

## Chapter DHS 88

### LICENSED ADULT FAMILY HOMES

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**Note:** Chapter HSS 88 was created as an emergency rule effective June 1, 1995. Chapter HSS 88 was renumbered Chapter HFS 88 under s. 13.93 (2m) (b) 1., Stats. and corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., [Register, December, 1999, No. 528](#). Chapter HFS 88 was renumbered to chapter DHS 88 under s. 13.92 (4) (b) 1., Stats., and corrections made under s. 13.92 (4) (b) 7., Stats., [Register November 2008 No. 635](#).

#### DHS 88.01 Authority, purpose and scope.

**(1) AUTHORITY AND PURPOSE.** This chapter is promulgated under the authority of ss. [50.02 \(2\) \(am\) 2.](#) and [50.033 \(2\)](#), Stats., to establish licensing standards for the operation of adult family homes in order to protect and promote the health, safety and welfare of persons residing in and receiving care and maintenance in these homes.

**(2) SCOPE.** (a) *Applicability.* This chapter applies to the department, county licensing agencies, adult family home license applicants and licensees, and service providers.

(b) *Exception to a requirement.* The licensing agency may grant an exception to any requirement in this chapter except a resident right under s. [DHS 88.10](#) if the licensee requests the exception in writing on a form provided by the department and presents a convincing argument that the proposed exception will not jeopardize the health, safety or welfare of residents or violate the rights of residents. The licensing agency shall respond in writing to the request within 45 days after receiving it. An exception may be granted only when it would not adversely affect the ability of the licensee to meet the residents' needs and if the exception will not jeopardize the health, safety or welfare of residents or violate the rights of residents. The licensing agency may impose conditions or time limitations on an exception. Violation of a condition under which the exception is granted constitutes a violation of this chapter.

**Note:** For copies of the form for requesting an exception to a requirement, contact the licensing agency or write or phone the appropriate regional office of the Department's Division of Disability and Elder Services. See Appendix A for the addresses and phone numbers of those offices.

**History:** Cr. [Register, January, 1996, No. 482](#), eff. 2-1-96.

#### DHS 88.02 Definitions. In this chapter:

**(1)** "Abuse" means conduct which is not accidental and which causes or could reasonably be expected to cause harm to a resident, and which may be physical abuse, mental abuse or material abuse.

**(2)** "Accessible" means the absence of barriers that would prevent a person who is semiambulatory or nonambulatory or has a functional limitation caused by impairment of sight, hearing, coordination or perception from entering, leaving or functioning within an adult family home without physical help.

**(3)** "Activities of daily living" means:

(a) Activities relating to the performance of self-care and engaging in leisure or recreational activities. "Self-care" includes dressing, eating, bathing, grooming, toileting, mobility, object manipulation, ambulation and rest.

(b) Activities relating to home and household management, including preparing meals, shopping and chores, personal house-keeping, using the telephone, managing one's personal finances,

and health care activities including taking medicine, applying or changing dressings and using a medical device.

(c) Activities involving movement about in one's community, for purposes that include getting to and participating in vocational, recreational and social activities in the community with other members of the community.

**(4)** "Adult" means an individual 18 years of age or over except that it does not mean either of the following:

(a) An individual 18 years of age or over whose placement in a home licensed under ch. [DCF 56](#) or [57](#) is funded by state or federal foster care funds or youth aid funds under s. [48.645](#), Stats., and who was placed in the home while under 18 years of age and became 18 years of age while a resident of the home.

(b) An individual 18 years of age or older who is a resident of a facility licensed under ch. [DCF 52](#).

**(5)** "Adult family home" or "home" means a place where 3 or 4 adults not related to the licensee reside in which care, treatment or services above the level of room and board but not including nursing care are provided to persons residing in the home as a primary function of the place except that it does not mean a place described in s. [50.01 \(1g\) \(a\) to \(d\)](#), Stats.

**(6)** "Ambulatory" means able to walk without difficulty or help.

**(7)** "Building" means a structure entirely enclosed under one roof.

**(8)** "Chemical restraint" means a psychopharmacologic drug that is used for discipline or convenience and not required to treat medical symptoms.

**(9)** "Continuous care" means the need for supervision, intervention or services on a 24-hour basis to prevent, control and ameliorate a constant or intermittent mental or physical condition which may break out or become critical during any time of the day or night.

**Note:** Examples of persons who need continuous care are wanderers, persons with irreversible dementia, persons who are self abusive or who become agitated or emotionally upset and persons whose changing or unstable health condition requires monitoring.

**(10)** "Contraband" means any item the possession of which is illegal, contrary to the purpose of the resident's stay in the adult family home or poses a physical danger to other residents or to staff or both.

**(11)** "County agency" means a county department of social services established under s. [46.215](#) or [46.22](#), Stats., a county department of human services established under s. [46.23](#), Stats., or a county department of community programs established under s. [51.42](#), Stats.

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

**(13)** "Designated representative" means a person or agency designated in writing by a resident or by the resident's guardian to aid a resident or act on the resident's behalf, but not including the licensee or a service provider or a relative of the licensee or a service provider.

(14) “Household member” means any person living in an adult family home, except a resident.

(14m) “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.

(15) “Licensee” means a person or persons licensed to operate an adult family home.

(16) “Licensing agency” means a county agency in a county that elects to license adult family homes located in the county, or the department in a county where no county agency has been designated to license adult family homes.

(17) “Material abuse” means the misuse of a person’s property or financial resources, which may include financial deception, diverting income, mismanagement of funds or taking money against a person’s will.

(18) “Mental abuse” means a single or repeated act of force, harassment, including sexual harassment, deprivation, neglect or mental pressure which reasonably could cause mental anguish or fear, which may include persistent or excessive negative comments, threats, deliberate inducement of anxiety or singling out a resident for inappropriate criticism or encouraging the resident’s peers to do the same.

(19) “Neglect” means significant danger presented to a person’s physical or mental health because the person responsible for his or her care is unable or fails to provide adequate food, shelter, clothing, medical care or dental care.

(20) “Nursing care” means nursing procedures, excluding personal care, which under ch. N 6, standards of practice for registered nurses and licensed practical nurses, may be performed only by a registered nurse or a licensed practical nurse directly on a resident.

(21) “Personal care” means help with eating, dressing, bathing, ambulation and other self-care activities of daily living.

(22) “Personal housekeeping” means the performance of routine housekeeping and household tasks.

(23) “Physical abuse” means the willful infliction of physical pain or injury or unreasonable confinement, including but not limited to direct beating, choking, sexual touching, unreasonable physical restraint or pain without physical marks.

(24) “Physical restraint” means any manual method or any article, device or garment interfering with the free movement of a resident or the normal functioning of a portion of the resident’s body or normal access to a portion of the body, and which the individual is unable to remove easily, or confinement in a locked room.

(25) “Place” means a building or portion of a building which is self-sufficient for living, dining and sleeping and the provision of care, treatment or services to its residents.

(26) “Placing agency” means the agency responsible for placing a resident in an adult family home.

(27) “Primary function” means the basic or essential care, treatment or services provided to residents of the home.

(27g) “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.

(27r) “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.

(28) “Relative” means a spouse, parent, step-parent, child, step-child, sibling, grandchild, grandparent, aunt, uncle, niece or nephew.

(29) “Resident” means an adult, unrelated to the licensee, who lives and sleeps in the home and receives care, treatment or services in addition to room and board.

(30) “Respite care” means temporary placement in an adult family home for maintenance of care, treatment or services, as established by the agency or individual responsible for planning, arranging or providing services to the individual, in addition to room and board, for no more than 14 consecutive days at a time.

(31) “Seclusion” means physical or social separation from others by action of the licensee, service provider or others in the home, but does not include separation in order to prevent the spread of a communicable disease or a cool down period in an unlocked room as long as being in the room is voluntary on the resident’s part.

(32) “Service coordinator” means a person not affiliated with a adult family home who has primary responsibility for arranging, coordinating, managing and monitoring the care and services needed by a resident, including services provided outside of the adult family home.

(33) “Service provider” means a person or persons who provide direct care or supervision for a resident of the adult family home, either as an employee of the licensee or as a volunteer.

(34) “Type of individuals” means individuals grouped according to one of the following disabilities, conditions or statuses:

(a) A functional impairment that commonly accompanies advanced age.

(b) Irreversible dementia such as Alzheimer’s disease.

(c) A developmental disability as defined in s. 51.05 (5), Stats.

(d) An emotional disturbance or mental illness as defined in s. 51.01 (13) (a), Stats.

(e) Alcoholism as defined in s. 51.01 (1m), Stats.

(f) A physical disability.

(g) A pregnant woman who needs counseling services.

(h) An individual under the legal custody of a government corrections agency or under the legal jurisdiction of a criminal court.

(i) A diagnosis of terminal illness.

(j) Acquired immunodeficiency syndrome (AIDS).

(35) “Unrelated adult” means an adult who is not a relative of the licensee.

(36) “Voluntary” means according to a resident’s free choice if the resident is competent, or by choice of the resident’s guardian if the resident is under guardianship.

(37) “Volunteer” means a person who provides services for residents without compensation, except for reimbursement for out-of-pocket expenses.

**History:** Cr. Register, January, 1996, No. 482, eff. 2-1-96; corrections in (4) (a) made under s. 13.93 (2m) (b) 7., Stats., Register, August, 2000, No. 536; correction in (4) (a) made under s. 13.93 (2m) (b) 7., Stats., Register December 2003 No. 576; CR 07-042: cr. (14m), (27g) and (27r) Register October 2007 No. 622, eff. 11-1-07; corrections in (4) (a), (b) and (12) made under s. 13.92 (4) (b) 6. and 7., Stats., Register November 2008 No. 635.

**DHS 88.03 Licensing administration.** (1) REQUIREMENT. No person may operate an adult family home unless a licensing agency determines that the home is in compliance with all requirements of s. 50.033, Stats., and this chapter, and issues a license to that person.

**(2) APPLICATION.** (a) Application for a license shall be made on a department–approved form available from the licensing agency.

**Note:** To obtain a copy of the application form, contact the county agency in which the home is located or write or phone the appropriate regional office of the Department's Division of Disability and Elder Services. See Appendix A for addresses and phone numbers of the Division of Disability and Elder Services regional offices.

(b) 1. Before an applicant may be licensed to operate an adult family home, the applicant shall submit to the licensing agency a completed and signed application form, the program statement described under subd. 2., the licensure fee required under s. 50.033 (2), Stats., and a check or money order in an amount sufficient to cover the fees for conducting the criminal records check required under sub. (3) (b).

2. A home's program statement shall describe the number and types of individuals the applicant is willing to accept into the home and whether the home is accessible to individuals with mobility problems. It shall also provide a brief description of the home, its location, the services available, who provides them and community resources available to residents who live within the home. A home shall follow its program statement. If a home makes any change in its program, the home shall revise its program statement and submit it to the licensing agency for approval 30 days before implementing the change.

(c) An applicant requesting a license shall provide any additional information requested by the licensing agency that may assist the agency in evaluating the applicant or licensee's character or qualifications. In assessing character and qualifications, the licensing agency may consider evidence of abuse or fraud, substantial or repeated violations of applicable or related statutes and rules in the licensee's operation of or employment in any service or facility serving adults or children or in the licensee's care of dependent persons, or a conviction or a pending criminal charge for a crime substantially related to caring for a dependent population or the funds or property of adults or minors or activities of the adult family home.

(d) If a home is to be licensed as an adult family home and the home is also licensed as a children's foster home under ch. DCF 56, the combined licensed bed capacity shall not exceed 4.

**(3) APPROVAL PROCESS.** (a) *Action by licensing agency.* The licensing agency shall review the application form and program statement and any supporting documents, including criminal records checks, and shall interview the applicant and conduct an on–site visit of the home to determine if the requirements for a license set out in this chapter are met. If the requirements for a license are met and the applicant has paid the applicable fees, a license shall be issued. If requirements for a license are not met, the licensing agency shall send a written notice to the applicant stating the reasons for not approving the application and shall inform the applicant of the opportunity for a hearing under sub. (7). The licensing agency shall issue the license or the notice of denial within 70 days after receiving a complete application and the program statement and any supporting documents and following the on–site visit.

(b) *Criminal records check.* Prior to issuing an initial license the licensing agency shall ask the Wisconsin department of justice to conduct a criminal records check on the license applicant and on any other adult household member. The licensee shall arrange for a criminal records check of all service providers. At least every second year following the issuance of an initial license the licensing agency shall request a criminal records check on the licensee and all other adult household members and the licensee shall arrange for a criminal records check on any service provider. In addition, during the period of licensure, the licensee shall arrange for a criminal records check on any new service provider. If any of these persons has a conviction record or a pending criminal charge which substantially relates to the care of a dependent population, the funds or property of adults or minors or activities of the adult family home, the licensing agency may deny, revoke, refuse

to renew or suspend a license, initiate other enforcement action provided in this chapter or in ch. 50, Stats., or place conditions on the license.

**Note:** Examples of actions the Department will consider in making a determination that an act substantially relates to the care of adults or minors, the funds or property of adults or minors or activities of the adult family home are: abuse, neglect, sexual assault, indecent exposure, lewd and lascivious behavior, or any crime involving non–consensual sexual conduct; child abuse, sexual exploitation of children, child abduction, child neglect, contributing to the delinquency or neglect of a child, enticing a child, enticing a child for immoral purposes, exposing a minor to pornography or other harmful materials, incest, or any crime involving children as victims or participants; armed robbery, aggravated battery, false imprisonment, kidnaping, homicide, any crimes involving bodily harm or threat of bodily harm, any crime involving the use of a dangerous weapon or any crime evidencing disregard to health and safety; cruelty, neglect or abandonment of animals and instigating fights between animals; burglary, extortion, forgery, concealing identity, embezzlement and arson; crimes involving a substantial misrepresentation of any material fact to the public including bribery, fraud, racketeering or allowing an establishment to be used for illegal purposes; offenses involving narcotics, alcohol or controlled substances that result in a felony conviction, operating a motor vehicle while under the influence of an intoxicant or other drug, operating after revocation and leaving the scene of an accident after injury or death to a person or damage to a vehicle driven or attended by any person.

**Note:** Wisconsin's Fair Employment Act, ss. 111.31 to 111.395, Stats., prohibits discrimination because of a criminal record or a pending charge, unless the record or charge substantially relates to the circumstances of the particular job or licensed activity.

(c) *Nurse aide registry check.* If the applicant, licensee or any non–resident adult living in the home of the applicant or licensee or any other occupant of the home has experience as a nurse assistant, home health aide or hospice aide, as defined under ch. DHS 129, the licensing agency shall check the department's registry for nurse assistants, home health aides and hospice aides under s. DHS 129.10 to determine if there is on the registry a substantiated finding that the person abused or neglected a client or misappropriated the funds or property of a client. If there is a substantiated finding of one or more of these offenses, the licensing agency may deny, revoke, refuse to renew or suspend a license, initiate other enforcement action provided for in this chapter or in ch. 50, Stats., or place conditions on the license.

**Note:** The department's registry for nurse assistants, home health aides and hospice aides can be reached by calling (608) 266–5545 to receive the information you need from an automated voice response unit, or you may call (608) 267–2374.

**Note:** Refer to the note under s. DHS 88.03 (3) (b) for examples of actions to be considered in making a determination that an act substantially relates to the care of adults or minors, the funds or property of adults or minors or activities of the adult family home.

(d) *Health check.* If the licensing agency suspects or has reason to believe that a license applicant, licensee, service provider or household member may pose a threat to the health, safety or welfare of residents, the licensing agency may require a physical examination, an alcohol or drug abuse assessment or a mental health evaluation of the person as a condition for issuance of a license.

**(4) LICENSE ISSUANCE.** (a) An adult family home license is valid indefinitely unless suspended or revoked.

(b) Every 24 months, on a schedule determined by the department, a licensed adult family home shall submit a biennial report to the licensing agency in the form and containing the information that the department requires, including payment of the fee required under sub. (2). If a complete biennial report is not timely filed, the department shall issue a warning to the licensee. If a licensed adult family home that has not filed a timely report fails to submit a complete report to the licensing agency within 60 days after the date established under the schedule determined by the department, the licensing agency may revoke the license.

(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 resident.

**(5) CHANGES TO BE REPORTED TO LICENSING AGENCY.** A licensee shall report to the licensing agency within 7 days, unless otherwise specified, the following changes:



(a) A significant and ongoing change in the type or amount of services the licensee offers to provide if the change adversely affects any resident who needs the service.

(b) A change in household members except paid staff.

(c) Within 48 hours, that the licensee or service provider has pending or has been charged with or convicted of any crime which is substantially related to caring for dependent persons.

(d) A change in the home's structure or damages to the home that may present a hazard to the residents.

(e) 1. Within 24 hours, a significant change in a resident's status, such as but not limited to an accident requiring hospitalization, missing from the home or a reportable death. A death shall be reported if there is reasonable cause to believe the death was related to use of a physical restraint or psychotropic medication, was a suicide or was accidental.

2. A death due to incident or accident not related to use of a restraint, psychotropic medications or suicide shall be reported to the licensing agency within 3 days. In addition the home shall;

a. Immediately notify the resident's guardian if any and those identified in s. DHS 88.09 (1) (d) 3.

b. Record the date, time and circumstance of the resident's death in the resident: record, including the name of the person to whom the body is released.

**Note:** Deaths not to be reported to the licensing agency are those resulting from natural causes such as heart attack, a stroke or an illness when none of the circumstances in par. (e) 1. and 2. exist.

**Note:** Providing notice under this subsection does not relieve the licensee or other persons of any obligation to report an incident to any other agency including law enforcement.

**(6) ACTION BY LICENSING AGENCY TO ENFORCE THIS CHAPTER.**

(a) *Requirement for plan of correction.* 1. A licensing agency when it issues a notice of violation may require the licensee to submit a plan of correction for approval of the licensing agency. The licensee shall submit the plan of correction to the licensing agency not more than 30 days after the date of the notice or within a shorter period of time, as specified by the licensing agency, if the licensing agency determines that continuation of the violation may be harmful to the health, safety, welfare or rights of residents.

2. The licensing agency may require modifications in a proposed plan of correction before approving it or may substitute its own plan of correction.

(b) *Placing limits on type of individuals.* A licensing agency may, at any time, following notice to the licensee and by modifying a license, limit the types of individuals served by an adult family home or the number of residents served by an adult family home for any of the following reasons:

1. The types of individuals are not compatible.

2. The licensee and service providers do not have the appropriate training to serve the residents.

3. The licensee is unable to demonstrate that the needs of residents as identified in their individual service plans under s. DHS 88.06 (3) are being met.

(c) *Placing conditions on license.* A licensing agency may place a condition on a license if the licensing agency finds that a condition or occurrence relating to the operation and maintenance of the adult family home directly threatens the health, safety or welfare of a resident.

(d) *Revocation.* A licensing agency may revoke an adult family home's license if the licensing agency determines that the home has intentionally and substantially violated a requirement of this chapter or fails to meet the minimum requirements for licensure. The licensing agency shall give the licensee written notice of revocation and the grounds for the revocation and shall inform the licensee of the right to appeal that decision under sub. (7).

(e) *Suspension.* A licensing agency may summarily suspend a license when it finds that there is imminent danger to the health, safety or welfare of the residents in care. A finding of imminent danger may be based on but is not limited to any of the following:

1. Failure of the licensee to provide environmental protections such as heat, water, electricity or telephone service.

2. The licensee, a service provider or any other person affiliated with or living in the adult family home or who has contact with residents has been convicted of or has a pending charge for a crime against life or for causing bodily harm.

3. The licensee, a service provider or any other person living in the adult family home or who has contact with residents has been convicted of a felony, misdemeanor or other offense or has a pending criminal charge which is substantially related to the care of the residents or activities of the home.

4. The licensee, a service provider or any other person living in the adult family home or who has contact with residents is the subject of a current investigation of alleged abuse or neglect of a resident.

(f) *Injunction.* Pursuant to s. 50.033 (5), Stats., a licensing agency may commence an action in circuit court to enjoin the operation of an adult family home that is not licensed under this chapter or that is licensed and has repeatedly used methods of operation in substantial violation of this chapter, or that endangers the health, safety or welfare of any adult receiving care and maintenance in the home.

(g) *Sanctions.* 1. A licensing agency shall provide an adult family home with written notice of any sanction to be imposed on the adult family home. The notice shall include:

a. The grounds for a sanction based on an investigation made by the licensing agency.

b. An explanation of the types of sanctions that the licensing agency is imposing under this section.

c. An explanation of the process under sub. (7) for appealing an appealable sanction.

2. The licensing agency may order any of the following actions:

a. That a person stop conducting, maintaining or operating an adult family home if the adult family home is without a valid license.

b. That a licensee stop violating any provision of its license or of this chapter.

c. That a licensee submit a plan of correction under par. (a) for violation of any provision of its license or of this chapter.

d. That a licensee implement and comply with a plan of correction previously submitted by the licensee and approved by the licensing agency.

e. That a licensee implement and comply with a plan of correction developed by the licensing agency.

f. That a licensee accept no additional residents until all violations are corrected.

g. That a licensee provide or secure training in one or more specific areas for the licensee or service provider.

(h) *Penalties.* Pursuant to s. 50.033 (6), Stats., any person who violates s. 50.033, Stats., or this chapter may be fined not more than \$500 or imprisoned for not more than one year in the county jail or both.

**(7) APPEAL.** (a) Any person whose application for a license is denied under sub. (3) or revoked under sub. (6) (d) or suspended under sub. (6) (e) may request a hearing on that decision under s. 227.42, Stats.

(b) A request for a hearing shall be in writing, shall be filed with the department of administration's division of hearings and appeals and shall be sent to that office so that it is received there within 10 days after the date of the notice under sub. (3), (4) or (6) (d).

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

**(8) MONITORING OF HOME.** (a) The licensee shall comply with all department and licensing agency requests for information about the residents, services or operation of the home.

(b) A licensing agency and service coordinator may, without notice, visit a home at any time to evaluate the status of resident health, safety or welfare or to determine if the home continues to comply with this chapter. The licensee shall permit the licensing agency and service coordinator to enter the home.

(c) A licensing agency may require a licensee to request fire, health, sanitation or safety officials to inspect the home and premises to assist in evaluating the safety of the home. Any inspection shall be at the licensee's expense.

**History:** Cr. Register, January, 1996, No. 482, eff. 2-1-96; am. (2) (a), (b) 1., (c), (3) (d), (7) (a), r. and recr. (4), Register, August, 2000, No. 536, eff. 9-1-00; CR 07-042: cr. (4) (c) Register October 2007 No. 622, eff. 11-1-07; corrections in (2) (d) and (3) (c) made under s. 13.92 (4) (b) 7., Stats., Register November 2008 No. 635.

**DHS 88.04 Licensee and service provider. (1) QUALIFICATIONS.** (a) A licensee shall be at least 21 years of age and shall be physically, emotionally and mentally capable of providing care for residents of the adult family home.

(b) A service provider shall be at least 18 years of age.

(c) The licensee and service provider shall be persons who are responsible, mature and of reputable character and who exercise and display the capacity to successfully provide care for 3 or 4 unrelated adult residents as identified in the home's program statement.

**(2) RESPONSIBILITIES.** (a) The licensee shall ensure that the home and its operation comply with this chapter and with all other laws governing the home and its operation.

(b) The licensee shall ensure that he or she or a service provider is present and awake at all times if any resident is in need of continuous care.

(c) The licensee shall report in writing to the licensing agency any change in the type of individual served at least 30 days before the change. A 30 day written notice of any change in type of individual served shall also be provided to each resident and each resident's guardian, designated representative, service coordinator, placing agency and third party payee.

(d) The licensee shall ensure that at least one copy of ch. DHS 88 is in the home at all times and is available for review by any resident, any resident's guardian or designated representative or any service provider.

(e) 1. The licensee shall refer a resident to the county protective services agency designated under s. 55.02, Stats., if the licensee believes the resident is incompetent as defined in s. 54.10 (3), Stats., for an evaluation to determine if a competency proceeding under ch. 54, Stats., is needed.

2. If a guardian of a person who has been found incompetent under ch. 54, Stats., places a person in the home and the resident objects to the placement, the licensee shall notify the agency designated under ch. 55, Stats., for the county in which the person is living.

(f) The licensee may not permit the existence or continuation of a condition in the home which places the health, safety or welfare of a resident at substantial risk of harm.

(g) 1. The licensee shall obtain documentation from a physician, a registered nurse or a physician's assistant indicating that the licensee and any service provider has been screened for illness detrimental to residents, including for tuberculosis. The documentation is to be completed within 90 days before the start of providing service. The documentation shall be kept confidential except that the licensing agency shall have access to the documentation for verification.

2. The licensee shall ensure that no one who has a communicable disease reportable under ch. DHS 145 may work in a position in the adult family home where the disease would present a significant risk to the health or safety of residents.

**Note:** For information on diseases reportable under ch. DHS 145, contact your city or county health department.

(h) The licensee and all service providers involved in the operation of the adult family home shall comply with the universal pre-

cautions contained in the U.S. Occupational Safety and Health Administration Standard 29 CFR 1910.1030 for the control of blood-borne pathogens.

**Note:** Information about universal precautions may be obtained from a county or city health department or from the Department's Bureau of Occupational Health, telephone (608) 266-9383.

(i) Neither the licensee nor a service provider may sell real or personal property to a resident or prospective resident, or purchase, borrow or accept money for real or personal property from a resident or prospective resident. Gifts offered by a resident on a festive occasion are allowable if permitted by the resident's finances.

**(3) FINANCIAL SECURITY.** A licensee or license applicant, on request of the licensing agency, shall produce evidence of financial stability to permit operation of the home for at least 60 days.

**Note:** Program contracts or agency agreements would meet the intent of this requirement.

**(4) INSURANCE.** (a) *Vehicle.* An applicant for a license who plans to transport residents in his or her vehicle shall provide the licensing agency with a certificate of insurance documenting liability coverage. If a service provider transports residents under direction of the licensee, the service provider shall have vehicle insurance and a valid driver's license and, if requested by the licensing agency, shall provide evidence to the licensing agency at 12 month intervals, on a form provided by the licensing agency that the vehicle is in safe operating condition.

**Note:** Form DCS-52, Safety Inspection for Day Care Vehicles, may be obtained from any regional office of the Department's Division of Disability and Elder Services. See Appendix A.

(b) *Home.* A license applicant shall provide the licensing agency with documentation of home owners or renters insurance coverage. The licensee shall maintain coverage in force for the entire term of the license.

**(5) TRAINING.** (a) The licensee and each service provider shall complete 15 hours of training approved by the licensing agency related to health, safety and welfare of residents, resident rights and treatment appropriate to residents served prior to or within 6 months after starting to provide care. This training shall include training in fire safety and first aid.

(b) Except as provided in pars. (c) and (d), the licensee and each service provider shall complete 8 hours of training approved by the licensing agency related to the health, safety, welfare, rights and treatment of residents every year beginning with the calendar year after the year in which the initial training is received.

(c) The licensing agency may require the licensee and service providers to obtain training in amounts that exceed the minimum required under par. (b) to ensure that resident health, safety and welfare are protected and promoted.

(d) The licensing agency may approve alternatives to the training requirements in pars. (a) and (b) at a licensee's request and if the licensing agency determines that any of the following has occurred:

1. The person has successfully completed substantially similar or related training.

2. The person has successfully completed course work or an academic degree program related to the care, maintenance and treatment of the type of individuals served by the adult family home as identified in the home's program statement or other persons in need of care, maintenance or treatment.

3. The person has acquired substantial and up-to-date knowledge concerning care, maintenance, treatment and health, safety, welfare and rights appropriate to a resident being served through prior experience in licensed or certified programs which are substantially similar to adult family homes.

**History:** Cr. Register, January, 1996, No. 482, eff. 2-1-96; am. (4), Register, August, 2000, No. 536, eff. 9-1-00; corrections in (2) (e) made under s. 13.93 (2m) (b) 7., Stats., Register October 2007 No. 622; correction in (2) (g) 2. made under s. 13.92 (4) (b) 7., Stats., Register November 2008 No. 635.

**DHS 88.05 Home. (1) LOCATION AND ACCESS TO THE COMMUNITY.** An adult family home shall be located so that residents

can easily get to community activities and supportive services by walking or by means of convenient private or public transportation, or the licensee shall ensure that residents receive the assistance necessary to enable them to get to those activities and services. The home shall be located in a residential area which is typical of residential areas in that community.

**(2) RESIDENT ACCESS TO THE HOME AND WITHIN THE HOME.** An adult family home shall be physically accessible to all residents of the home. Residents shall be able to easily enter and exit the home, to easily get to their sleeping rooms, a bathroom, the kitchen and all common living areas in the home, and to easily move about in the home. Additional accessibility features shall be provided as follows, if needed to accommodate the physical limitations of a resident or if specified in the resident's individual service plan:

(a) If a resident is not able to walk at all or able to walk only with difficulty, or only with the assistance of crutches, a cane, or walker or is unable to easily negotiate stairs without assistance:

1. The exits from the home shall be ramped to grade with a hard surfaced pathway with handrails.

2. All entrance and exit doors and interior doors serving all common living areas and all bathrooms and bedrooms used by a resident not able to walk at all shall have a clear opening of at least 32 inches.

3. Toilet and bathing facilities used by a resident not able to walk at all shall have enough space to provide a turning radius for the resident's wheelchair and provide accessibility appropriate to the resident's needs.

(b) Grab bars shall be provided for toilet and bath fixtures in those bathing and toilet facilities used by residents not able to walk at all or only with difficulty, or by other residents with physical limitations that make transferring difficult.

(c) If any resident has either manual strength or dexterity limitations, the home shall have levered handles on all doors, bathroom water fixtures and other devices normally used by that resident if these can be replaced and if replacement is readily achievable.

(d) Any resident who is unable to easily negotiate stairs without assistance shall have his or her bedroom, toilet and bathing facilities and all common living areas on the first floor.

**(3) HOME ENVIRONMENT.** (a) An adult family home shall be safe, clean and well-maintained and shall provide a homelike environment.

(b) The home shall be free from hazards and kept uncluttered and free of dangerous substances, insects and rodents.

(c) The home shall have heating, hot and cold water and electrical, plumbing, sewerage and lighting systems that meet local building codes.

(d) Where a public water supply is not available water samples shall be taken from the well and tested at the state laboratory of hygiene or other laboratory approved under ch. NR 149 at least annually.

(e) 1. The home shall have a heating system capable of maintaining a temperature of 74°F. The temperature in habitable rooms shall not be permitted to fall below 70° F. during periods of occupancy, except that the home may reduce temperatures during sleeping hours to 67° F. Higher or lower temperatures, for certain residents, including but not limited to residents of advanced age and residents with physical disabilities, shall be provided to the extent possible when requested by a resident.

2. The heating system shall be inspected as follows, with written documentation of the inspections maintained in the home:

a. An oil furnace shall be inspected and serviced every 2 years by a heating contractor.

b. A gas furnace shall be inspected and serviced every 3 years by a heating contractor or local utility company.

c. The chimney shall be visually inspected by the inspector at the interval identified in subd. 2. a. or b.

d. Any woodburning stove or fireplace in an adult family home shall have a flue separate from the one used by a gas or oil fired furnace or boiler. The flue shall be cleaned as often as necessary but not less than 2 times during each heating season, except that when a woodburning stove or fireplace is used for no more than 4 days each month of the heating season, the flue shall be cleaned at least once during each heating season.

(f) The home shall have functioning support services, including refuse removal and access to laundry facilities.

(g) The home shall have ventilation for health and comfort. There shall be at least one window which is capable of being opened to the outside in each resident sleeping room and each common room used by residents. Windows used for ventilation shall be screened during appropriate seasons of the year.

(h) The home shall have space to accommodate all household activities and members comfortably as follows:

1. There shall be large enough common areas with sufficient furnishings so that all occupants of the home can comfortably share the space at the same time.

2. There shall be sufficient space and equipment in the kitchen for the sanitary preparation and storage of food.

3. The dining room or other dining area shall be large enough so that all household members may dine together.

4. There shall be at least one bathroom with at least one sink, stool and shower or tub for every 8 household members and towel racks with sufficient space for each household member.

5. A resident bedroom may accommodate no more than 2 persons. A resident bedroom shall have a floor area of at least 60 square feet per resident in shared bedrooms and 80 square feet in single occupancy rooms. For a person requiring a wheelchair, the bedroom space shall be 100 square feet for that resident.

6. Each resident shall be provided conveniently located individual storage space in the resident's bedroom sufficient for hanging clothes and for storing clothing, toilet articles, towels and other personal belongings.

(i) The door of each bathroom shall have a lock which can be opened from the outside in an emergency.

(j) A resident's bedroom may not be used by anyone else to get to any other part of the home.

(k) Persons of the opposite sex shall not be required to occupy the same sleeping room. Accommodations shall be made for couples who wish to share a sleeping room.

(L) A resident's bedroom shall provide comfort and privacy, shall be enclosed by full height walls and shall have a rigid door that the resident can open and close.

(m) No resident may regularly sleep in a basement bedroom or in a bedroom above the second floor of a single family dwelling unless there are 2 exits to the grade from that floor level.

(n) The home shall have clean, functioning and safe household items and furnishings, including the following:

1. A separate bed for each resident unless a couple chooses to share a bed. The bed shall be clean, in good condition and of proper size and height for the comfort of the resident.

2. Appropriate bedding and linens that are maintained in a clean condition. When a waterproof mattress cover is used, there shall be a washable mattress pad, the same size as the mattress, over the waterproof mattress cover.

(o) The home shall not be used for any business purpose that regularly brings customers to the home so that the residents' use of the home as their residence or the residents' privacy is adversely affected.

**(4) FIRE SAFETY.** (a) *Fire extinguishers.* Every adult family home shall be equipped with one or more fire extinguishers on each floor. Each required fire extinguisher shall have a minimum



2A, 10–B–C rating. All required fire extinguishers shall be mounted. A fire extinguisher is required at the head of each stairway and in or near the kitchen except that a single fire extinguisher located in close proximity to the kitchen and the head of a stairway may be used to meet the requirement for an extinguisher at each location. Each required fire extinguisher shall be maintained in readily usable condition and shall be inspected annually by an authorized dealer or the local fire department and have an attached tag showing the date of the last dealer or fire department inspection.

(b) *Smoke detectors.* 1. Every adult family home shall be equipped with one or more single station battery operated, electrically interconnected or radio signal emitting smoke detectors on each floor level. Required smoke detectors shall be located in each habitable room except the kitchen and bathroom and specifically in the following locations: at the head of each open stairway, at the door leading to every enclosed stairway, on the ceiling of the living room or family room, on the ceiling of each sleeping room and in the basement.

2. The licensee shall maintain each required smoke detector in working condition and test each smoke detector monthly to make sure that it is operating. If a unit is found to be not operating, the licensee shall immediately replace the battery or have the unit repaired or replaced.

(c) *Exiting from the first floor.* 1. The first floor of the home shall have at least 2 means of exiting which provide unobstructed access to the outside.

2. Exits shall be doors.

(d) *Fire safety evacuation plan.* 1. The licensee shall have a written plan for the immediate and safe evacuation of all occupants of the home in the event of a fire. The plan shall identify an external meeting place.

2. a. The licensee shall review the fire safety evacuation plan with each new resident immediately following placement and shall evaluate the resident using a form provided by the department to determine whether the resident is able to evacuate the home without any help within 2 minutes.

b. Each resident shall be evaluated annually for evacuation time, using the department's form. All service providers who work on the premises shall be made aware of each resident having an evacuation time of more than 2 minutes.

c. The licensee shall conduct semi-annual fire drills with all household members with written documentation of the date and evacuation time for each drill maintained by the home.

**Note:** Licensees are encouraged to consult with their local fire department in preparing a fire safety evacuation plan.

**Note:** For a copy of the resident evaluation form to determine evacuation time, contact the county agency in the county in which the home is located or write or phone the appropriate regional office of the Department's Division of Disability and Elder Services. See Appendix A for addresses and phone numbers of the Division of Disability and Elder Services regional offices.

(e) *Report of a fire.* The licensee shall report to the licensing agency within 72 hours after the event the occurrence of a fire in the home which required the assistance of the fire department.

(f) *Resident incapable of self-evacuation.* If a resident who is incapable of self-evacuation in an emergency is present in the home, the licensee or service provider shall be in the home.

(5) **TELEPHONE.** A home shall provide a non-pay telephone for residents to make and receive telephone calls. The home may require that long distance calls be made at a resident's own expense. Emergency telephone numbers, including numbers for the fire department, police, hospital, physician, poison control center and ambulance, shall be located on or near each telephone.

(6) **HOUSEHOLD PETS.** (a) Pets may be allowed on the premises of an adult family home. Cats, dogs and other pets vulnerable to rabies which are owned by any resident or household member shall be vaccinated as required under local ordinance. A pet suspected of being ill or infected shall be treated immediately for its condition or removed from the home.

(b) Pens and cages shall be kept clean.

(c) Pets shall be kept and handled in a manner which protects the well-being of both residents and pets.

(d) The wishes of residents shall be considered before a new pet is allowed on the premises.

**History:** Cr. Register, January, 1996, No. 482, eff. 2-1-96; correction in (3) (d) under s. 13.92 (4) (b) 7., Stats., Register May 2011 No. 665.

**DHS 88.06 Placement.** (1) **PREADMISSION.** (a) A licensee shall provide the following information, in writing, to a prospective resident and that person's guardian, if any:

1. Information regarding filing a complaint when the home or a service provider does not comply with this chapter.

2. The amount, possible sources and acceptable methods of payment for providing care and maintenance to a resident of the home, specifying any costs for which the resident will be liable.

3. A description of the roles, responsibility and expectations of all parties involved in providing services. This shall include reviewing the content of the home's program statement and describing any personal housekeeping the resident will be requested to perform. A resident shall be allowed to refuse to perform this work and any other work for the home.

(b) A copy of this chapter shall be made available upon request by the prospective new resident or that person's guardian if any.

(c) The licensee shall give a prospective new resident an opportunity to meet current residents, spend time in the house and become familiar with the household routines. This may include visits during the day and an overnight stay.

(d) The licensee shall discuss the religious and cultural beliefs of the licensee and residents of the home with a prospective resident because these may affect how comfortable the prospective resident may feel in the home.

(e) The licensee shall obtain information from a prospective resident necessary to determine whether the person's needs can be met with the services identified in the home's program statement.

(2) **ADMISSION.** (a) Except as provided in subd. 2., the licensee shall ensure that a new resident of an adult family home receives a health examination by a physician to identify health problems and is screened for communicable disease, including tuberculosis. Screening for communicable disease may be provided by a physician, a registered nurse or a physician assistant. The health examination and screening shall take place within 90 days prior to admission to the home or within 7 days after admission.

2. No health examination is required for a person admitted for respite care who will not be staying in a home more than 7 days and will not be placed in the home more than once in a calendar year.

(b) An adult family home shall have a service agreement with each person to be admitted to the home except a person being admitted for respite care. The service agreement shall be completed prior to admission and revised at least 30 days prior to any change. The service agreement shall be dated and signed by the licensee and the person being admitted or that person's guardian or designated representative. Copies shall be provided to all parties and to the placing agency, if any.

(c) A service agreement shall specify all of the following:

1. The names of the parties to the agreement.

2. The services that will be provided and a description of each.

3. Charges for room and board and services and any other applicable expenses, and the amount of the security deposit, if any.

4. The frequency, amount, source and method of payment.

5. The policy on refunds.

6. How personal funds will be handled.

7. Conditions for transfer or discharge and the assistance a licensee will provide in relocating a resident.

8. A statement indicating that the resident rights and grievance procedures have been explained and copies provided to the resident and the resident's guardian or designated representative, if any.

(3) **INDIVIDUAL SERVICE PLAN AND ASSESSMENT.** (a) The licensee shall ensure that a written assessment and individual service plan are completed and developed for each resident within 30 days after placement.

(b) The individual service plan and written assessment shall be developed by the placing agency, if any, the service coordinator, if any, the licensee, the resident and the resident's guardian, if any, and designated representative, if any, with the resident participating in a manner appropriate for the resident's level of understanding and method of communication.

(c) The assessment shall identify the person's needs and abilities in at least the areas of activities of daily living, medications, health, level of supervision required in the home and community, vocational, recreational, social and transportation.

(d) The individual service plan shall contain at least the following:

1. A description of the services the licensee will provide to meet assessed need.
2. Identification of the level of supervision required in the home and community.
3. Descriptions of services provided by outside agencies.
4. Identification of who will monitor the plan.
5. A statement of agreement with the plan, dated and signed by all persons involved in developing the plan.

(e) A copy of the individual service plan shall be provided to all persons involved in the development of it.

(f) The individual service plan shall be reviewed at least once every 6 months by the licensee, the resident or the resident's guardian, the service coordinator, if any, the designated representative, if any, and, if applicable, the placing agency with the resident participating in a manner appropriate for the resident's level of understanding and method of communication. This review is to determine continued appropriateness of the plan and to update the plan as necessary. A plan shall be updated, in writing, whenever the resident's needs or preferences change substantially or when requested by the resident or the resident's guardian.

**History:** Cr. Register, January, 1996, No. 482, eff. 2-1-96; cr. (1) (a) 4. and (4), Register, October, 2000, No. 538, eff. 11-1-00; reprinted to restore dropped copy in (1) Register December 2003 No. 576; corrections in (1) (a) 4. and (4) made under s. 13.92 (4) (b) 7., Stats., Register November 2008 No. 635; CR 10-091; r. (1) (a) 4, Register December 2010 No. 660, eff. 1-1-11; CR 10-145; r. (4) Register May 2011 No. 665, eff. 6-1-11.

#### **DHS 88.07 Resident care. (1) GENERAL REQUIREMENTS.**

(a) The licensee shall provide a safe, emotionally stable, homelike and humane environment for residents.

(b) The licensee shall encourage a resident's autonomy, respect a resident's need for physical and emotional privacy and take a resident's preferences, choices and status as an adult into consideration while providing care, supervision and training.

(c) The licensee shall plan activities and services with the residents to accommodate individual resident needs and preferences and shall provide opportunities for each resident to participate in cultural, religious, political, social and intellectual activities within the home and community. A resident may not be compelled to participate in these activities.

(d) The licensee shall allow a resident to participate in all activities that the resident selects unless contrary to the resident's individualized service plan or the home's program statement.

(e) The licensee shall arrange for a service provider to be present in the home when the licensee is gone overnight or when the licensee's absence prevents the resident from receiving the services, training or supervision specified in the resident's individual service plan under s. DHS 88.06 (3).

(2) **SERVICES.** (a) The licensee shall provide or arrange for the provision of individualized services specified in a resident's individual service plan that are the licensee's responsibility.

(b) Services shall be directed to the goal of assisting, teaching and supporting the resident to promote his or her health, well-being, self-esteem, independence and quality of life. The services shall include but are not limited to:

1. Supervising or assisting a resident with or teaching a resident about activities of daily living.

2. Providing, arranging, transporting or accompanying a resident to leisure and recreational activities, employment and other activities identified in the resident's individual service plan.

3. Providing, arranging, transporting or accompanying a resident to medical or other appointments as part of the resident's individual service plan.

4. Keeping a current record of all medical visits, reports and recommendations for a resident.

5. Monitoring resident health by observing and documenting changes in each resident's health and referring a resident to health care providers when necessary.

6. Notifying the placing agency, if any, and guardian, if any, of any significant changes in a resident's medical condition, including any life-threatening, disabling or serious illness, any illness lasting more than 3 days, an injury sustained by the resident, medical treatment needed by the resident or the resident's absence from the home for more than 24 hours.

(c) Services that are provided shall be services determined by the resident, licensee, service coordinator, if any, placing agency, if any, and guardian, if any, to be needed by the resident and within the capability of the licensee to provide.

(d) A licensee may arrange for or, if qualified, personally provide nursing care to residents. No more than 7 hours of nursing care per week may be provided to a resident.

(e) The licensee shall ensure that each resident has an annual health examination by a physician.

(3) **PRESCRIPTION MEDICATIONS.** (a) Every prescription medication shall be securely stored, shall remain in its original container as received from the pharmacy and be stored as specified by the pharmacist.

(b) A resident has the right to refuse prescription medication unless there is a court order requiring the resident to take the medication. When the resident under court order does not take the medication, the licensee shall notify the court and the responsible physician.

(c) If the licensee or service provider assists a resident with a prescription medication, the licensee or service provider shall help the resident securely store the medication, take the correct dosage at the correct time and communicate effectively with his or her physician.

(d) Before a licensee or service provider dispenses or administers a prescription medication to a resident, the licensee shall obtain a written order from the physician who prescribed the medication specifying who by name or position is permitted to administer the medication, under what circumstances and in what dosage the medication is to be administered. The licensee shall keep the written order in the resident's file.

(e) 1. The licensee shall keep a record of all prescription medications controlled, dispensed or administered by the licensee which show the name of the resident, the name of the particular medication, the date and time the resident took the medication and errors and omissions. The medication controlled by licensee shall be kept in a locked place.

2. The record shall also contain information describing potential side effects and adverse reactions caused by each prescription medication.



(4) **NUTRITION.** (a) A licensee shall provide each resident with a quantity and variety of foods sufficient to meet the resident's nutritional needs and preferences and to maintain the resident's health.

(b) The licensee shall provide to each resident or ensure that each resident receives 3 nutritious meals each day and snacks that are typical in a family setting.

(c) Food shall be prepared and stored in a sanitary manner.

(d) Residents shall be routinely served their meals in common dining areas with other household members.

(e) Meals prepared by the licensee shall take into account special physical and religious dietary needs of the residents. A special diet shall be served to a resident if prescribed by the resident's physician.

**History:** Cr. Register, January, 1996, No. 482, eff. 2-1-96.

**DHS 88.08 Termination of placement.** A licensee may terminate a resident's placement only after giving the resident, the resident's guardian, if any, the resident's service coordinator, the placing agency, if any, and the designated representative, if any, 30 days written notice. The termination of a placement shall be consistent with the service agreement under s. DHS 88.06 (2) (c) 7. The 30 day notice is not required for an emergency termination necessary to prevent harm to the resident or other household members.

**History:** Cr. Register, January, 1996, No. 482, eff. 2-1-96.

**DHS 88.09 Records. (1) RESIDENT RECORDS.** (a) The licensee shall maintain a record for each resident. Resident records shall be maintained in a secure location within the home to prevent unauthorized access.

(b) The records of residents shall be confidential. Access to records of a resident's HIV test results shall be controlled by s. 252.15, Stats. Access to other resident records shall be restricted to the following: the resident, the resident's guardian, authorized representatives of the department, other persons or agencies with the informed written consent of the resident or resident's guardian, if applicable, persons or agencies authorized by s. 51.30, Stats., ss. 146.81 to 146.83, Stats., or 42 CFR Part 2, and persons or agencies authorized by other applicable law.

**Note:** Section 51.30 (4) (b) 5. and 15., Stats., permits sharing of limited information in certain circumstances between the department and a county department established under s. 46.215, 46.22, 46.23, 51.42 or 51.437, Stats.

**Note:** For information on 42 CFR Part 2 which relates to a resident who is in the home because of alcohol or other drug abuse, write or phone the appropriate regional office of the department's division of disability and elder services which will refer you to the appropriate county agency in your county. See Appendix A for the addresses and phone numbers of these offices.

**Note:** The records of residents with mental disabilities are subject to requirements of s. 51.30, Stats., and ch. DHS 92.

(c) Copies of a resident's record shall be made available on request to the resident, the resident's guardian or a designated representative of the resident as soon as reasonably practicable if authorized in writing by the resident, at a cost no greater than the cost of reproduction.

(d) A resident's record shall include all of the following:

1. The resident's name and date of birth.
2. The name, address, and phone number of the resident's legal guardian, if any.
3. The name, address and phone number of every person, including the resident's physician, to be notified in the event of an emergency.
4. The name, address and phone number of the placing agency, if any, and service coordinator, if any.
5. Medical insurance or medical assistance and medicare identification numbers and the name of the pharmacy that the resident uses. In this subdivision, "medical assistance" means the assistance program operated by the department under ss. 49.43 to 49.497, Stats., and "medicare" means the insurance program

operated by the U.S. department of health and human services under 42 USC 1395 to 1395.22 and 42 CFR, Pts. 405 to 421.

6. The service agreement required under s. DHS 88.06 (2) (b) and (c).

7. The report of the medical examination required under s. DHS 88.06 (2) (a).

8. The individual service plan required under s. DHS 88.06 (3).

9. The statement indicating that resident rights and grievance procedures have been explained and copies have been provided to the parties as required under s. DHS 88.06 (2) (c) 8.

10. Medication records under s. DHS 88.07 (3) (d) and (e).

11. Records maintained by the licensee of the resident's finances, including written authorization from the resident or the resident's guardian to control the resident's funds.

(e) The licensee shall retain a resident's record for at least 7 years after the resident's discharge. The record shall be kept in a secure, dry place.

(2) **SERVICE PROVIDER AND LICENSEE RECORDS.** (a) *Service provider record.* The licensee shall maintain and keep up to date a separate personnel record for each service provider. The licensee shall ensure that all service provider records are adequately safeguarded against destruction, loss or unauthorized use. A service provider record shall include all of the following:

1. Name and address.
2. Social security number.
3. Date of birth.
4. Beginning date of employment.
5. Job-related experience and training.
6. Educational qualifications.
7. Job description.
8. Documentation of successful completion of the training requirements under s. DHS 88.04 (5).
9. The results of screening for communicable disease.
10. Description of any disciplinary action.
11. Date of discharge or resignation.

(b) *Licensee record.* The licensee shall maintain and keep up to date a separate record for the licensee which shall contain the information listed in par. (a) 1., 2., 3., 5., 6., 8. and 9.

(c) *Location and retention period.* Service provider and licensee records shall be available at the adult family home for review by the licensing agency. A service provider's record shall be available while the service provider is employed by the home and for at least 3 years after ending employment.

**History:** Cr. Register, January, 1996, No. 482, eff. 2-1-96.

**DHS 88.10 Resident rights. (1) LEGAL RIGHTS.** A licensee shall comply with all applicable statutes and rules relating to resident rights, including s. 51.61, Stats., chs. 54, 55, and 304, Stats., and chs. DHS 92 and 94.

**Note:** These laws may clarify or condition a particular resident's right, depending on the legal status of the resident or a service being received by the resident.

(2) **EXPLANATION OF RESIDENT RIGHTS.** The licensee shall explain and provide copies of the resident rights under sub. (3) and the grievance procedure under sub. (5) to the person being admitted, that person's guardian, family members involved in the placement and any designated representative of the person before the service agreement is signed.

(3) **RIGHTS OF RESIDENTS.** Individuals, except for correctional residents, have basic rights which they do not lose when they enter an adult family home. A resident shall have all of the following rights:

(a) *Fair treatment.* To be treated with courtesy, respect and full recognition of the resident's dignity and individuality.

(b) *Privacy.* To have physical and emotional privacy in treatment, living arrangements and in caring for personal needs,

including toileting, bathing and dressing. The resident, resident's room, any other area in which the resident has a reasonable expectation of privacy, and the personal belongings of a resident shall not be searched without the resident's permission or permission of the resident's guardian except when there is a reasonable cause to believe that the resident possesses contraband. The resident shall be present for the search.

(c) *Confidentiality.* To have his or her records kept confidential as described in s. DHS 88.09 (1) (b).

(d) *Presumption of competency.* To be treated as mentally competent unless there has been a court determination of incompetency under ch. 54, Stats. A resident who has been adjudicated incompetent has a right to have his or her guardian fully informed and involved in all aspects of his or her relationship to the adult family home. A resident who has been adjudicated incompetent shall be allowed decision-making participation to the extent that the resident is capable of participating.

(e) *Self-direction.* To have opportunities to make decisions relating to care, activities and other aspects of life in the adult family home. No curfew, rule or other restrictions on a resident's freedom of choice shall be imposed unless specifically identified in the home's program statement or the resident's individual service plan. An adult family home shall help any resident who expresses a preference for more independent living to contact any agency needed to arrange for it.

(f) *Financial affairs.* To manage his or her own financial affairs, including any personal allowances under federal or state programs, unless the resident delegates, in writing, responsibility for financial management to the licensee or someone else of the resident's choosing or the resident is adjudicated incompetent in which case the guardian or guardian's designee is responsible.

(g) *Clothing and possessions.* To retain and use personal clothing and effects and to retain, as space permits, other personal possessions in a reasonably secure manner.

(h) *Social activity choice.* To meet with and participate in social and community activities at the resident's own discretion.

(i) *Choice of providers.* To exercise complete choice of providers of physical health care, mental health care and pharmaceutical services.

(j) *Treatment choice.* To receive all treatments prescribed by the resident's physician and to refuse any form of treatment unless the treatment has been ordered by a court. The written informed consent of the resident or resident's guardian is required for any treatment administered by the adult family home.

(k) *Religion.* To participate in religious activities of the resident's choice. No resident may be required to engage in any religious activity.

(L) *Safe physical environment.* To a safe environment in which to live. The adult family home shall safeguard residents who cannot fully guard themselves from environmental hazards to which they are likely to be exposed, including conditions which would be hazardous to anyone and conditions which would be or are hazardous to a particular resident because of the resident's condition or handicap.

(m) *Freedom from abuse.* To be free from physical, sexual or mental abuse, neglect, and financial exploitation or misappropriation of property.

(n) *Freedom from seclusion and restraints.* 1. Except as provided in subd. 2., to be free from seclusion and from all physical and chemical restraints, including the use of an as-necessary (PRN) order for controlling acute, episodic behavior.

2. Physical restraints may be used in an emergency when necessary to protect the resident or another person from injury or to prevent physical harm to the resident or another person resulting from the destruction of property, provided that law enforcement or other emergency assistance be summoned as soon as possible and the incident is reported to the licensing agency by the next

business day with documentation of what happened, the actions taken by the adult family home and the outcomes.

(o) *Labor.* To not be required by the licensee to perform labor which is of any financial benefit to the licensee.

(p) *Prompt and adequate treatment.* To receive prompt and adequate treatment and services appropriate to the resident's needs.

(q) *Medication.* To receive all prescribed medications in the dosage and at the intervals prescribed by the resident's physician, and to refuse medication unless there has been a court order under s. 51.61 (1) (g), Stats., with a court finding of incompetency.

(r) *Mail.* To receive and send sealed, unopened mail, including packages. The licensee shall give mail to residents on the day it is received or as soon as possible thereafter, unless the licensee has reasonable cause to believe that the mail being sent or received contains contraband, in which case a resident's mail may be opened by the licensee but only in the presence of the resident.

(s) *Telephone calls.* To make and receive a reasonable number of telephone calls of reasonable duration and in privacy.

(t) *Visits.* To have private visitors and have adequate time and private space for visits.

(u) *Service charges.* To be fully informed in writing before or at the time of admission of all services and charges for the services. Throughout the time a person is a resident of the adult family home, he or she shall be fully informed in writing of any changes in services and related charges at least 30 days before those changes take effect.

**(4) CORRECTIONAL CLIENTS.** The rights established under sub. (3) do not apply to a resident under the supervision of the department of corrections except as determined by the department of corrections.

**(5) RESOLUTION OF GRIEVANCES.** (a) *Right to file a grievance.* A resident or the resident's guardian, if any, or designated representative, if any, may file a grievance if he or she believes that a right of the resident or a provision of this chapter has been violated.

(b) *Grievance procedure.* The grievance procedure of the adult family home shall be established in accordance with ch. DHS 94. If a resident is placed or funded by a county agency, the county grievance procedure under s. DHS 94.29 shall be used.

**Note:** For information or assistance in developing a ch. DHS 94 grievance procedure, write or phone the appropriate regional office of the Department's Division of Disability and Elder Services which will refer you to the appropriate office of the Department.

(c) *Assistance with grievance procedure.* 1. Residents have the right to advocacy assistance throughout the grievance process. An adult family home shall assist its residents as needed and enable its residents to have access to the licensing agency, the resident's service coordinator, if any, the state board on aging and long term care and its ombudsman program, the Wisconsin coalition for advocacy and any other organization providing advocacy assistance, and shall assure the following for representatives of these agencies:

2. The ability to communicate privately and without restriction with any resident who does not object to the communications.

3. Access to medical and personal records of the resident, with the consent of the resident or the resident's guardian, or on the order of the court.

4. To have available in the home the name, address and phone number of organizations providing advocacy assistance for the type of individual served by the adult family home, and the name, address and phone number of the licensing agency.

(d) *Disclosure.* The licensee shall provide a written summary of a resident's grievance, the findings and the conclusions and any action taken to the resident or the resident's guardian and the resident's placing agency, if any, or designated representative, if any, and shall insert the summary in the resident's record.

**(6) COERCION AND RETALIATION PROHIBITED.** Any form of coercion to discourage or prevent a resident or the resident's guardian or designated representative from exercising any of the rights under this section is prohibited. Any form of coercion or retaliation against a resident or the resident's guardian or designated representative for exercising any of the rights in this section, or against a service provider who assists a resident or the resident's guardian or designated representative in exercising any of the resident's rights in this section, is prohibited.

**History:** Cr. Register, January, 1996, No. 482, eff. 2-1-96; corrections in (1) and (3) (d) made under s. 13.93 (2m) (b) 7., Stats., Register October 2007 No. 622; corrections in (1) and (5) (b) made under s. 13.92 (4) (b) 7., Stats., Register November 2008 No. 635; CR 10-091: am. (5) (b) Register December 2010 No. 660, eff. 1-1-11.

**DHS 88.11 Reporting of abuse and neglect. (1)** A licensee or service provider who knows or has reasonable cause to suspect that a resident has been abused or neglected as defined in s. 46.90 or 940.285, Stats., shall immediately contact the licensing agency. Providing notice under this subsection does not relieve the licensee or other person of the obligation to report an incident to law enforcement authorities. If the licensee has reason to believe that a crime has been committed, the incident shall immediately be reported to law enforcement authorities.

**(2)** The licensing agency shall immediately contact the resident's guardian, if any, placing agency, if any, service coordinator, if any, and designated representative, if any, regarding any occurrence or suspected occurrence under sub. (1).

**(3)** As soon as possible after being contacted under sub. (1) the licensing agency shall undertake an investigation of the reported abuse or neglect.

**(4)** If the licensing agency is a county agency and may have a conflict of interest, the licensing agency may enter into an agreement with another agency under s. 46.215, 46.22, 46.23, 51.42 or 51.437, Stats., to perform an independent investigation. The investigating county agency shall comply with the same confidentiality requirements as required of the licensing agency.

**(5)** After the investigating agency has completed its investigation, the investigating agency shall notify the parties identified in sub. (2) of its findings and shall, in addition, notify the following agencies if the report of abuse or neglect has been substantiated:

(a) The licensing agency, if different.

(b) Any agency that placed a current resident in the home.

(c) A county agency in the county where the adult family home is located if the licensing agency is the department.

**History:** Cr. Register, January, 1996, No. 482, eff. 2-1-96.