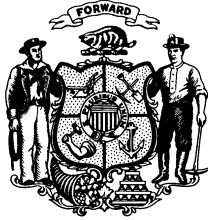


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CLEARINGHOUSE RULE 95-079

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

1. Statutory Authority

a. The Wisconsin Court of Appeals recently held that, according to the definition of a community-based residential facility (CBRF) in s. 50.01 (1g), Stats., a CBRF licensee may not provide nursing care to residents of a CBRF [*Hacker v. Wisconsin Department of Health and Social Services*, 189 Wis. 2d. 328, 525 N.W. 2d 364 (Ct. App. 1994), *review granted* (January 23, 1995)]. Section 50.01 (1) (b), Stats., indicates that a licensed adult family home is a place that meets the definition of a CBRF except that only three or four adults reside there. Therefore, it appears that the licensee of a licensed adult family home may not provide nursing care to residents of a licensed adult family home.

This is consistent with the last sentence in the first paragraph of the analysis which states that an adult family home “is to be a licensed home providing care, treatment or services above the level of room and board **but not including nursing care** to 3 or 4 residents” (emphasis added). [Also, s. HSS 88.02 (4) provides that an “adult family home” means “a place where 3 or 4 unrelated adults 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.”]

However, in contradiction of the analysis, s. HSS 88.07 (2) (d), provides that a licensee may arrange for or personally provide nursing care to residents subject to the limitation that no more than two residents may routinely need or receive nursing care in excess of seven hours per week. Again, there does not appear to be statutory authority for a licensee to provide this nursing care to residents of a licensed adult family home.

b. Section 50.033 (2), Stats., provides that the Department of Health and Social Services (DHSS) is to promulgate rules under s. 50.02 (2) (am) 2., Stats., establishing standards “for operation of licensed adult family homes and application for licensure, monitoring, inspection, **revocation and appeal of revocation...**” (emphasis added). Section 50.033 (4), Stats., provides for license **revocation** but also refers to **failure to renew** a license. Section 50.033 (5), Stats., provides for filing for an **injunction** for violation of the rules promulgated under s. 50.02 (2) (am) 2., Stats. Section 50.02 (2) (am) 2., Stats., provides that DHSS is to promulgate rules for the purposes of s. 50.033, Stats., “establishing minimum requirements for licensure, licensure application procedures and forms, standards for operation and procedures for monitoring, inspection, **revocation and appeal of revocation**” [s. 50.02 (2) (am) 2., Stats. (emphasis added)].

However, ch. HSS 88 provides for sanctions beyond those authorized in s. 50.02 (2) (am) 2. or 50.033, Stats., that are applicable to licensed adult family homes. In particular, s. HSS 88.03 (6) provides for sanctions such as requiring a plan of correction, placing limits on the types of residents, placing conditions on a license and suspension. These are the types of “intermediate” sanctions explicitly added for CBRF’s in s. 50.03 (5g), Stats., as created by 1993 Wisconsin Act 375. Although the definition of a licensed adult family home is based on the definition of a CBRF, the statutes do not provide for identical regulation. What statutory authority exists for the application of any type of sanction to licensed adult family homes beyond revocation, nonrenewal and filing for an injunction?

c. The first sentence of s. HSS 88.09 (1) (b) indicates that access to a resident’s record shall be restricted to the resident, the resident’s guardian, the resident’s designated representative, service providers directly involved with the resident, authorized representatives of the DHSS, the licensing agency, third-party payers and other persons authorized by the resident, or as otherwise permitted by law. The second sentence of s. HSS 88.09 (1) (b) then provides that “for a person who is developmentally disabled, emotionally disturbed, mentally ill or alcoholic or drug dependent, third party payer access to records is governed by s. 51.30 (4), Stats.”

It is not clear whether the first sentence was intended to provide for automatic access to records to the enumerated entities, subject to the limitation with respect to third-party payers for certain residents specified in the second sentence. If this was the intent, ss. 51.30 (4), 146.81 to 146.84 and 252.15, Stats., do not allow all of these entities access to records without informed consent.

If this was not the intent, the provision in the last sentence of s. HSS 88.09 (1) (b) should not be limited to a statement about access to such records by third-party payers inasmuch as access by other entities is also governed by s. 51.30, Stats. Moreover, other statutes may apply to the confidentiality of records, such as ss. 146.81 to 146.84 and 252.15, Stats., and reference to them also should be included. [See s. HSS 88.10 (3) (c) 1., which refers to the right to have treatment records kept confidential consistent with ss. 146.81 to 146.84 and 252.15, Stats.]

Also, s. HSS 88.10 (3) (c) 3. provides that a resident or the resident’s guardian or designated representative may inspect, copy and challenge the accuracy of the resident’s records. While statutory provisions would allow the guardian to do so, neither s. 51.30, 146.81 to 146.84 nor 252.15, Stats., provide for a designated representative to do so unless the resident has given informed consent to the release of such information. There does not appear to be statutory

authority for allowing a designated representative access to such records without informed consent.

d. Section HSS 88.11 (1) requires that “[a] licensee, service provider *or anyone else* who knows or has reasonable cause to suspect that a resident has been abused or neglected” (emphasis added) immediately contact the licensing agency. Section HSS 88.03 (6) (h) provides a fine of up to \$500 or imprisonment for up to one year in the county jail, or both, for a violation of ch. HSS 88. In combination, these provisions potentially make all persons mandated reporters of abuse or neglect.

Section 50.02 (2) (am) 2., Stats., provides that DHSS is to promulgate rules for the purposes of s. 50.033, Stats., “establishing minimum requirements for licensure, licensure application procedures and forms, standards for operation and procedures for monitoring, inspection, revocation and appeal of revocation” for adult family homes. It does not authorize DHSS to promulgate rules making persons who are not operating or working at a licensed adult family home mandated reporters of abuse or neglect. Moreover, s. 46.90, Stats., which is referred to in s. HSS 88.11 (1) provides only for *voluntary* reporting of abuse and neglect.

2. Form, Style and Placement in Administrative Code

a. Section HSS 88.02 (1) defines “abuse” and indicates that it “includ[es] any of the following: (a) ‘Physical abuse’ means... (b) ‘Material abuse’ means... (c) ‘Mental abuse’ means....” If physical abuse, material abuse and mental abuse are to be defined, their definitions should be placed in s. HSS 88.02 in alphabetical order. [See s. 1.01 (7) (a), Manual. See, also, s. HSS 88.02 (3) (a) and (33). In the latter subsection, the phrase “. ‘Compensation’ does not include” should be replaced by the phrase “, except for.”]

b. The term “private residence” or “residence” is defined in s. HSS 88.02 (23) but does not appear to be used in ch. HSS 88. If the term is not used in ch. HSS 88, its definition should be deleted. Moreover, the limitation appears to contain substantive provisions concerning limitations on the use of a house or apartment in which a licensee lives for business purposes when the residents’ use of the home or privacy is adversely affected. If there is a prohibition against such use, it should be stated in a substantive provision of ch. HSS 88 and not included in a definition. [See s. 1.01 (7) (b), Manual.]

c. In s. HSS 88.02 (16), the title to ch. N 6 should not be capitalized. [See, also, s. HSS 88.04 (2) (h).]

d. In s. HSS 88.03 (5), the paragraphs should be labeled (a) to (e) rather than 1. to 5. [See s. 1.03 (4), Manual.]

e. In s. HSS 88.03 (7) (a), the notation “sub.” should be inserted before the reference to “(6) (d).”

f. In s. HSS 88.05 (3) (f) 7., the notation “; and” should be replaced by a period.

g. In s. HSS 88.05 (4) (d), the title “Fire safety evacuation plan.” should be inserted immediately following the paragraph letter “(d)” and preceding the subdivision number “1.” [See s. 1.05 (2) (d), Manual.]

h. In s. HSS 88.06 (3), a period should be inserted after the paragraph title. Also, in par. (c), each subdivision should conclude with a period. Finally, sub. (6) does not follow grammatically from the introduction in par. (c) and probably should be renumbered as a separate paragraph in sub. (3).

i. Section HSS 88.09 (2) (a) should contain a title, since the remaining paragraphs in this subsection are titled.

j. In s. HSS 88.10 (1), the second sentence, if necessary at all, should be contained in a note to the rule.

k. In s. HSS 88.10 (2), the reference to “par. (5)” should be changed to “sub. (5).” [See s. 1.07 (2), Manual.]

l. The entry following s. HSS 88.10 (3) (t) should be s. HSS 88.10 (3) (u) rather than s. HSS 88.10 (3) (f).

m. In s. HSS 88.11 (1), the phrase “notice under this paragraph” should be changed to “notice under this subsection.” [See s. 1.07 (2), Manual.]

n. In s. HSS 88.11 (4), the paragraphs should be labeled (a) to (f) rather than 1. to 4. [See s. 1.03 (4), Manual.]

4. Adequacy of References to Related Statutes, Rules and Forms

a. Section 50.033 (2), Stats., authorizes DHSS to establish standards for licensed adult family homes by rules promulgated under s. 50.02 (2) (am) 2., Stats. It would be helpful to include a reference to s. 50.033 (2), Stats., in the listing of statutes providing statutory authority for the rule. This comment applies to the following: (1) the statutory authority section of the “Transmittal to Legislative Council Rules Clearinghouse”; (2) the second paragraph of the fiscal estimate; (3) the last paragraph of the analysis which is part of the proposed order; and (4) s. HSS 88.01 (1).

b. The third paragraph of the analysis in the “Transmittal to Legislative Council Rules Clearinghouse” refers to “the revised HSS 83.” As ch. HSS 83 has not been promulgated, it would be more appropriate to refer to it as “the proposed ch. HSS 83.”

c. In the first sentence of the analysis that is part of the proposed order, it would be helpful to indicate that 1993 Wisconsin Act 327 also created s. 50.01 (1) (b), Stats.

d. In s. HSS 88.02 (30) (d), the reference to s. 51.01 (12) (a), Stats., should be to s. 51.01 (13) (a), Stats.

e. In s. HSS 88.02 (30) (e), the reference to s. 51.01 (2), Stats., should be to s. 51.01 (1m), Stats.

f. In s. HSS 88.09 (1) (d) 5., the reference to ss. 49.45 to 49.497, Stats., should be to ss. 49.43 to 49.499, Stats.

g. Section HSS 88.10 (3) (c) 1. indicates that a resident has the right to have his or her treatment records kept confidential consistent with ss. 146.81 to 146.84 and 252.15, Stats. This listing should be expanded to include reference to s. 51.30, Stats.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In the third sentence of s. HSS 88.01 (2) (b), “residents needs” should be “residents’ needs” and the phrase “a resident” should be replaced by the word “residents.”

b. In s. HSS 88.02 (1) (b), the first use of the word “a” should be deleted in the phrase “taking a money against a person’s will.”

c. Section HSS 88.02 (3) (c) refers to activities for purposes including getting to and participating in vocational, recreational and social activities in the community with other members of the community. Does this provision imply that activities of daily living do not include movement in the community without other members of the community?

d. Section HSS 88.02 (4) defines the term “adult family home” in a manner similar to that contained in s. 50.01 (1) (b) and (1g) (intro.), Stats. Why are the exceptions contained in s. 50.01 (1g), Stats., not included in the rule definition or cross-referenced in the rule definition?

e. The role of a tribal governing body in the licensing of adult family homes is unclear. Section HSS 88.02 (9) includes tribal governing bodies in the definition of “county agency.” In turn, s. HSS 88.02 (14) provides that a “‘licensing agency’ means a *county agency* in a county that elects to license adult family home [sic] located in the county, or the department in a county where no county agency has been designated to license adult family homes” (emphasis added).

Does the inclusion of a tribal governing body in s. HSS 88.02 (9) mean that if a county elects to license adult family homes, a tribal governing body located in that county is a county agency that may license adult family homes? Or does it mean that if a county does not elect to license adult family homes, a tribal governing body located in that county may not license adult family homes? This should be clarified.

f. Section HSS 88.02 (14) provides that a “‘licensing agency’ means a county agency in a county that elects to license adult family home [sic] located in the county, or the department in a county where no county agency has been designated to license adult family homes.” The term “adult family home” should be “adult family homes.” Also, the use of the passive voice in the clause that begins “or the department” leaves unclear who is to designate the county agency. It would be preferable to more closely parallel the language in s. 50.033 (1m), Stats., and substitute for this clause: “or the department in a county that elects not to license adult family homes.”

g. Section HSS 88.02 (24) defines “relative” as meaning “a spouse, parent, step-parent, child, step-child, sibling, grandchild, grandparent, aunt, uncle, niece or nephew of the adult family home licensee.” It appears that the phrase “of the adult family home licensee” should be deleted as that phrase limits the definition of “relative” to the listed persons who are related to the adult family home licensee. This limitation leaves undefined the term “relative” when that term is used in other sections of ch. HSS 88 that refer to relatives of other individuals. Such

sections include s. HSS 88.02 (11), which refers to a relative of a service provider, and s. HSS 88.03 (3) (c), which refers to a relative of an applicant for a license.

This amendment may necessitate clarifying substantive provisions that use the term “relative” in order to specify whom the person is a relative of. See, for example, s. HSS 88.03 (3) (c).

h. Section HSS 88.03 (2) (c) provides that the licensing agency may consider evidence of various factors to assess the character and qualifications of an applicant for a license, including “substantial or repeated violations of applicable or related statutes and rules in the licensee’s operation of or employment in any service facility or service agency....” The meaning of “service facility or service agency” is not clear. Does it include, for example, an automobile service facility, or is it limited to facilities or agencies which provide services to people or particular types of services to people?

Also, s. HSS 88.03 (2) (c) lists several factors that may be considered in assessing the character and qualifications of an applicant. In contrast to s. HSS 88.03 (3) (b), s. HSS 88.03 (2) (c) does not include a consideration of whether the applicant has been convicted of or has a pending charge for a crime that substantially relates to the funds or property of adults or minors. In contrast to s. HSS 88.03 (3) (c), s. HSS 88.03 (2) (c) does not include a consideration of whether there is a substantiated finding that the applicant has misappropriated the funds or property of a client. If the intention is to consider such property crimes in the assessment of character and qualifications, they should be included in s. HSS 88.03 (2) (c).

i. Section HSS 88.03 (3) (b) *permits* the licensing agency to conduct a criminal records check with the Wisconsin Department of Justice on “any adult relative of the license applicant who lives in the home, any other occupants of the home and any service provider” prior to issuing the initial license and *requires* such a criminal records check for all such individuals at least every two years thereafter. Under s. HSS 88.03 (3) (c), if “any adult relative 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, the licensing agency must check a DHSS registry.

These provisions include a check of all occupants of the home, *including residents*. If the intent is to include all such individuals, then the defined term “household member” would appear to be a more appropriate term.

j. In the second sentence in s. HSS 88.03 (3) (b), the phrase “services provider” should be “service provider.” In the last sentence in s. HSS 88.03 (3) (b), the word “dependant” should be “dependent.”

k. In Note #1 to s. HSS 88.03 (3) (b), the phrase “material fact to the pubic” should be “material fact to the public,” and the phrase “alcohol and controlled substances” should be “alcohol or controlled substances.”

l. Section HSS 88.03 (5) 1. [sic] provides that, within 48 hours, a licensee must report to the licensing agency “a change in the licensee’s or service provider’s legal status because he or she has pending or has been charged with or convicted of any crime which is substantially related to caring for dependent persons.” It is not clear what a change in “legal status” means.

If the intent is to require reporting of any charge or conviction of such a crime, this should be simply stated without referring to a change in “legal status.”

m. In s. HSS 88.03 (6) (d), it appears that the provision should be rewritten to state that revocation may occur if a home has intentionally and substantially violated a requirement of ch. HSS 88. [See s. 50.033 (4), Stats. This statute also provides that revocation may occur because of a failure to meet the minimum requirements for licensure.]

n. In s. HSS 88.03 (6) (e) 2., the reference to “a crime against life or bodily injury” should be changed to “a crime against life or for causing bodily harm.” [See ch. 940, Stats.]

o. In s. HSS 88.03 (6) (g) 2. g., the letter “O” should be deleted following the sentence.

p. With respect to the appeal provisions in s. HSS 88.03 (7), the right is given to appeal a license denial, nonrenewal or revocation. Section HSS 88.03 (7) does not indicate that there is a right to appeal a suspension or the right to appeal the placing of conditions on a license. However, s. HSS 88.03 (6) (g) 1. c. specifies that for any sanction imposed on an adult family home, the notice of the sanction must include an explanation of the process to appeal a sanction under s. HSS 88.03 (7). If there is a right to appeal all sanctions, this should be clarified in s. HSS 88.03 (7). If there is not a right to appeal certain sanctions, the notice about the sanction should not contain information about the appeal process.

Also, s. HSS 88.03 (7) specifies that a request for a hearing must be filed with DHSS’s Office of Administrative Hearings. If the licensing agency is a county agency, does DHSS intend to hold a hearing on the decision of the county agency? If not, instructions on how to appeal to a county should be included.

q. Section HSS 88.04 (2) (b) provides that a licensee or service provider must be present and awake at all times if any resident is in need of “continuous care.” It is not clear what “continuous care” means.

Further, s. HSS 88.06 (3) (c) 2. provides that *if* the individual service plan for a person in need of continuous care “identifies need for a responsible person to be available in the home at all times or the licensee being up and awake or that a [sic] electronic monitoring device is required, the licensee shall provide or arrange for that level of supervision.” [The word “a” should be changed to “an.”] The inconsistency between s. HSS 88.04 (2) (b), which requires that the licensee or service provider be present and awake at all times if a resident is in need of continuous care, and s. HSS 88.06 (3) (c) 2., which appears to allow three options as to how a person in need of continuous care may be cared for, should be remedied. Further, if the intent is to allow the three options in s. HSS 88.06 (3) (c) 2., it appears that provision should be allowed for a service provider, as well as the licensee, to be the person who is up and awake.

r. In s. HSS 88.04 (2) (c), the phrase “each guardian” should be changed to “each resident’s guardian.” Also, the term “responsible professional” is not clear in this context. If this is a resident’s physician or other health care provider, attorney or accountant, this should be stated. Is the phrase intended to mean the resident’s “service coordinator”? If not, should “service coordinator” be included? Also, the term “referral agency” should be changed to the defined term “placing agency.”

s. Section HSS 88.04 (2) (e) should include an introductory clause to make it applicable only to residents who have not already been determined to be incompetent. Also, the phrase “or to an attorney designated under s. 55.02, Stats.,” is unclear since s. 55.02, Stats., does not provide for the designation of an attorney.

t. In pertinent part, s. HSS 88.04 (2) (i) provides that a licensee may not accept money from a resident or prospective resident. As drafted, this would exclude payment for the services of the adult family home. It appears that an exception should be included for payment for such services.

u. In s. HSS 88.04 (4) (a), the phrase “drivers license” should be replaced by the phrase “driver’s license.”

v. Section HSS 88.04 (5) (b) provides that the licensee and each service provider must complete eight hours of training “every year beginning the year after the initial training is received.” It is not clear if this is based on a 12-month period which begins immediately after the initial training or if it is based on calendar years. This should be clarified. In the latter case, it would be clearer if the following wording were substituted for the phrase quoted above: “every calendar year beginning with the calendar year which first begins after the calendar year in which the initial training is received.”

w. In s. HSS 88.05 (3) (f) 8., “the bedroom” should be replaced by “the resident’s bedroom.”

x. In s. HSS 88.05 (6), the term “member of the household” should be replaced by the defined term “household member.”

y. In s. HSS 88.06 (1) (b), the word “license” should be replaced by the word “licensee.”

z. In s. HSS 88.06 (2) (b) 1., the term “placement agency” should be replaced by the defined term “placing agency.”

aa. In s. HSS 88.06 (2) (b), which relates to service agreements, s. HSS 88.06 (2) (b) 2. indicates that: “For admission of a person for respite care, no service agreement is required. The licensee shall meet only the requirements of sub. (1) (d).”

If the latter sentence is intended to apply only with respect to persons admitted for respite care, the sentence itself should include language regarding persons admitted for respite care.

Assuming that this sentence is intended to apply only with respect to persons admitted for respite care, due to the placement of this sentence, it is not clear how far this exception extends. With respect to persons admitted for respite care, is it intended to exempt the licensee with respect to: (1) all requirements of ch. HSS 88; (2) the requirements in s. HSS 88.06; or (3) the requirements of certain subsections of s. HSS 88.06, for example, s. HSS 88.06 (2)? This should be clarified. Depending on the extent to which the exception applies, it may be preferable to change the placement of this sentence.

Also, s. HSS 88.06 (2) (a) requires that each resident have a medical examination. This appears to be a requirement of the resident rather than the licensee. If that is the case, it is not clear if the exception to the *licensee's* requirements set forth in s. HSS 88.06 (2) (b) 2. applies to persons admitted for respite care. Thus, the rule should make clear whether the medical examinations referred to in s. HSS 88.06 (2) (a) are applicable to persons admitted for respite care.

ab. The title of s. HSS 88.06 (3) refers to an "individual service plan," and this term is used in many sections of ch. HSS 88. However, s. HSS 88.06 also refers to this document as a "service plan" or a "plan." It would be preferable to use a consistent term throughout ch. HSS 88 to refer to this document.

ac. Section HSS 88.06 (3) (b) provides for development of an individual service plan "by the placing agency, if any, service coordinator, if any, the licensee, the resident *and* the resident's guardian" (emphasis added). Section HSS 88.06 (3) (d) provides that the individual service plan must be reviewed at least every six months "by the licensee, the resident *or* resident's guardian and, if applicable, the placing agency" (emphasis added). It also provides for changes "when requested by the resident or resident's guardian."

Was the potential omission of the resident in the review process [which is due to the use of the word "or" in the first sentence in s. HSS 88.06 (3) (d)] intentional in light of the fact that s. HSS 88.06 (3) (b) provides for the resident to participate in the initial development of the individual service plan "in a manner appropriate for the resident's level of understanding and method of communication"?

Was the omission of the service coordinator, if any, in the review process intentional in light of the fact that, under s. HSS 88.02 (28), the service coordinator is a person who has primary responsibility for arranging, coordinating, managing and monitoring care and services needed by a resident and, under s. HSS 88.07 (2) (c), the service coordinator is involved in determining which services are to be provided to the resident? Also, was the omission of the service coordinator intentional in s. HSS 88.11 (2), which provides for notification of alleged abuse or neglect?

Also, was the omission of the resident's designated representative, if any, in both the initial development of the individual service plan in s. HSS 88.06 (3) (b) and the review process in s. HSS 88.06 (3) (d) intentional in light of the fact that, under s. HSS 88.02 (11), the designated representative is a person designated in writing by a resident or the resident's guardian to aid a resident or act on the resident's behalf? Also, was the omission of the resident's designated representative, if any, intentional in: (1) s. HSS 88.08, which relates to who gets notification of termination of a resident's placement; (2) s. HSS 88.10 (5) (a), which relates to the right to file a grievance; (3) s. HSS 88.10 (5) (d), which relates to entities to whom a written summary regarding actions taken on a grievance are provided; and (4) s. HSS 88.11 (2), which relates to persons contacted in the event of alleged abuse or neglect? [If the omission was intentional in s. HSS 88.10 (5) (a) and (d), then s. HSS 88.10 (6) should be amended as it contemplates exercise of the right to file a grievance by the designated representative.]

Also, the rule makes no provision with respect to the role of a person who has been designated by the resident as the resident's health care agent under a power of attorney for health care under ch. 155, Stats., in: (1) the initial development and periodic review of the individual

service plan in s. HSS 88.06 (3) (b) and (d); (2) receiving notification of significant medical changes under s. HSS 88.07 (2) (b) 6.; (3) determining which services are needed by the resident under s. HSS 88.07 (2) (c); (4) notification of termination of placement under s. HSS 88.08; or (5) right to consent to treatment under s. HSS 88.10 (3) (j). It would be helpful if provisions were included regarding the licensee's obligation to deal with a health care agent, if any.

ad. Section HSS 88.07 (3) sets forth various requirements if the licensee assists a resident with medications. It does not set forth any requirements if a service provider, rather than the licensee, assists a resident with medications. On the other hand, ch. HSS 88 does not prohibit a service provider from assisting a resident with medications. If service providers are permitted to assist with medications, any requirements applicable to service providers should be specified. If service providers are prohibited from assisting with medications, this should be clearly stated.

ae. Section HSS 88.08 provides for notification to certain entities about termination of a resident's placement. In light of the role of the placing agency, was omission of the placing agency intentional?

af. In s. HSS 88.09 (1) (b), the comma at the end of the last sentence should be deleted.

ag. In s. HSS 88.09 (1) (d) 5., the phrase "department of health an human services" should be "department of health and human services."

ah. In s. HSS 88.09 (2) (a) and (b), "up-to-date" should not be hyphenated as it is not being used as an adjective.

ai. Section HSS 88.10 (2) refers to an "admissions agreement." It appears that this is the same document that is referred to in s. HSS 88.06 (2) (b) and (c) and other sections as a "service agreement." If this is the case, then, in order to avoid ambiguity, one term to describe the document should be selected and used throughout ch. HSS 88.

aj. In s. HSS 88.10 (3) (c) 1., the reference to "chs. 146.81 to 146.84, Stats., and s. 252.15, Stats." should be changed to "ss. 146.81 to 146.84 and 252.15, Stats."

ak. In s. HSS 88.10 (3) (c) 3., the term "legal guardian" should be changed to "guardian."

al. In s. HSS 88.10 (3) (f), the phrase "would be" should be replaced by the word "is."

am. Section HSS 88.10 (3) (m) sets forth the right of a resident "to be free from physical, sexual or mental abuse, neglect and financial exploitation or misappropriation of property." Since abuse is defined under s. HSS 88.02 (1) as including physical abuse, mental abuse and material abuse, s. HSS 88.10 (3) (m) appears to be repetitious in listing anything other than the defined term "abuse" plus "sexual abuse" which is not part of the definition of "abuse" in s. HSS 88.02 (1).

an. Section HSS 88.10 (3) (n) 1. provides for the right to be free from seclusion and restraints. However, s. HSS 88.10 (3) (n) 2. provides for limited use of physical restraints. Therefore, s. HSS 88.10 (3) (n) 1. should begin by stating: "Except as provided in subd. 2., to be free from...."

ao. Section HSS 88.10 (5) (c) provides that an adult family home must enable residents to have access to various entities in a grievance procedure. The licensing agency was not included. To the extent that this may not be DHSS, was this omission intentional?

ap. In s. HSS 88.10 (5) (d), the term “placement agency” should be replaced by the defined term “placing agency.”

aq. The following comments apply to s. HSS 88.10 (6):

- (1) In the first sentence, the phrase “a resident, his or her guardian or designated representative” and, in the second sentence, the phrase “a resident, guardian or designated representative” and the phrase “a resident, resident’s guardian or designated representative” should be changed to either: “a resident or the resident’s guardian or designated representative” or “a resident, the resident’s guardian or the resident’s designated representative.”
- (2) In the last sentence, the phrase “residents rights” should be changed to “resident’s rights.”

ar. Section HSS 88.11 contemplates that an investigation of reported abuse or neglect will take place by the licensing agency or another agency under contract with the licensing agency. However, there is no affirmative statement assigning the duty of investigation to a licensing agency and under what circumstances and conditions the investigation must take place. This should be remedied.

as. In s. HSS 88.11 (2), the phrase “contact the resident’s guardian...of any occurrence” would be clearer if it were changed to “contact the resident’s guardian...regarding any occurrence.”

at. In s. HSS 88.11 (3), a comma should be inserted in the phrase “51.437 Stats.” following the number.

au. Section HSS 88.11 (4) provides that “[a]fter an investigating agency has completed and substantiated an abuse or neglect report, the investigating agency shall notify the following of its findings:....” This provision does not appear to require the investigating agency to notify the specified entities about the results of the abuse or neglect investigation if the allegation of abuse or neglect was not substantiated. As s. HSS 88.11 (2) required immediate notification of some of these entities when the report of abuse or neglect was received, it seems appropriate to notify them about the results of the investigation even if the allegations were not substantiated so that their books on the matter can be closed. Was this omission intentional? If so, what mechanism is in place to provide that such entities can obtain information about the results of the investigation?

Also, it would appear to be appropriate to add the phrase “its investigation” to the end of the phrase “[a]fter an investigating agency has completed.”

av. In Appendix A under the listing for the Northwestern Office, the reference to “Douglas,” appears to be extraneous.

aw. The following comments pertain to Item 12 of the proposed “AFH License Application”:

- (1) The phrase “30 day period” should be changed to “60 day period.”
- (2) The phrase “30 day financial stability requirement” should be changed to “60 day financial stability requirement.”
- (3) The reference to s. HSS 82.04 (3) should be changed to s. HSS 88.04 (3).