Amend 50.05 (15) (b) to enable DHS or the courts to hold owners liable for expenses of receivership if the receivership is the result of a conviction related to the care and treatment of the residents.</p>	<p>DHS will be able to recover costs associated with receivership and placement of affected residents.</p>		
5. (5)	<p>Nursing Home</p> <p>Amend 50.03 (5) to give the Department the authority to consider substantial or repeated violations of applicable federal regulations in determining whether to continue licensure, to revoke or suspend the license.</p>	<p>Currently the Department has the authority to suspend or revoke a license when it finds that the nursing home has substantially failed to comply with state rules. The Department would like to amend this provision to consider violations of applicable federal law or regulation when determining whether to suspend or revoke a license. Wisconsin relies heavily on federal citing. DQA citing policy only requires citing State violations that result in actual harm or have a strong potential for harm or that have</p>	X	

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		no federal counterpart. Federal procedure mandate States to cite all violations of federal regulations.		
6. (8)	Nursing Home Amend 50.04(4) (a) 2. b. to allow the Department to not issue a violation if the nursing home has made every reasonable effort to prevent the violation from occurring, but the violation occurred and the nursing home has corrected the violation.	Current statute requires the Department to issue a citation when a violation occurs even though the facility took all reasonable efforts to prevent the violation from occurring and corrected the violation. This is the situation with many of the incidents nursing homes are required to report to the Department. The Department investigates these situations and most often the facility receives a violation. Federal citing policy does not require the state agency to cite a violation. Providers find Wisconsin statute grossly unfair. Legislation proposed over a year ago has the support of the provider community, advocates and the Department.		
7. (9)	Nursing Home Amend 50.04 (4) (d) to increase the Department's ability to suspend admissions to a nursing home when a nursing home failed to correct a violation.	Similar to federal law, Wisconsin statute allows the Department to suspend new admissions to a nursing home when the nursing home fails to correct a serious violation. However, since the law was enacted the threshold to implement the intermediate remedy is so high that it has been used very sparingly by the Department. DQA seeks to amend the language to be similar to the federal sanction so that it can be used when a provider fails to correct a serious violation. This remedy is quite effective in that providers work hard to correct the problems quickly so they may accept new admissions to the facility.		
8. (1)	Nursing Home Amend 50.04 (6) to expand the criteria for issuance of a conditional license to include a continuing violation of federal law that constitutes immediate jeopardy, high risk of death, substantial harm, or actual harm not involving immediate jeopardy.	Currently the Department has the authority to issue a conditional license when it finds that the nursing home has substantially failed to comply with applicable state rules. The Department would like to amend this provision to consider violations of applicable federal law or regulation when determining	X	

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		whether to issue a conditional license. Wisconsin relies heavily on federal citing. DQA citing policy only requires citing State violations that result in actual harm or have a strong potential for harm or that have no federal counterpart. Federal procedure mandate States to cite all violations of federal regulations.		
9.	Nursing Home Amend 50.04 (6) (d) to eliminate the four day informal case conference provision for the conditional license.	This will streamline the process. Facilities still have the ability to appeal the issuance of a conditional license.		
10.	Nursing Home Notify the Department of the sale or exchange of the majority of shares of stock.	This will require facilities to inform the Department of major stock sales or exchanges to ensure that the Department is fully aware of who the owners are in order to hold the owners responsible for the care provided to residents.		
11. (12)	All provider types Add language to require a provider to report to the Department a ch.128, Stats. (creditor's action) or a bankruptcy under Chapter 7, 11 or 13, U.S. Code.	In recent years more facilities are experiencing declining financial conditions. Poor care is often a result of the financial stress on an entity. This provision would allow DHS to be aware of the potential for poor care and closure and also may trigger a Fit and Qualified review.		
12.	Nursing Home 50.04 (4) (e) and (5) (e) Hospital 50.389 (3) (4) and 50.39 (5) (b) Rural Medical Ctr. 50.55 (1) (d) and (e) Hospice 50.98 (5) Amend the above provisions to create a unified deadline for appeals of enforcement action. Increase the number of days that facilities have to file an appeal from the current 10 days to 60 days.	This provision was removed from the 09-11 budget due to a non fiscal impact. There is general agreement on extending the appeal dates to benefit DHS and the provider community.	X	
13. (6)	Adult Family Home Amend 50.03(5g) (a) through (g) to make adult family homes eligible for the same sanctions and penalties currently available for CBRFs. These sanctions and penalties include; to stop operating as an AFH if the entity is without a license to operate, to submit a plan	DQA has documented significant harm that has occurred to residents in adult family homes. Many of these residents have a higher acuity level than residents who live in CBRFs. Currently DQA has no intermediate sanctions to employ to address these serious violations. DQA needs a wide variety of		

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	of correction, to implement the plan of correction, to comply with an imposed plan of correction, to cease admission of new residents until all violations are corrected, to provide training in specific areas to the licensee's staff, pay a forfeiture of not less than \$10 nor more than \$1,000 for each violation, with each day of violation and to suspend or revoke the license to operate a AFH.	intermediate sanctions to be able to ensure residents receive adequate care and services. In addition, this would add consistency to the enforcement of all assisted living regulations for similar violations and poor outcomes to residents in adult family homes.		
II. TRANSPARENCY				
1.	Nursing Homes Facility must post in the lobby the identity of each member of the governing body, officer, director, partner, trustee, managing employee of the facility and any additional disclosable party. Additional disclosable party is any person or entity who exercises operational, financial or managerial control over the facility or provides financial or management services to the facility. The information to be posted includes the name, title and period of service of each person to the organizational structure and a description of their relationship to the person or entity to the facility.	Consistent with the provisions in the proposed U. S. House of Representatives Health Care Reform Bill. Reevaluate after the passage of the national health care reform bill to verify that the provision was adopted in the current form.		X
2.	Nursing Homes. Nursing home must make available to any individual all survey reports within the past 3 preceding years. The facility must post a notice of the availability of such reports in a prominent location of the facility.	Consistent with the provisions in the proposed U. S. House of Representatives Health Care Reform Bill. Reevaluate after the passage of the national health care reform bill to verify that the provision was adopted in the current form.		X

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III. CAREGIVER LAW				
1. (16)	Criminal Background Checks Amend 50.065 (1) (ag) 1. to clarify that regular, direct contact between an employee and a client is contact that is scheduled, planned, expected or otherwise periodic, as this contact is defined in DHS 12, the clarifying administrative rule.	The Department has received questions regarding the definition of regular, direct contact. It will be very helpful to clarify the definition in statute.		
2. (17)	Criminal Background Checks Amend 50.065 (1) (c) to define non-profit corporate guardian agencies as an entity required to complete criminal background checks on their employees.	The proposed rule, DHS 85, would require non-profit corporate guardian agencies to conduct a criminal background check on employees. The Department's Office of Legal Counsel recommends including corporate guardian agencies in statute to give the Department authority to require agencies to conduct criminal background checks.		
3. (20)	Criminal Background Checks Amend 50.065(4m)(c) to reduce the time period allowed to complete the initial background checks for employees and persons residing in a residential facility from 60 days to 20 days.	Since 95% of providers' complete caregiver background checks online and receive the results in a matter of minutes, it is no longer necessary to allow such a long period of time for completion.		
4.	Criminal Background Checks Include in Chapter 50 a provision that adds to the Wisconsin Caregiver Registry persons licensed under DRL statutes and rules who have findings of caregiver misconduct.	Currently, The Caregiver Registry includes only non-licensed persons such as nurse aides and other noncredentialed staff (caregivers, housekeepers, personal care workers, etc). The Registry should include licensed persons such as registered nurses, licensed practical nurses and physicians, who have a governmental finding of misconduct.		
5.	Criminal Background Checks Change the language that states "The department shall obtain...information maintained by the department of regulation and licensing regarding the status of the person's credentials..." to require that the	Currently, the caregiver background check information obtained from the Department of Regulation and Licensing includes the status of a regulated person's license, but does not include the substantive reason for any limitation on the person's		

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	Department of Regulation and Licensing's background check report include substantive information about whether a licensed person has a "finding" that meets the definition of caregiver misconduct, rather than only a statement relating to the status of the person's license.	license.		
IV. ACCEPTANCE OF OUTSIDE ACCREDITATION				
1. (23)	Home Health Agency Amend 50.49 to allow the Department to accept evidence that a home health agency has been inspected by and is in compliance with the home health agency requirement of a CMS approved accrediting organization.	The Department does not have the authority to accept JCAHO accreditation instead of inspecting or investigating a home health agency applicant before issue in it a license. This will enable the Department to address higher priority work relating to agencies that are already certified.		
2. (24)	Hospice licensure. Amend 50.92(4) (b) by substituting "a CMS-approved accrediting organization" for "the joint commission for accreditation of health care organizations".	Applicants for hospice licensure frequently apply for federal certification at the same time. DQA conducts the license and certification inspection concurrently. CMS has advised state survey agencies that, due to budget constraints, certification of new providers has lower priority than complaint investigations, recertification, and other core work for existing Medicare providers, and should be done only after higher priority functions are accomplished. The Department has authority under sec. 50.92(4)(b), Stats. to accept evidence that a hospice has been inspected by and is in compliance with the hospice requirements of an approved accrediting organization instead of inspecting or investigating the hospice before issuing it a license. CMS accepts accreditation by JCAHO and other CMS-approved accrediting organizations to deem both hospices and home health agencies to be in compliance with CMS certification standards.		

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V. FEES				
1. (2)	Nursing Home and Hospital Amend 50.02 (2) (b) 2. and 50.36 (2) (b) to use the plan review fee structure used by the Department of Commerce.	The current fee for nursing home and hospital plan review is a fixed rate that was established in 1995. By adopting the DOC fee structure, the review fee will be adjusted periodically to more accurately reflect the cost for the service and the State will be using a uniform standard.		
2.	Nurse Aide Training Program Revise 146.40 (Instructional programs for nurse's aides, reporting client abuse) to allow for a \$500 fee to be charged for an initial application to operate a nurse aide training program and a \$750 renewal fee for the required review of each approved nurse aide training program every 2 years. The proposal will generate revenue to replace the GPR share of the nurse consultant that reviews, approves and administers the nurse aide training programs. Federal funds cover the remaining cost of this position. Phase in the amount starting with \$250 for the first year.	The nurse aide training program application review process is time sensitive and time consuming. Currently, there is no fee associated with submitting a nurse aide training program application but there is cost to the Department for staff consultation and review of the application as well as travel costs for required onsite reviews prior to and post approval. These costs must be absorbed by the Department.		
3.	CBRF Revise chapter 50 to allow the Department to charge a fee for the approval of an assisted living administrator training course conducted by the Department or by an entity under contract with the Department.	Based on a review conducted by OLC, the Department does not have the statutory authority to charge for approving the assisted living administrator training course required under Wis. Admin. Code, DHS 83.15 (1) (c) and (d).		
4.	Adult Family Home Amend ch, 50. to allow the Department to charge a \$10 per day late fee for failing to submit the biennial fee by the date established by the department. Similar to the penalty imposed on CBRFs at 50.037	This would add consistency to the enforcement of all assisted living facilities for similar violations.		

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	(2) (c).			
5.	Residential Care Apartment Complex Allow the department to charge a fee for Registered RCAC.	Currently there are 99 RCACs registered with the Department. Chapter 50 only allows fees to be collected for certified RCACs and not registered RCACs. Even though the department does not conduct an on-site inspection for initial registration and does not conduct on-going surveys, the department spends significant administrative costs to manage these facilities and also conducts on-site inspections for complaints. The number of complaints continues to increase in RCACs. Revise Chapter 50 to allow for an initial registration fee of \$100 and a \$100 biennial registration fee.		
VI. UNNECESSARY REPORTING/TRAINING				
1. (3)	CBRF and Nursing Home. Delete 50.02 (4). This provision requires the Department to submit quarterly and annual reports to BOALTC regarding enforcement action, consultation, staff training, complaint investigations and rules for short term admission to nursing homes.	Staff from the BOALTC has indicated to DQA that the quarterly and annual reports they receive from DQA are no longer useful.		
2. (21)	Criminal Background Checks Amend 50.065(5g) to eliminate an annual report to the legislature specifying the number of persons to request rehabilitation review, the number of persons who successfully demonstrated that they have been rehabilitated and the reasons for the success or failure of the review.	The Department last filed this report in 2006, and the legislature has not indicated further interest in these statistics. In addition, the Department has two rehabilitation review coordinators who are readily available to answer questions about rehabilitation review results.		
3. (22)	Criminal Background Checks Amend 50.065(7) (c) to eliminate the requirement for the Department to conduct periodic training sessions to cover caregiver law requirements.	The Department conducts regular training sessions on individual and group basis on daily, weekly, monthly, and even longer interval bases. This provision is unnecessary in that it calls for "tracking" training sessions the Department has incorporated into the Department's regular workload. DQA provides all caregiver law resources, forms and		

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		training materials online at http://dhs.wisconsin.gov/caregiver/index.htm		
4.	Nursing Homes Delete 50.04(5) (fr). This provision requires the Department to submit a report on the amount of forfeiture, amount paid, assessments less than \$2,500 for any Class A violation.	The purpose for which the report was established has been met. The mandated report on Class A violations was implemented in 1998 to assess the effect of increased forfeiture amounts. The change in 1998 forfeitures is no longer a determining factor in annual changes in Class A violations; therefore, further reporting is not needed. This provision was removed from the 09-11 budget due to a non fiscal impact.		
VII. TECHNICAL				
1. (1)	CBRF Amend 50.01(1g)(h) to include in the list of arrangements that are not considered a CBRF, a private residence which is the home of adults and who independently arrange for and receive care, treatment or services for themselves from a person or agency which has no authority to exercise direction or control over the residence.	Currently there are a number of situations in which adults own or lease a residence and arrange for care and treatment from a person or agency. The Department seeks to clarify that these arrangements do not meet the definition of a CBRF. The Department attempted to clarify this during the recent revisions to DHS 83, CBRF administrative rule. However, at that time the Legislative Council Rules Clearinghouse advised the Department to remove the clarifying language from the proposed rule as it exceeded statute.		
2. (15)	Criminal Background Checks Move s. 146.40 (4r) to s. 50.065, Stats., as a new subsection.	Currently, this subsection addresses receiving complaints, conducting investigations, determining whether a finding of caregiver misconduct should be substantiated, and conducting any attendant appeal, but under the wording of this subsection, it's questionable whether the subsection relates only to nurse aides working in federally-certified nursing		

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		<p>homes and federally-certified facilities for the developmentally disabled. Since the state law's final effective date of October of 1998, the Wisconsin caregiver law has included virtually all caregivers who are licensed by or who work in Wisconsin caregiving entities as being persons or entities covered by the caregiver law. That is, the caregiver law is no longer limited to covering only nurse aides working only in federally-certified nursing homes.</p> <p>Therefore, since the "caregiver law" is codified in ss. 50.065 and 48.685, Stats., and s. 146.40 continues to address primarily nurse aide training and testing requirements, the Department suggests that the background check and complaint investigation provisions be consolidated in chapters 50 and 48.</p>		
3. (18)	Criminal Background Checks Amend 50.065 (1) (e) to include the title of the statute that matches each crime number.	Many persons do not understand or have experience dealing with Wisconsin's statutory numbering scheme and do not know how to find out whether a specific crime number they see on a background check investigation is affected by Wisconsin's caregiver law.		
4. (19)	Criminal Background Checks Amend 50.065(2) (am) & b to indicate that the mechanism and process for all background checks will be defined by the Department by rule.	Given the advent of readily available, on-line background check information, all of the entities covered by the background check law have more avenues for conducting almost immediate background checks, and the Department recommends that the statutes be changed to reflect and adapt to the efficiencies of changing technology.		

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5.	<p>Nursing Homes Bed Allocation</p> <p>Repeal the restrictions on nursing home bed transfers, which permit a nursing home to transfer a licensed bed to another nursing home only if the other nursing home is located in the same planning area and shares the same ownership. Under this item, a nursing home would be permitted to transfer a licensed bed to any nursing home in the state, regardless of location or ownership. All transfers would still be subject to DHS review and approval.</p>	<p>This provision was removed from the 09-11 budget due to a non fiscal impact.</p> <p>This is actually a change in Chapter 150</p>		
6.	<p>Include federal terminology, including definitions, to describe federal enforcement action. Cross reference 42 CFR so that if federal law changes, ch. 50 will not need to be updated.</p>	<p>The definitions of federal terms are needed to implement the use of federal enforcement to support state enforcement.</p>	X	
7.	<p>Rural Medical Center. Delete 50.50 through 50.57 to eliminate the Rural Medical Center provider type from the statute. Since the creation of ch. DHS 127, in 1997, no entity has been licensed as a rural medical center.</p>	<p>Since the creation of ch. DHS 127, in 1997, no entity has been licensed as a rural medical center. DQA would like to repeal DHS 127. Chapter 50 requires the department to establish rules, set fees, and regulate persons choosing to establish rural medical centers. The department cannot repeal DHS 127 unless the legislature repeals the requirement for the department to establish rules and regulate rural medical centers and remove the department's authority to regulate rural medical centers, or disallow the existence of rural medical centers.</p> <p>The Rural Wisconsin Health Cooperative acknowledges that what seemed like a good idea is too complicated to practice. The Rural Health Cooperative has not been encouraging member to participate in this provider type.</p>		

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8.	Reorganize Chapter 50 to create a separate subchapter for each provider type and a separate subchapter for provisions that apply to all provider types.	Chapter 50 is unorganized, cumbersome and difficult to follow. Provisions for Nursing Homes, Community-Based Residential Facilities, Adult Family Homes and Residential Care Apartment Complexes are interspersed in Subchapter I making it difficult for the reader to determine which provisions apply to which entity. This same problem occurs in Subchapter II where Home Health standards are interspersed with Hospital provisions. Several provisions in Chapter 50 apply to all providers but are not grouped as such making it difficult for the reader to determine which provisions apply to which providers.		
9.	Delete 50.035 (1). This provision states that "The department may not prohibit any nursing home from distributing over the counter drugs from bulk supply."	This type of specific requirement should be addressed through administrative code, not statute. With the use of administrative code the Department can more readily address resident safety and be flexible to address unique situations.		
VIII. BOALTC RECOMMENDATIONS				
1.	The introductory language of § 50.09 should be amended to read: (1) RESIDENTS' RIGHTS. Every resident in a nursing home, or community-based residential facility, residential care apartment complex or adult family home shall, except as provided in sub. (5), have the right to:	This change would afford equal protection under the law to all residents or tenants of DHS licensed and regulated facilities.		

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2.	The statute should explicitly define the system of sanctions available to the department to address violations by residential care apartment complexes. Currently the law directs the department to address this in rule.			
3.	The language of sub. (4) of § 50.-09 should be amended to read: (4) Each facility shall make available a <u>complete</u> copy of the rights and responsibilities established under this section and the facility's rules to each resident and each resident's legal representative, if any, <u>in a language and format understandable to the individual</u> , at or prior to the time of admission to the facility, to each person who is a resident of the facility and to each member of the facility's staff. The <u>entire complement of rights as specified in sub. (1)</u> , responsibilities and rules shall be posted in a prominent place in each facility. Each facility shall prepare a written plan and provide appropriate staff training to implement each resident's rights established under this section.	This change would emphasize to the resident or potential resident and her or his family the scope of the rights guaranteed under the state long term care regulatory system.		
4.	Statute should be amended to more directly and emphatically address situations where residents are transferred to acute care facilities with the apparent intent to refuse readmission following treatment. Language such as the following could be inserted to achieve this end: <u>50.07(1)(et) Intentionally discriminate against a resident by refusing to readmit the resident to the facility following transfer to an acute care facility when there has been no documented change in the resident's required level of care or services.</u>	This change would place this form of intentional discrimination in the same section as that heretofore reserved for persons discriminating against persons who report violations to regulatory authorities or to the BOALTC. This recognition of a higher level of significance of the offense is necessary to address the seriousness of the effect it has on residents.		

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IX. WALA RECOMMENDATION				
1.	<p>Notice of death in a CBRF. 50.037(5) (b) reads: "No later than 24 hours after the death of a resident of a community-based residential facility, the community-based residential facility shall report the death to the department if one of the following applies..."</p> <p>Change the 24 hour notice requirement to "No later than the next business day..."</p>	Change the 24 hour notice requirement to "No later than the next business day..." That way if this took place on Saturday, the report is due on Monday versus Sunday.		

Legend

Division of Quality Assurance Agencies

AO – Administrator’s Office

BAL – Bureau of Assisted Living –

- Oversees all of Wisconsin assisted living providers.
- Coordinates Enforcement actions against assisted living providers.

BHS – Bureau of Health Services –

- Oversees hospitals, home health agencies, mental health and AODA clinics, hospices and federal-certified providers.

BNHRC – Bureau of Nursing Home Resident Care –

- Coordinates federal nursing home enforcement remedies
- Oversees on-site regulation of:
 - Nursing homes; and
 - Facilities serving persons with developmental disabilities.

BTLE – Bureau of Technology, Licensing and Education – Coordinates

- Various administrative licensing functions for nursing homes, hospitals, home health agencies and hospice agencies.
- Enforcement actions for nursing homes and hospices.
- Training for staff and external organizations.
- Information technology management and support for DQA staff.
- Waivers and variances requests for non assisted living providers.
- Federal database (MDS and OASIS) management.
- Maintains and updates DQA Internet sites.

OCQ – Office of Caregiver Quality

- Reviews and approves/denies applications to establish nurse aide training and feeding assistant programs.
- Manages allegations and investigations of caregiver misconduct reports.
- Conducts background checks on state approved entities.
- Initiates referrals to other DQA Bureaus/state/local/federal agencies with oversight jurisdiction.

Office of Legal Counsel

OLC – Office of Legal Counsel