

1987 Assembly Bill 828

Date of enactment: **March 17, 1988**  
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## 1987 Wisconsin Act 161

AN ACT to renumber 50.01 (1); to amend 46.03 (22) (a), 50.01 (3) (a), 50.02 (1), 55.05 (5) (a), 59.97 (15) (intro.) and (bm), 60.63 (intro.) and (3), 62.23 (7) (i) (intro.) and 2m and 101.01 (2) (f) and (g); and to create 50.01 (1), 50.01 (1g) (e), 50.02 (2) (am), 50.032 and 940.29 (9) of the statutes, relating to adult family homes, granting rule-making authority and providing penalties.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. 46.03 (22) (a) of the statutes is amended to read:

46.03 (22) (a) "Community living arrangement" means any of the following facilities licensed or operated, or permitted under the authority of the department: child welfare agencies under s. 48.60, group homes for children under s. 48.02 (7) and community-based residential facilities under s. 50.01; but does not include adult family homes, as defined in s. 50.01, day care centers, nursing homes, general hospitals, special hospitals, prisons and jails.

SECTION 2d. 50.01 (1) of the statutes is renumbered 50.01 (1g).

SECTION 2h. 50.01 (1) of the statutes is created to read:

50.01 (1) "Adult family home" means a private residence to which all of the following apply:

(a) Care and maintenance above the level of room and board but not including nursing care are provided in the private residence by the care provider whose primary domicile is this residence for 3 or 4 adults, or more adults if all of the adults are siblings, each of whom has a developmental disability, as defined in s. 51.01 (5), or, if the residence is licensed as a foster home, care and maintenance are provided to children, the combined total of adults and children so served being no more than 4, or more adults or children if all of the adults or all of the children are siblings.

(b) The private residence was licensed under s. 48.62 as a foster home for the care of the adults specified in par. (a) at least 12 months before any of the adults attained 18 years of age.

SECTION 2p. 50.01 (1g) (e) of the statutes is created to read:

50.01 (1g) (e) An adult family home.

SECTION 2t. 50.01 (3) (a) of the statutes is amended to read:

50.01 (3) (a) A place which provides 24-hour services including board and room to 3 or more unrelated residents who because of their mental or physical condition require nursing care or personal care in excess of 7 hours a week, unless the facility has been designated as a community-based residential facility under sub. (4) (1g).

SECTION 4. 50.02 (1) of the statutes is amended to read:

50.02 (1) DEPARTMENTAL AUTHORITY. The department ~~shall have authority to~~ may provide uniform, statewide licensing, inspection and regulation of community-based residential facilities and nursing homes as provided in this subchapter. The department may certify, inspect and otherwise regulate adult family homes, as specified under s. 50.032. Nothing in this subchapter may be construed to limit the authority of the department of industry, labor and human relations or of municipalities to set standards of building safety and hygiene, but any local orders of municipalities shall be consistent with uniform, statewide regulation of community-based residential facilities. The department may not prohibit any nursing home from

distributing over-the-counter drugs from bulk supply. The department may consult with nursing homes as needed and may provide specialized consultations when requested by any nursing home, separate from its inspection process, to scrutinize any particular questions the nursing home raises. The department shall, by rule, define "specialized consultation".

SECTION 5. 50.02 (2) (am) of the statutes is created to read:

50.02 (2) (am) The department shall promulgate rules with respect to adult family homes defining the term "permanent basis" for the purposes of s. 50.032 (2m) and establishing minimum requirements for certification, certification application procedures and forms, standards for operation and procedures for monitoring, inspection, decertification and appeal of decertification. The rules shall be designed to protect and promote the health, safety and welfare of the disabled adults receiving care and maintenance in certified adult family homes.

SECTION 6. 50.032 of the statutes is created to read:

**50.032 Adult family homes.** (1) CERTIFICATION. (a) No person may operate an adult family home unless the adult family home is certified under this section.

(b) A county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437 may certify an adult family home that is located in the county. The department may certify an adult family home in a county that elects not to certify adult family homes.

(2) REGULATION. Standards for operation of certified adult family homes and procedures for application for certification, monitoring, inspection, decertification and appeal of decertification shall be under rules promulgated by the department under s. 50.02 (2) (am). Certification shall be for a term not to exceed 12 months from the date of issuance and is not transferable.

(2m) EXCEPTION. Notwithstanding s. 50.01 (1g) (b), if an individual served in a disabled adult family home attains 18 years of age and leaves the disabled adult family home on a permanent basis, as defined in rules promulgated by the department, he or she may be replaced for receipt of service by an individual who has a developmental disability, as defined in s. 51.01 (5).

(3) INVESTIGATION OF ALLEGED VIOLATIONS. If the department or a certifying county department under sub. (1) (b) is advised or has reason to believe that any person is violating this section or the rules promulgated under s. 50.02 (2) (am), the department or the certifying county department shall make an investigation to determine the facts. For the purposes of this investigation, the department or the certifying county department may inspect the premises where the violation is alleged to occur. If the department or the certifying county department finds that the requirements of this section and of rules under s. 50.02 (2) (am) are met, the department or the certifying county depart-

ment may certify the premises under this section. If the department or the certifying county department finds that a person is violating this section or the rules under s. 50.02 (2) (am), the department or the certifying county department may institute an action under sub. (5) or (6).

(4) DECERTIFICATION. A certified adult family home may be decertified because of the substantial and intentional violation of this section or of rules promulgated by the department under s. 50.02 (2) (am) or because of failure to meet the minimum requirements for certification. The operator of the certified adult family home shall be given written notice of any decertification and the grounds for the decertification. Any adult family home certification applicant or operator of a certified adult family home may, if aggrieved by the failure to issue or renew the certification or by decertification, appeal under the procedures specified by the department by rule under s. 50.02 (2) (am).

(5) INJUNCTION. The department or a certifying county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437 may commence an action in circuit court to enjoin the operation of an adult family home that is not certified under sub. (1) or that is certified and has repeatedly used methods of operation in substantial violation of the rules promulgated under s. 50.02 (2) (am) or that endanger the health, safety or welfare of any disabled adult receiving care and maintenance in an adult family home.

(6) PENALTIES. Any person who violates this section or rules promulgated under s. 50.02 (2) (am) may be fined for not more than \$500 or imprisoned for not more than one year in the county jail or both.

SECTION 7. 55.05 (5) (a) of the statutes is amended to read:

55.05 (5) (a) A person who is legally and actually capable of consenting may consent to enter a group home, foster home or, community-based residential facility, as defined under s. 50.01 (4) (1g), adult family home, as defined in s. 50.01 (1), or nursing home without protective placement under s. 55.06.

SECTION 8. 59.97 (15) (intro.) and (bm) of the statutes are amended to read:

59.97 (15) (title) COMMUNITY AND OTHER LIVING ARRANGEMENTS. (intro.) For purposes of this section, the location of a community living arrangement, as defined in s. 46.03 (22), a foster family home or an adult family home, as defined in s. 50.01 (1), in any city, village or town, shall be subject to the following criteria:

(bm) A foster family home which is the primary domicile of a foster parent and which is licensed under s. 48.62 or an adult family home certified under s. 50.032 (1) (b) shall be a permitted use in all residential areas and is not subject to pars. (a) and (b) except that foster homes operated by corporations, child welfare agencies, churches, associations or public agencies shall be subject to pars. (a) and (b).

SECTION 9. 60.63 (intro.) and (3) of the statutes are amended to read:

60.63 (title) **Community and other living arrangements.** (intro.) For purposes of s. 60.61, the location of a community living arrangement, as defined in s. 46.03 (22), a foster family home or an adult family home, as defined in s. 50.01 (1), in any town shall be subject to the following criteria:

(3) A foster family home which is the primary domicile of a foster parent and which is licensed under s. 48.62 or an adult family home certified under s. 50.032 (1) (b) shall be a permitted use in all residential areas and is not subject to subs. (1) and (2) except that foster homes operated by corporations, child welfare agencies, churches, associations or public agencies shall be subject to subs. (1) and (2).

SECTION 10. 62.23 (7) (i) (intro.) and 2m of the statutes are amended to read:

62.23 (7) (i) (title) *Community and other living arrangements.* (intro.) For purposes of this section, the location of a community living arrangement, as defined in s. 46.03 (22), a foster family home or adult family home, as defined in s. 50.01 (1), in any city shall be subject to the following criteria:

2m. A foster family home which is the primary domicile of a foster parent and which is licensed under s. 48.62 or an adult family home certified under s. 50.032 (1) (b) shall be a permitted use in all residential areas and is not subject to subs. 1 and 2 except that foster homes operated by corporations, child welfare agencies, churches, associations or public agencies shall be subject to subs. 1 and 2.

SECTION 11. 101.01 (2) (f) and (g) of the statutes are amended to read:

101.01 (2) (f) "Place of employment" includes every place, whether indoors or out or underground and the premises appurtenant thereto where either temporarily or permanently any industry, trade or business is carried on, or where any process or operation, directly or indirectly related to any industry, trade or business, is carried on, and where any person is, directly or indirectly, employed by another for direct or indirect gain or profit, but does not include any place where persons are employed in private domestic service which does not involve the use of mechanical power or in farming. "Farming" includes those activities specified in s. 102.04 (3), and also includes the transportation of farm products, supplies or equipment directly to the farm by the operator of said farm or employes for use thereon, if such activities are directly or indirectly for the purpose of producing commodities for market, or as an accessory to such production. When used with relation to building codes, "place of employment" does not include a an adult family home certified under s. 50.032 (1) (b) or, except for the purposes of s. 101.11, a previously constructed building used as a community-based residential facility, as defined in s. 50.01 (4) (1g), which serves 20 or fewer unrelated residents, except for the purposes of s. 101.11.

(g) "Public building" means any structure, including exterior parts of such building, such as a porch, exterior platform or steps providing means of ingress or egress, used in whole or in part as a place of resort, assemblage, lodging, trade, traffic, occupancy, or use by the public or by 3 or more tenants. When used in relation to building codes, "public building" does not include a previously constructed building used as a community-based residential facility as defined in s. 50.01 (4) (1g) which serves 20 or fewer unrelated residents or an adult family home certified under s. 50.032 (1) (b).

SECTION 12. 940.29 (9) of the statutes is created to read:

940.29 (9) An adult family home, as defined in s. 50.01 (1).

SECTION 13. **Nonstatutory provisions; health and social services.** (1) **ADULT FAMILY HOME RULES.** (a) The department of health and social services shall submit in proposed form the rules required under section 50.02 (2) (am) of the statutes, as created by this act, to the legislative council staff for review under section 227.15 (1) of the statutes no later than September 1, 1988.

(b) Using the procedure under section 227.24 of the statutes, the department of health and social services

shall promulgate rules required under section 50.02 (2) (am) of the statutes, as created by this act, no later than the first day of the 2nd month after the effective date of this paragraph, for the period prior to the effective date of the rules submitted under paragraph (a). Notwithstanding section 227.24 (1) and (3) of the statutes, the department is not required to make a finding of emergency. Notwithstanding section 227.24 (1) (c) of the statutes, a rule promulgated under this paragraph remains in effect until January 1, 1989, or until the corresponding rule submitted under paragraph (a) goes into effect, whichever is earlier.

(2) **REPORT ON CHILDREN WITH DISABILITIES IN FOSTER HOMES.** By December 31, 1988, the department of health and social services shall submit to the joint committee on finance and to the chief clerk of each house of the legislature, for distribution to standing committees with jurisdiction over health matters, a report on problems and possible solutions to problems that persons in this state encounter in maintaining or obtaining housing and reimbursement for residential services for children with disabilities in foster homes upon the children attaining 18 years of age.

SECTION 13m. **Cross-reference changes.** In the sections of the statutes listed in Column A, the cross-references shown in Column B are changed to the cross-references shown in Column C:

A	B	C
Statute Sections	Old Cross-References	New Cross-References
46.036 (5m)(a), as created by 1987 Wis. Act 27	50.01 (1)	50.01 (1g)
46.275 (5)(b) 5	50.01 (1)	50.01 (1g)
51.62 (1) (b)	50.01 (1)	50.01 (1g)
55.05 (5)(b) 1	50.01 (1)	50.01 (1g)
101.11 (3)	50.01 (1)	50.01 (1g)
101.123 (1)(b)	50.01 (1)	50.01 (1g)
101.127	50.01 (1)	50.01 (1g)
140.85 (1)	50.01 (1)	50.01 (1g)
150.01 (8)	50.01 (1)	50.01 (1g)
154.01 (4)	50.01 (1)	50.01 (1g)
940.29 (8)	50.01 (1)	50.01 (1g)

SECTION 14. **Effective dates.** This act takes effect on the first day of the 2nd month after publication, except as follows:

(1) The treatment of section 50.02 (2) (am) of the statutes and SECTION 13 of this act take effect on the day after publication.