



State of Wisconsin
1997 - 1998 LEGISLATURE

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**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 1997 ASSEMBLY BILL 432**

February 12, 1998 - Offered by Representative HUBER.

1 **AN ACT** *to renumber and amend* 48.68 (4) and 50.03 (4) (g); *to amend* 48.68
2 (1), 48.68 (3), 50.03 (4) (a) 1. b. and 50.03 (4) (a) 3.; *to repeal and recreate* 48.68
3 (1); and *to create* 48.68 (1r), 48.68 (3m), 48.68 (4) (b), 48.68 (5), 50.03 (1g), 50.03
4 (3) (cm), 50.03 (4) (a) 4., 50.03 (4) (g) 2. and 50.03 (4) (h) of the statutes; **relating**
5 **to:** licensing and community oversight of child welfare agencies, group homes
6 and community-based residential facilities and granting rule-making
7 authority.

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

8 **SECTION 1.** 48.68 (1) of the statutes is amended to read:
9 48.68 (1) After receipt of an application for a license, the department shall
10 investigate to determine if the applicant meets the minimum requirements for a
11 license adopted by the department under s. 48.67. If the department receives an
12 application for a license to operate a child welfare agency or a group home that is

1 intended to serve primarily persons who are under court-ordered supervision or
2 aftercare supervision as a result of a criminal violation or who require treatment for
3 alcohol or other drug abuse, the department shall also investigate to determine if the
4 applicant meets all applicable zoning ordinances and the requirements of s. 59.69
5 (15) (b), 60.63 (1) and (2) or 62.23 (7) (i) 1. and 2., whichever is applicable. In
6 determining whether to issue or continue a license, the department may consider any
7 action by the applicant, or by an employe of the applicant, that constitutes a
8 substantial failure by the applicant or employe to protect and promote the health,
9 safety and welfare of a child. Upon satisfactory completion of this investigation and
10 payment of the fee required under s. 48.615 (1) (a) or (b), 48.625 (2) (a), 48.65 (3) (a)
11 or 938.22 (7) (b), the department shall issue a license under s. 48.66 (1) or, if
12 applicable, a probationary license under s. 48.69 or, if applicable, shall continue a
13 license under s. 48.66 (5). At the time of initial licensure and license renewal, the
14 department shall provide a foster home licensee with written information relating
15 to the age-related monthly foster care rates and supplemental payments specified
16 in s. 48.62 (4), including payment amounts, eligibility requirements for
17 supplemental payments and the procedures for applying for supplemental
18 payments.

19 **SECTION 2.** 48.68 (1) of the statutes, as affected by 1997 Wisconsin Acts 27 and
20 (this act), is repealed and recreated to read:

21 48.68 (1) After receipt of an application for a license, the department shall
22 investigate to determine if the applicant meets the minimum requirements for a
23 license adopted by the department under s. 48.67 and meets the requirements
24 specified in s. 48.685, if applicable. If the department receives an application for a
25 license to operate a child welfare agency or a group home that is intended to serve

1 primarily persons who are under court-ordered supervision or aftercare supervision
2 as a result of a criminal violation or who require treatment for alcohol or other drug
3 abuse, the department shall also investigate to determine if the applicant meets all
4 applicable zoning ordinances and the requirements of s. 59.69 (15) (b), 60.63 (1) and
5 (2) or 62.23 (7) (i) 1. and 2., whichever is applicable. In determining whether to issue
6 or continue a license, the department may consider any action by the applicant, or
7 by an employe of the applicant, that constitutes a substantial failure by the applicant
8 or employe to protect and promote the health, safety and welfare of a child. Upon
9 satisfactory completion of this investigation and payment of the fee required under
10 s. 48.615 (1) (a) or (b), 48.625 (2) (a), 48.65 (3) (a) or 938.22 (7) (b), the department
11 shall issue a license under s. 48.66 (1) or, if applicable, a probationary license under
12 s. 48.69 or, if applicable, shall continue a license under s. 48.66 (5). At the time of
13 initial licensure and license renewal, the department shall provide a foster home
14 licensee with written information relating to the age-related monthly foster care
15 rates and supplemental payments specified in s. 48.62 (4), including payment
16 amounts, eligibility requirements for supplemental payments and the procedures for
17 applying for supplemental payments.

18 **SECTION 3.** 48.68 (1r) of the statutes is created to read:

19 48.68 (1r) (a) An application for a license or for continuance of a license to
20 operate a child welfare agency or group home shall identify the client group to be
21 served. The department shall define "client group" by rule for purposes of this
22 section.

23 (b) A child welfare agency or group home may not provide care and
24 maintenance for a person who is not a member of the client group identified under

1 par. (a) unless the child welfare agency or group home complies with par. (c) or (d),
2 whichever is applicable.

3 (c) Except as provided in par. (d), a child welfare agency or group home may
4 change the client group served by the child welfare agency or group home without
5 the approval of the department.

6 (d) Notwithstanding par. (c), but subject to par. (e), if any of the following
7 applies a child welfare agency or group home may not change the client group served
8 by the child welfare agency or group home unless the child welfare agency or group
9 home submits to the department a written application for approval of the change and
10 obtains the department's approval of the change:

11 1. The client group served consists primarily of persons who are not under
12 court-ordered supervision or aftercare supervision as a result of a violation of a
13 criminal law and the child welfare agency or group home proposes to change the
14 client group served to one that consists primarily of persons who are under
15 court-ordered supervision or aftercare supervision as a result of a violation of a
16 criminal law.

17 2. The client group served consists primarily of persons who do not require
18 treatment for alcohol or other drug abuse and the child welfare agency or group home
19 proposes to change the client group served to one that consists primarily of persons
20 who require treatment for alcohol or other drug abuse.

21 (e) Paragraph (d) does not apply to a proposed change in client group served
22 if the initial client group served by the child welfare agency or group home consists
23 primarily of persons who are under court-ordered supervision or aftercare
24 supervision as a result of a violation of a criminal law or who require treatment for
25 alcohol or other drug abuse.

1 **SECTION 4.** 48.68 (3) of the statutes is amended to read:

2 48.68 (3) Within 10 working days after receipt of an application applying for
3 initial licensure of a child welfare agency or group home or within 10 working days
4 after applying under sub. (1r) (d) for approval of a change in the client group served,
5 the department applicant shall notify the city, town or village planning commission,
6 or other appropriate city, town or village agency if there is no planning commission,
7 of receipt submission of the application. ~~The department~~ In the case of a child
8 welfare agency or group home that intends to serve a client group consisting
9 primarily of persons who are not under court-ordered supervision or aftercare
10 supervision as a result of a violation of a criminal law or who do not require treatment
11 for alcohol or other drug abuse, the notification shall request state that the planning
12 commission or agency may send to the department, within 30 days after the date of
13 the notification, a description of any specific hazards ~~which~~ that may affect the
14 health and safety of the residents of the child welfare agency or group home. In the
15 case of a child welfare agency or group home that intends to serve a client group
16 consisting primarily of persons who are under court-ordered supervision or
17 aftercare supervision as a result of a violation of a criminal law or who require
18 treatment for alcohol or other drug abuse, the notification shall state that the
19 planning commission or agency may send to the department, within 45 days after the
20 date of the notification, a description of any specific hazards that may affect the
21 health and safety of the residents of the child welfare agency or group home. The
22 applicant shall send a copy of the notification to the department. No license may be
23 issued and no approval under sub. (1r) (d) of a change in the client group served may
24 be granted to a child welfare agency or group home until the 30-day or 45-day period,
25 whichever is applicable, has expired or until the department receives the response

1 of the planning commission or agency, whichever is sooner. In issuing a license or
2 granting approval under sub. (1r) (d) of a change in the client group served, the
3 department shall give full consideration to such hazards determined by the planning
4 commission or agency. Prior to issuing a license for a child welfare agency or group
5 home that will serve a client group consisting primarily of persons who are under
6 court-ordered supervision or aftercare supervision as a result of a violation of a
7 criminal law or who require treatment for alcohol or other drug abuse or granting
8 approval under sub. (1r) (d) of a change in the client group served, the department
9 shall work with the applicant to address each of the hazards described. If the
10 department issues a license for a child welfare agency or group home that will serve
11 a client group consisting primarily of persons who are under court-ordered
12 supervision or aftercare supervision as a result of a violation of a criminal law or who
13 require treatment for alcohol or other drug abuse or approves under sub. (1r) (d) a
14 change in the client group served, the department shall respond in writing to the
15 planning commission or agency addressing each of the hazards described and stating
16 why the license was issued or approval granted despite the hazards.

17 **SECTION 5.** 48.68 (3m) of the statutes is created to read:

18 48.68 **(3m)** Within 10 working days after submitting an application for
19 approval by the department under sub. (1r) (d) of a change in the client group served,
20 the applicant shall notify the community advisory committee established under sub.
21 (4) (b) or, if there is no community advisory committee, shall establish one that
22 conforms to the requirements of sub. (4) (b).

23 **SECTION 6.** 48.68 (4) of the statutes is renumbered 48.68 (4) (a) and amended
24 to read:

1 48.68 (4) (a) Prior to initial licensure of a residential facility operated by a child
2 welfare agency or of a group home, other than a residential facility or group home
3 that will serve a client group consisting primarily of persons who are under
4 court-ordered supervision or aftercare supervision as a result of a violation of a
5 criminal law or who require treatment for alcohol or other drug abuse, the applicant
6 for licensure shall make a good faith effort to establish a community advisory
7 committee consisting of representatives from the child welfare agency or proposed
8 group home, the neighborhood in which the proposed residential facility or group
9 home will be located and a local unit of government.

10 (c) The community advisory committee shall provide a forum for
11 communication for those persons interested in the proposed residential facility or
12 group home. Any committee established under this subsection shall continue in
13 existence after licensure to make recommendations to the licensee regarding the
14 impact of the residential facility or group home on the neighborhood. The
15 department shall determine compliance with this subsection both prior to and after
16 initial licensure.

17 **SECTION 7.** 48.68 (4) (b) of the statutes is created to read:

18 48.68 (4) (b) Prior to initial licensure of a residential facility operated by a child
19 welfare agency, or of a group home, that will serve a client group consisting primarily
20 of persons who are under court-ordered supervision or aftercare supervision as a
21 result of a violation of a criminal law or who require treatment for alcohol or other
22 drug abuse, the applicant for licensure shall establish a community advisory
23 committee consisting of residents from the child welfare agency or proposed group
24 home appointed by the child welfare agency or group home operator, representatives
25 of the neighborhood in which the proposed residential facility or group home will be

1 located appointed by the mayor or city manager, village president or town board
2 chairperson or his or her designee and representatives of the city, village or town
3 appointed by the mayor or city manager, village president or town board chairperson
4 or his or her designee. A majority of the members of a community advisory committee
5 established under this paragraph shall be representatives of the neighborhood, and
6 representatives of the city, village or town, in which the proposed residential facility
7 or group home will be located.

8 **SECTION 8.** 48.68 (5) of the statutes is created to read:

9 48.68 (5) (a) In the case of a child welfare agency or group home that will serve
10 a client group consisting primarily of persons who are under court-ordered
11 supervision or aftercare care supervision as a result of a violation of a criminal law
12 or who require treatment for alcohol or other drug abuse, if the city, town or village
13 planning commission, or other appropriate city, town or village agency if there is no
14 planning commission, describes any specific hazards under sub. (3), if the
15 community advisory committee expresses any concerns regarding the impact of the
16 proposed child welfare agency or group home or proposed change in the client group
17 served on the neighborhood or if the department, following its investigation under
18 sub. (1), has any concerns regarding any specific hazards as described in sub. (3) or
19 regarding the impact of the proposed child welfare agency or group home or proposed
20 change in the client group served on the neighborhood, the department may issue the
21 license or approve the proposed change in the client group served subject to any
22 conditions that the department may impose to address those specific hazards or
23 concerns.

24 (b) After issuing a license or approving a change in the client group served, the
25 department may not change any condition imposed under par. (a) to make that

1 condition less stringent unless the department first provides to the city, town or
2 village planning commission, or other appropriate city, town or village agency if there
3 is no planning commission, notice of the proposed change and an explanation
4 showing that the proposed change would not endanger the health or safety of the
5 residents of the child welfare agency or group home.

6 **SECTION 9.** 50.03 (1g) of the statutes is created to read:

7 50.03 **(1g)** UNAUTHORIZED RESIDENTS. No person operating or maintaining a
8 community-based residential facility may permit any person who is not a member
9 of the client group identified under sub. (3) (cm) 1. to become a resident of the
10 community-based residential facility unless the person operating or maintaining
11 the community-based residential facility complies with sub. (3) (cm) 2. or 3.,
12 whichever is applicable.

13 **SECTION 10.** 50.03 (3) (cm) of the statutes is created to read:

14 50.03 **(3)** (cm) 1. An application for a license to operate a community-based
15 residential facility shall identify the client group to be served. The department shall
16 define “client group” by rule for purposes of this section.

17 2. Except as provided in in subd. 3., a community-based residential facility
18 may change the client group served without the approval of the department.

19 3. Notwithstanding subd. 2., but subject to subd. 4., if any of the following
20 applies a community-based residential facility may not change the client group
21 served by the community-based residential facility unless it submits to the
22 department a written application for approval of the change and obtains the
23 department’s approval of the change:

24 a. The client group served consists primarily of persons who are not on
25 probation or parole and the community-based residential facility proposes to change

1 the client group served to one that consists primarily of persons who are on probation
2 or parole.

3 b. The client group served consists primarily of persons who do not require
4 treatment services for alcohol or other drug abuse and the community-based
5 residential facility proposes to change the client group served to one that consists
6 primarily of persons who require treatment services for alcohol or other drug abuse.

7 4. Subdivision 3. does not apply to a proposed change in client group served if
8 the initial client group served by the community-based residential facility consists
9 primarily of persons who are on probation or parole or who require treatment for
10 alcohol or other drug abuse.

11 **SECTION 11.** 50.03 (4) (a) 1. b. of the statutes, as affected by 1997 Wisconsin Act
12 27, is amended to read:

13 50.03 (4) (a) 1. b. Except as provided in sub. (4m) (b), the department shall issue
14 a license for a community-based residential facility if it finds the applicant to be fit
15 and qualified, if it finds that the community-based residential facility meets the
16 requirements established by this subchapter and if the community-based
17 residential facility has paid the license fee under s. 50.037 (2) (a). If a
18 community-based residential facility proposes to serve primarily persons who are
19 on probation or parole or who require treatment for alcohol or other drug abuse, the
20 department shall also investigate to determine if the community-based residential
21 facility meets all applicable zoning ordinances and the requirements of s. 59.69 (15)
22 (b), 60.63 (1) and (2) or 62.23 (7) (i) 1. and 2., whichever is applicable. In determining
23 whether to issue a license for a community-based residential facility, the department
24 may consider any action by the applicant or by an employe of the applicant that
25 constitutes a substantial failure by the applicant or employe to protect and promote

1 the health, safety or welfare of a resident. The department may deny licensure to
2 or revoke licensure for any person who conducted, maintained, operated or permitted
3 to be maintained or operated a community-based residential facility for which
4 licensure was revoked. The department, or its designee, shall make such inspections
5 and investigations as are necessary to determine the conditions existing in each case
6 and shall file written reports. In reviewing the report of a community-based
7 residential facility that is required to be submitted under par. (c) 1., the department
8 shall consider all complaints filed under sub. (2) (f) since initial license issuance or
9 since the last review, whichever is later, and the disposition of each. The department
10 shall promulgate rules defining "fit and qualified" for the purposes of this subd. 1.
11 b.

12 **SECTION 12.** 50.03 (4) (a) 3. of the statutes is amended to read:

13 50.03 (4) (a) 3. Within 10 working days after receipt of an application applying
14 for initial licensure of a community-based residential facility or within 10 working
15 days after applying under sub. (3) (cm) 3. for approval of a change in the client group
16 served, the department applicant shall notify the city, town or village planning
17 commission, or other appropriate city, town or village agency if there is no planning
18 commission, of receipt submission of the application. The department In the case of
19 a community-based residential facility that intends to serve a client group
20 consisting primarily of persons who are not on probation or parole or who do not
21 require treatment for alcohol or other drug abuse, the notification shall request state
22 that the planning commission or agency may send to the department, within 30 days
23 after the date of the notification, a description of any specific hazards which that may
24 affect the health and safety of the residents of the community-based residential
25 facility. In the case of a community-based residential facility that intends to serve

1 a client group consisting primarily of persons who are on probation or parole or who
2 require treatment for alcohol or other drug abuse, the notification shall state that the
3 planning commission or agency may send to the department, within 45 days after the
4 date of the notification, a description of any specific hazards that may affect the
5 health and safety of the residents of the community-based residential facility. The
6 applicant shall send a copy of the notification to the department. No license may be
7 granted issued and no approval under sub. (3) (cm) 3. of a change in the client group
8 served may be granted to a community-based residential facility until the 30-day
9 or 45-day period, whichever is applicable, has expired or until the department
10 receives the response of the planning commission or agency, whichever is sooner. In
11 granting issuing a license or granting approval under sub. (3) (cm) 3. of a change in
12 the client group served, the department shall give full consideration to such hazards
13 determined by the planning commission or agency. Prior to issuing a license for a
14 community-based residential facility that will serve a client group consisting
15 primarily of persons who are on probation or parole or who require treatment
16 services for alcohol or other drug abuse or granting approval under sub. (3) (cm) 3.
17 of a change in the client group served, the department shall work with the applicant
18 to address each of the hazards described. If the department issues a license for a
19 community-based residential facility that will serve a client group consisting
20 primarily of persons who are on probation or parole or who require treatment
21 services for alcohol or other drug abuse or approves under sub. (3) (cm) 3. a change
22 in the client group served, the department shall respond in writing to the planning
23 commission or agency addressing each of the hazards described and stating why the
24 license was issued or approval granted despite the hazards.

25 **SECTION 13.** 50.03 (4) (a) 4. of the statutes is created to read:

1 50.03 (4) (a) 4. Within 10 working days after submitting an application for
2 approval by the department under sub. (3) (cm) 3. of a change in the client group
3 served, the applicant shall notify the community advisory committee established
4 under par. (g) 2. or, if there is no community advisory committee, shall establish one
5 that conforms to the requirements of par. (g) 2.

6 **SECTION 14.** 50.03 (4) (g) of the statutes is renumbered 50.03 (4) (g) 1. and
7 amended to read:

8 50.03 (4) (g) 1. Prior to initial licensure of a community-based residential
9 facility, other than a community-based residential facility that will serve a client
10 group consisting primarily of persons who are on probation or parole or who require
11 treatment for alcohol or other drug abuse, the applicant for licensure shall ~~make a~~
12 ~~good faith effort to~~ establish a community advisory committee consisting of
13 representatives from the proposed community-based residential facility, the
14 neighborhood in which the proposed community-based residential facility will be
15 located and a local unit of government.

16 3. The community advisory committee shall provide a forum for
17 communication for those persons interested in the proposed community-based
18 residential facility. Any committee established under this paragraph shall continue
19 in existence after licensure to make recommendations to the licensee regarding the
20 impact of the community-based residential facility on the neighborhood. The
21 department shall determine compliance with this paragraph both prior to and after
22 initial licensure.

23 **SECTION 15.** 50.03 (4) (g) 2. of the statutes is created to read:

24 50.03 (4) (g) 2. Prior to initial licensure of a community-based residential
25 facility that will serve a client group consisting primarily of persons who are on

1 probation or parole or who require treatment for alcohol or other drug abuse, the
2 applicant for licensure shall establish a community advisory committee consisting
3 of representatives from the proposed community-based residential facility
4 appointed by the proposed community-based residential facility, representatives of
5 the neighborhood in which the proposed community-based residential facility will
6 be located appointed by the mayor or city manager, village president or town board
7 chairperson or his or her designee and representatives of the city, village or town
8 appointed by the mayor or city manager, village president or town board chairperson
9 or his or her designee. A majority of the members of a community advisory committee
10 established under this subdivision shall be representatives of the neighborhood, and
11 representatives of the city, village or town, in which the proposed community-based
12 residential facility will be located.

13 **SECTION 16.** 50.03 (4) (h) of the statutes is created to read:

14 50.03 (4) (h) 1. In the case of a community-based residential facility that will
15 serve a client group consisting primarily of persons who are on probation or parole
16 or who require treatment for alcohol or other drug abuse, if the city, town or village
17 planning commission, or other appropriate city, town or village agency if there is no
18 planning commission, describes any specific hazards under par. (a) 3., if the
19 community advisory committee expresses any concerns regarding the impact of the
20 proposed community-based residential facility or proposed change in the client
21 group served on the neighborhood or if the department, following its investigation
22 under par. (a) 1., has any concerns regarding any specific hazards as described in par.
23 (a) 3. or regarding the impact of the proposed community-based residential facility
24 or proposed change in the client group served on the neighborhood, the department
25 may issue the license or approve the proposed change in the client group served

1 subject to any conditions that the department may impose to address those specific
2 hazards or concerns.

3 2. After issuing a license or approving a change in the client group served, the
4 department may not change any condition imposed under subd. 1. to make that
5 condition less stringent unless the department first provides to the city, town or
6 village planning commission, or other appropriate city, town or village agency if there
7 is no planning commission, notice of the proposed change and an explanation
8 showing that the proposed change would not endanger the health or safety of the
9 residents of the community-based residential facility.

10 **SECTION 17. Initial applicability.**

11 (1) INITIAL LICENSURE AND CHANGES IN CLIENT GROUP SERVED. The treatment of
12 sections 48.68 (1r), (3), (3m), (4) and (5) and 50.03 (3) (cm) and (4) (a) 1. b., 3. and 4.,
13 (g) and (h) of the statutes and the amendment of section 48.68 (1) of the statutes first
14 apply to applications for initial licensure or for approval of a change in the client
15 group served received by the department of health and family services on the
16 effective date of this subsection.

17 **SECTION 18. Effective dates.** This act takes effect on the day after publication,
18 except as follows:

19 (1) The repeal and recreation of section 48.68 (1) of the statutes takes effect on
20 October 1, 1998, or on the day after publication, whichever is later.

21 (END)