

1989 Assembly Bill 229

Date of enactment: April 12, 1990  
Date of publication: April 27, 1990

## 1989 Wisconsin Act 199 (Vetoed in Part)

AN ACT to consolidate, renumber and amend 50.01 (3) (intro.) and (a); to amend 20.435 (1) (gm), 50.01 (3) (c) and 146.81 (1); to repeal and recreate 146.81 (1); and to create 20.435 (1) (dv), 50.01 (3) (d) and subchapter IV of chapter 50 of the statutes, relating to licensure of hospices, establishing rule-making authority, providing penalties and making appropriations.

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

SECTION 1. 20.005 (3) (schedule) of the statutes: at the appropriate place, insert the following amounts for the purposes indicated:

	<u>1989-90</u>	<u>1990-91</u>
<b>20.435 Health and social services, department of</b>		
(1) HEALTH SERVICES PLANNING, REGULATION AND DELIVERY		
(dv) Hospice regulation		

GPR A

~~80,000~~

46,600

**Vetoed  
in Part**

SECTION 2. 20.435 (1) (dv) of the statutes is created to read:

20.435 (1) (dv) *Hospice regulation.* The amounts in the schedule for the inspection, investigation, licensing and other regulation of hospices under subch. IV of ch. 50.

SECTION 3. 20.435 (1) (gm) of the statutes, as affected by 1989 Wisconsin Act 31, is amended to read:

20.435 (1) (gm) *Licensing, review and certifying activities.* The amounts in the schedule for the purposes specified in ss. 50.50 to 50.85, 140.05 (17), 140.051, 140.06 (5) and (8), 140.45 (6), 140.50 to 140.60, 140.86, 141.15 (2) (b), 143.15 (7) and 146.24, subch. IV of ch. 50 and ch. 150. All moneys received under ss. 50.50 to 50.85, 50.93 (1) (c), 140.05 (17), 140.051 (3), 140.06 (5) and (8), 140.45 (6), 140.50 to 140.60, 140.85, 140.86, 141.15 (2) (b), 143.15 (7), 146.24 and 150.13 shall be credited to this appropriation.

SECTION 4. 50.01 (3) (intro.) and (a) of the statutes, as affected by 1989 Wisconsin Act 31, are consolidated, renumbered 50.01 (3) (intro.) and amended to read:

50.01 (3) (intro.) "Nursing home" means: ~~(a) A~~ a place which provides 24-hour services including board and room to 3 or more unrelated residents who because of their mental or physical condition require nursing care or personal care in excess of 7 hours a week. "Nursing home" does not include any of the following:

SECTION 5. 50.01 (3) (c) of the statutes is amended to read:

50.01 (3) (c) ~~The reception and care or treatment of a person in a~~ A convent or facility owned or operated exclusively by and for members of a religious order ~~shall not constitute the premises to be a "nursing home" that provides reception and care or treatment of an individual.~~

SECTION 6. 50.01 (3) (d) of the statutes is created to read:

50.01 (3) (d) A hospice, as defined in s. 50.90 (1), that directly provides inpatient care.

SECTION 7. Subchapter IV of chapter 50 of the statutes is created to read:

CHAPTER 50  
SUBCHAPTER IV  
HOSPICES

**50.90 Definitions.** In this subchapter:

(1) "Hospice" means any of the following:

(a) An organization that primarily provides palliative care and supportive care to an individual with terminal illness where he or she lives or stays and, if necessary to meet the needs of an individual with terminal illness, arranges for or provides short-term inpatient care and treatment or provides respite care.

(b) A program, within an organization, that primarily provides palliative care and supportive care to an individual with terminal illness where he or she lives or stays, that uses designated staff time and facility services, that is distinct from other programs of care provided, and, if necessary to meet the needs of an individual with terminal illness, that arranges for or provides short-term inpatient care and treatment or respite care.

(c) A place, including a freestanding structure or a separate part of a structure in which other services are provided, that primarily provides palliative and supportive care and a place of residence to individuals with terminal illness and provides or arranges for short-term inpatient care as needed.

(1m) "Managing employe" means a general manager, business manager, administrator, director or other individual who exercises operational or managerial control over, or who directly or indirectly conducts, the operation of the hospice.

(2) "Organization" means a public agency, as defined in s. 46.93 (1m) (e), a nonprofit corporation, a for-profit stock corporation, a cooperative, a partnership or a sole proprietorship.

(3) "Palliative care" means management and support provided for the reduction or abatement of pain, for other physical symptoms and for psychosocial or spiritual needs of individuals with terminal illness and includes physician services, skilled nursing care, medical social services, services of volunteers and bereavement services. "Palliative care" does not mean treatment provided in order to cure a medical condition or disease or to artificially prolong life.

(3g) "Respite care" means care provided to a terminally ill individual in order to provide temporary relief to the primary caregiver.

(3m) "Short-term care" means care provided to a terminally ill individual in an inpatient setting for brief periods of time for the purpose of pain control or acute or chronic symptom management.

(4) "Supportive care" means services provided during the final stages of an individual's terminal illness and dying and after the individual's death to meet the psychosocial, social and spiritual needs of family members of the terminally ill individual and other individuals caring for the terminally ill individual. "Supportive care" includes personal adjustment counseling, financial counseling, respite services, bereavement counseling and follow-up services provided by volunteers or other persons.

(5) "Terminal illness" means a medical prognosis that an individual's life expectancy is less than 12 months.

**50.91 Departmental powers and duties.** The department shall provide uniform, statewide licensing, inspection and regulation of hospices as specified in this subchapter.

**50.92 Licensing requirements.** (1) No person may conduct, maintain, operate or otherwise participate in conducting, maintaining or operating a hospice unless the hospice is licensed by the department.

(2) The department shall issue an initial license or a renewal of a license if the department finds that the applicant is fit and qualified and that the hospice meets the requirements of this subchapter and the rules promulgated under this subchapter.

(3) The department or the department's designated representative shall inspect or investigate a hospice prior to issuance of a license for the hospice except as provided in sub. (4) and may inspect or investigate a hospice as the department deems necessary, including conducting home visits or a review of health care records of any individuals with terminal illness served by the hospice, to determine if any person is in violation of this subchapter.

(4) (a) In lieu of inspecting or investigating a hospice under sub. (3) prior to issuance of an initial license, the department may accept evidence that a hospice applying for licensure under s. 50.93 has been inspected under and is currently certified as meeting the conditions for medicare participation under 42 USC 1395 to 1395ccc. In lieu of inspecting or investigating a hospice under sub. (3) prior to issuance of a license renewal, the department shall accept evidence that a hospice applying for licensure under s. 50.93 has been inspected under and is currently certified as meeting the conditions for medicare participation under 42 USC 1395 to 1395ccc. The department shall inspect or investigate under sub. (3) prior to issuance of an initial license or a renewal of a license a hospice that fails to meet the conditions for medicare participation under 42 USC 1395 to 1395ccc.

(b) In lieu of inspecting or investigating a hospice under sub. (3) prior to issuance of an initial license or a renewal of a license, the department may accept evidence that a hospice applying for licensure under s. 50.93 has been inspected under and is currently in compliance with the hospice requirements of the joint commission for the accreditation of health organiza-

tions. A hospice shall provide the department with a copy of the report by the joint commission for the accreditation of health organizations of each periodic review the association conducts of the hospice.

(5) The past record of violations of applicable laws or regulations of the United States or of state statutes or rules of this or any other state, in the operation of any health-related organization, by an operator, managing employe or direct or indirect owner of a hospice or of an interest of a hospice is relevant to the issue of the fitness of an applicant for receipt of an initial license or the renewal of a license. The department or the department's designated representative shall inspect and investigate as necessary to determine the conditions existing in each case under this subsection and shall prepare and maintain a written report concerning the investigation and inspection.

**50.925 Use of name or advertising prohibited.** No entity that is not a hospice licensed under this subchapter or an applicant for a license or a provisional license under this subchapter may designate itself as a "hospice" or use the word "hospice" to represent or tend to represent the entity as a hospice or services provided by the entity as services provided by a hospice.

**50.93 Licensing procedure.** (1) APPLICATION. The application for an initial license, for renewal of a license or for a provisional license shall:

(a) Be in writing on a form provided by the department.

(b) Contain such information as the department requires.

(c) Include licensing fee payment, unless the licensing fee is waived by the department on a case-by-case basis under criteria for determining financial hardship established in rules promulgated by the department. An initial licensing fee is \$300, except that, for a hospice that is a nonprofit corporation and that is served entirely by uncompensated volunteers or employs persons in not more than 1.5 positions at 40 hours of employment per week, the initial licensing fee is \$25. The renewal fee is an amount equal to 0.15% of the net annual income of the hospice, based on the most recent annual report of the hospice under par. (d), or, if that amount is less than \$200, the renewal fee is \$200 and if that amount is greater than \$1,000, the renewal fee is \$1,000, except that for a hospice that is a nonprofit corporation and that is served entirely by uncompensated volunteers or employs persons in not more than 1.5 positions at 40 hours of employment per week the renewal fee is \$10. The amount of the provisional licensing fee shall be established under s. 50.95 (2). The licensing fee for an initial license, including the initial licensing fee for a hospice that is a nonprofit corporation and that is served entirely by uncompensated volunteers or employs persons in not more than 1.5 positions at 40 hours of employment per week, issued after September 1 shall be prorated

according to the number of full months remaining in the license period.

(d) Include, if for renewal of a license or if for an initial license subsequent to receipt of a provisional license, an annual report, in a format determined by the department.

(2) ISSUANCE OF INITIAL LICENSE OR LICENSE RENEWAL. (a) Unless sooner revoked or suspended, an initial license or renewal of a license issued to a hospice is valid for 12 months from the date of issuance.

(b) Issuance of a renewal of a license by the department under par. (a) is contingent upon the department's receipt from the applicant of all of the information required under sub. (1) (a) to (d), no later than 30 days prior to the final date of validity of the license. Any license for which timely renewal is not made under the requirements of this paragraph expires on the day following the final date of validity of that license.

(c) Each license shall be issued only for the applicant named in the application and may not be transferred or assigned.

(d) Any initial license or renewal of a license shall state any additional information or special limitations prescribed by the department.

(3) PROVISIONAL LICENSE. If the applicant has not been previously licensed under this subchapter or if the hospice is not in operation at the time that application is made, the department may issue a provisional license. Unless sooner suspended or revoked under sub. (4), a provisional license shall be valid for 12 months from the date of issuance. Within 30 days prior to the termination of a provisional license, the department shall fully and completely inspect the hospice and, if the hospice meets the applicable requirements for licensure, shall issue a regular license under sub. (2). If the department finds that the hospice does not meet the requirements for licensure, the department may not issue a regular license under sub. (2).

(4) SUSPENSION, NONRENEWAL AND REVOCATION. (a) The department, after notice to the applicant or licensee, may suspend, revoke or refuse to renew a license in any case in which the department finds that there has been a substantial failure to comply with the requirements of this subchapter or the rules promulgated under this subchapter. No state or federal funds passing through the state treasury may be paid to a hospice not having a valid license issued under this section.

(b) Notice under this subsection shall include a clear and concise statement of the violations on which the nonrenewal or revocation is based, the statute or rule violated and notice of the opportunity for an evidentiary hearing under par. (c).

(c) If a hospice desires to contest the nonrenewal or revocation of a license, the hospice shall, within 10 days after receipt of notice under par. (b), notify the department in writing of its request for a hearing under s. 227.44.

(d) 1. Subject to s. 227.51 (3), revocation shall become effective on the date set by the department in the notice of revocation, or upon final action after hearing under ch. 227, or after court action if a stay is granted under ch. 227, whichever is later.

2. Nonrenewal shall become effective on the date of expiration of any existing license, or upon final action after hearing under ch. 227, or after court action if a stay is granted under the same terms and conditions as found in s. 50.03 (11), whichever is later.

3. The department may extend the effective date of license revocation or expiration in any case in order to permit orderly removal and relocation of individuals served by the hospice.

**50.95 Rule-making authority.** The department shall promulgate all of the following rules:

(1) Standards for the care, treatment, health, safety, rights, welfare and comfort of individuals with terminal illness, their families and other individuals who receive palliative care or supportive care from a hospice and the maintenance, general hygiene and operation of a hospice, which will permit the use of advancing knowledge to promote safe and adequate care and treatment for these individuals. These standards shall permit provision of services directly, as required under 42 CFR 418.56, or by contract under which overall coordination of hospice services is maintained by hospice staff members and the hospice retains the responsibility for planning and coordination of hospice services and care on behalf of a hospice client and his or her family, if any.

(2) Provisional hospice licensure fees or the methods of computation of those fees.

(3) Inspection or investigation procedures that the department or the department's designated representative may use to assure the provision of care and treatment that is commensurate with the standards established under sub. (1).

(4) Criteria for determining financial hardship for the waiver of licensing fees.

(5) Criteria for determining that the applicant for initial licensure or license renewal is fit and qualified.

(6) A procedure for waiver of and variance from standards under sub. (1) or criteria under sub. (5). The department may limit the duration of the waiver or variance.

**50.97 Right of injunction.** The department may, upon the advice of the attorney general, who shall represent the department in all proceedings under this section, institute an action in the name of the state in the circuit court for Dane county for injunctive relief or other process against any licensee, owner, operator, administrator or representative of any owner of a hospice for the violation of any of the provisions of this subchapter or rules promulgated under this subchapter if the violation affects the health, safety or welfare of individuals with terminal illness.

**50.98 Forfeitures.** (1) Any person who violates this subchapter or rules promulgated under this sub-

chapter may be required to forfeit not more than \$100 for the first violation and may be required to forfeit not more than \$200 for the 2nd or any later violation within a year. The period shall be measured using the dates of issuance of citations of the violations. Each day of violation constitutes a separate violation.

(2) In determining whether a forfeiture is to be imposed and in fixing the amount of the forfeiture to be imposed, if any, for a violation, the following factors shall be considered:

(a) The gravity of the violation, including the probability that death or serious physical or psychological harm to a resident will result or has resulted; the severity of the actual or potential harm; and the extent to which the provisions of the applicable statutes or rules were violated.

(b) Good faith exercised by the licensee. Indications of good faith include, but are not limited to, awareness of the applicable statutes and regulation and reasonable diligence in complying with such requirements, prior accomplishments manifesting the licensee's desire to comply with the requirements, efforts to correct and any other mitigating factors in favor of the licensee.

(c) Any previous violations committed by the licensee.

(d) The financial benefit to the hospice of committing or continuing the violation.

(3) The department may directly assess forfeitures provided for under sub. (1). If the department determines that a forfeiture should be assessed for a particular violation or for failure to correct it, it shall send a notice of assessment to the hospice. The notice shall specify the amount of the forfeiture assessed, the violation, and the statute or rule alleged to have been violated, and shall inform the licensee of the right to a hearing under sub. (4).

(4) A hospice may contest an assessment of forfeiture, by sending, within 10 days after receipt of notice under sub. (3), a written request for hearing under s. 227.44 to the division of hearings and appeals created under s. 15.103 (1). The administrator of the division may designate a hearing examiner to preside over the case and recommend a decision to the administrator under s. 227.46. The decision of the administrator of the division shall be the final administrative decision. The division shall commence the hearing within 30 days after receipt of the request for hearing and shall issue a final decision within 15 days after the close of the hearing. Proceedings before the division are governed by ch. 227. In any petition for judicial review of a decision by the division, the party, other than the petitioner, who was in the proceeding before the division shall be the named respondent.

(5) All forfeitures shall be paid to the department within 10 days after receipt of notice of assessment or, if the forfeiture is contested under sub. (4), within 10 days after receipt of the final decision after exhaustion of administrative review, unless the final decision is

appealed and the order is stayed by court order under the same terms and conditions as found in s. 50.03 (11). The department shall remit all forfeitures paid to the state treasurer for deposit in the school fund.

(6) The attorney general may bring an action in the name of the state to collect any forfeiture imposed under this section if the forfeiture has not been paid following the exhaustion of all administrative and judicial reviews. The only issue to be contested in any such action shall be whether the forfeiture has been paid.

SECTION 8. 146.81 (1) of the statutes is amended to read:

146.81 (1) "Health care provider" means a nurse licensed under ch. 441, a chiropractor licensed under ch. 446, a dentist licensed under ch. 447, a physician, podiatrist or physical therapist licensed or an occupational therapist or occupational therapy assistant certified under ch. 448, an optometrist licensed under ch. 449, a psychologist licensed under ch. 455, a partnership thereof, a corporation thereof that provides health care services, an operational cooperative sickness care plan organized under ss. 185.981 to 185.985 that directly provides services through salaried employes in its own facility, a hospice licensed under subch. IV of ch. 50 or an inpatient health care facility or community-based residential facility, a defined in s. 140.85 (1) or 140.86.

SECTION 9. 146.81 (1) of the statutes, as affected by 1989 Wisconsin Act 31, is repealed and recreated to read:

146.81 (1) "Health care provider" means a nurse licensed under ch. 441, a chiropractor licensed under ch. 446, a dentist licensed under ch. 447, a physician, podiatrist or physical therapist licensed or an occupational therapist or occupational therapy assistant certified under ch. 448, an optometrist licensed under ch. 449, an acupuncturist certified under ch. 451, a psychologist licensed under ch. 455, a partnership thereof, a corporation thereof that provides health

care services, an operational cooperative sickness care plan organized under ss. 185.981 to 185.985 that directly provides services through salaried employes in its own facility, a hospice licensed under subch. IV of ch. 50 or an inpatient health care facility or community-based residential facility, as defined in s. 140.85 (1) or 140.86.

SECTION 10. **Nonstatutory provisions; health and social services.** (1) **HOSPICE RULES.** The department of health and social services shall submit in proposed form the rules required under section 50.95 of the statutes, as created by this act, to the legislative council staff under section 227.15 (1) of the statutes no later than the first day of the 13th month after the effective date of this subsection.

(2) **POSITION AUTHORIZATIONS.** The authorized FTE positions for the department of health and social services are increased by ~~0.5 GPR position on the effective date of this subsection~~ and by 1.0 GPR position on July 1, 1990, to be funded from the appropriation under section 20.435 (1) (dv) of the statutes, for performance of licensing and regulation of hospices under subchapter IV of chapter 50 of the statutes.

Vetoed  
in Part

SECTION 11. **Appropriation changes; health and social services.** (1) **HOSPICE REGULATION.** The dollar amounts in the schedule under section 20.005 (3) of the statutes for the appropriation to the department of health and social services under section 20.435 (1) (gm) of the statutes, as affected by the acts of 1989, are increased by \$18,000 for fiscal year 1990-91 to provide for the licensing and regulation of hospices under subchapter IV of chapter 50 of the statutes.

SECTION 12. **Effective date.** This act takes effect on August 1, 1990, except as follows:

(1) The treatment of section 50.95 of the statutes and SECTIONS 10 (1) and (2) and 11 (1) of this act take effect on the day after publication.

(2) The repeal and recreation of section 146.81 (1) of the statutes takes effect on September 1, 1990.