



1997 ASSEMBLY BILL 432

June 24, 1997 - Introduced by Representatives HUBER, WALKER, GARD, HANSON, RUTKOWSKI, GOETSCH, DUFF, GUNDERSON, URBAN, ZIEGELBAUER, KELSO, OLSEN, RYBA, BOYLE, MUSSER and SPRINGER, cosponsored by Senators ROSENZWEIG, DECKER, DARLING, ROESSLER, BRESKE, HUELSMAN, FARROW and PLACHE. Referred to Committee on Health.

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

Analysis by the Legislative Reference Bureau

Under current law, the department of health and family services (DHFS) licenses certain facilities for the care and treatment in the community of certain children and adults. Those facilities include child welfare agencies, which may provide care for 4 or more children, group homes, which may provide care for 5 to 8 children, and community-based residential facilities, which may provide care for 5 or more unrelated adults (community living arrangements).

Under current law, on receipt of an application for initial licensure of a community living arrangement, DHFS must notify the planning commission of the city, village or town in which the proposed community living arrangement is to be located and request the planning commission to send, within 30 days after the request, a description of any specific hazards that might affect the health and safety of the residents of the community living arrangement. DHFS may not issue a license until receiving a response or until the 30-day period has expired, whichever is sooner, and DHFS must consider the hazards as determined by the planning commission.

This bill makes the following changes with respect to the licensing of a community living arrangement:

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1. Requires an application for a license or for renewal of a license to operate a community living arrangement to identify the client group to be served and prohibits a community living arrangement from changing the client group served without the approval of DHFS.

2. Requires the applicant for initial licensure as a community living arrangement or for approval of a change in the client group served, rather than DHFS, to notify the city, town or village planning commission of the submission of the application and to send a copy of the notification to DHFS.

3. Increases to 45 days after the date of notification of the submission of an application for licensure or for approval of a change in the client group served the time that a city, town or village planning commission has to describe any specific hazards that may affect the health and safety of a resident of the community living arrangement.

4. Requires DHFS to work with the applicant for licensure or for approval of a change in the client group served to address the hazards described by the planning commission and to respond in writing to the planning commission addressing each of the hazards described and stating why the license was issued or the approval granted despite the hazards.

The bill also requires DHFS to determine, prior to issuing a license to operate a community living arrangement, that the applicant meets all applicable local zoning ordinances and the state statutes that specify certain requirements, such as distance and density requirements, for community living arrangements.

Under current law, before initial licensure of a community living arrangement, the applicant must make a good faith effort to establish a community advisory committee consisting of representatives of the proposed community living arrangement, the neighborhood in which the proposed community living arrangement is to be located and a local governmental unit. A community advisory committee provides a forum for communication for persons interested in the proposed community living arrangement and, after licensure, continues in existence to make recommendations regarding the impact of the community living arrangement on the neighborhood. This bill *requires* an applicant for licensure of a proposed community living arrangement to establish a community advisory committee. The bill also specifies that the members of the community advisory committee who are representatives of the proposed community living arrangement are appointed by the proposed community living arrangement and that the members of the committee who are representatives of the neighborhood and of the city, town or village are appointed by the mayor or city manager, village president or town board chairperson or his or her designee. In addition, the bill requires that a majority of the members of a community advisory committee be representatives of the neighborhood and of the city, village or town. Moreover, the bill requires a community living arrangement that applies for DHFS approval of a change in the client group served to notify the community advisory committee or, if there is no community advisory committee, to establish one within 10 working days after submitting the application.

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Under current law, a license issued to a community living arrangement must state certain information, including any special conditions that DHFS may prescribe. This bill permits DHFS to issue a license to a community living arrangement or to approve a change in the client group served subject to any conditions that DHFS may impose to address any specific hazards described by the city, town or village planning commission, any concerns of the community advisory committee or any concerns of DHFS. After issuing a license or approving a change in the client group served, DHFS may not make any condition less stringent unless DHFS first notifies the city, town or village planning commission of the proposed change and explains how it would not affect the health or safety of residents of the community living arrangement.

Finally, the bill prohibits a child welfare agency or group home from providing care and maintenance for a person who is not a member of the client group served by the child welfare agency or group home. The bill also prohibits a person who operates or maintains a community-based residential facility from permitting a person who is not a member of the client group served by the community-based residential facility to become a resident of the community-based residential facility.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

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

2 48.68 (1) After receipt of an application for a license, the department shall

3 investigate to determine if the applicant meets the minimum requirements for a

4 license adopted by the department under s. 48.67, all applicable zoning ordinances

5 and the requirements of s. 59.69 (15) (b), 60.63 (1) and (2) or 62.23 (7) (i) 1. and 2.,

6 whichever is applicable. In determining whether to issue a license, the department

7 may consider any action by the applicant, or by an employe of the applicant, that

8 constitutes a substantial failure by the applicant or employe to protect and promote

9 the health, safety and welfare of a child. Upon satisfactory completion of this

10 investigation and payment of the fee required under s. 48.615 (1) (a) or (b), 48.625

11 (2) (a), 48.65 (3) (a) or 938.22 (7) (b), the department shall issue a license under s.

12 48.66 (1) or, if applicable, a probationary license under s. 48.69. At the time of initial

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1 licensure and license renewal, the department shall provide a foster home licensee
2 with written information relating to the age-related monthly foster care rates and
3 supplemental payments specified in s. 48.62 (4), including payment amounts,
4 eligibility requirements for supplemental payments and the procedures for applying
5 for supplemental payments.

6 **SECTION 2.** 48.68 (1r) of the statutes is created to read:

7 48.68 (1r) (a) An application for a license or for renewal of a license to operate
8 a child welfare agency or group home shall identify the client group to be served. The
9 department shall define “client group” by rule for purposes of this section.

10 (b) A child welfare agency or group home may not change the client group
11 served unless it submits a written application for approval of the change to the
12 department and obtains the department’s approval.

13 (c) A child welfare agency or group home may not provide care and maintenance
14 for a person who is not a member of the client group identified under par. (a) by the
15 child welfare agency or group home.

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

17 48.68 (3) Within 10 working days after receipt of an application applying for
18 initial licensure of a child welfare agency or group home or within 10 working days
19 after applying for approval of a change in the client group served, the department
20 applicant shall notify the city, town or village planning commission, or other
21 appropriate city, town or village agency if there is no planning commission, of receipt
22 submission of the application. The department notification shall request state that
23 the planning commission or agency may send to the department, within ~~30~~ 45 days
24 after the date of the notification, a description of any specific hazards which may
25 affect the health and safety of the residents of the child welfare agency or group

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1 home. The applicant shall send a copy of the notification to the department. No
2 license may be issued and no approval of a change in the client group served may be
3 granted to a child welfare agency or group home until the ~~30-day~~ 45-day period has
4 expired or until the department receives the response of the planning commission or
5 agency, whichever is sooner. In issuing a license or granting approval of a change in
6 the client group served, the department shall give full consideration to such hazards
7 determined by the planning commission or agency. Prior to issuing a license or
8 granting approval of a change in the client group served, the department shall work
9 with the applicant to address each of the hazards described. If the department issues
10 a license or approves a change in the client group served, the department shall
11 respond in writing to the planning commission or agency addressing each of the
12 hazards described and stating why the license was issued or approval granted
13 despite the hazards.

14 **SECTION 4.** 48.68 (3m) of the statutes is created to read:

15 48.68 **(3m)** Within 10 working days after submitting an application for
16 department approval of a change in the client group served, the applicant shall notify
17 the community advisory committee established under sub. (4) or, if there is no
18 community advisory committee, shall establish one that conforms to the
19 requirements of sub. (4).

20 **SECTION 5.** 48.68 (4) of the statutes is amended to read:

21 48.68 **(4)** Prior to initial licensure of a residential facility operated by a child
22 welfare agency or of a group home, the applicant for licensure shall ~~make a good faith~~
23 ~~effort to~~ establish a community advisory committee consisting of representatives
24 from the child welfare agency or proposed group home, appointed by the child welfare
25 agency or group home operator, representatives of the neighborhood in which the

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1 proposed residential facility or group home will be located and a local unit of
2 government appointed by the mayor or city manager, village president or town board
3 chairperson or his or her designee and representatives of the city, village or town
4 appointed by the mayor or city manger, village president or town board chairperson
5 or his or her designee. A majority of the members of the community advisory
6 committee shall be representatives of the neighborhood, and representatives of the
7 city, village or town, in which the proposed residential facility or group home will be
8 located. The community advisory committee shall provide a forum for
9 communication for those persons interested in the proposed residential facility or
10 group home. Any committee established under this subsection shall continue in
11 existence after licensure to make recommendations to the licensee regarding the
12 impact of the residential facility or group home on the neighborhood. The
13 department shall determine compliance with this subsection both prior to and after
14 initial licensure.

15 **SECTION 6.** 48.68 (5) of the statutes is created to read:

16 48.68 (5) (a) If the city, town or village planning commission, or other
17 appropriate city, town or village agency if there is no planning commission, describes
18 any specific hazards under sub. (3), if the community advisory committee expresses
19 any concerns regarding the impact of the proposed child welfare agency or group
20 home or proposed change in the client group served on the neighborhood or if the
21 department, following its investigation under sub. (1), has any concerns regarding
22 any specific hazards as described in sub. (3) or regarding the impact of the proposed
23 child welfare agency or group home or proposed change in the client group served on
24 the neighborhood, the department may issue the license or approve the proposed

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1 change in the client group served subject to any conditions that the department may
2 impose to address those specific hazards or concerns.

3 (b) After issuing a license or approving a change in the client group served, the
4 department may not change any condition imposed under par. (a) 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 child welfare agency or group home.

10 **SECTION 7.** 50.03 (1g) of the statutes is created to read:

11 50.03 (1g) UNAUTHORIZED RESIDENTS. No person operating or maintaining a
12 community-based residential facility may permit any person who is not a member
13 of the client group identified under sub. (3) (cm) to become a resident of the
14 community-based residential facility.

15 **SECTION 8.** 50.03 (3) (cm) of the statutes is created to read:

16 50.03 (3) (cm) An application for a license or for renewal of a license to operate
17 a community-based residential facility shall identify the client group to be served.
18 The department shall define "client group" by rule for purposes of this section. A
19 community-based residential facility may not change the client group served unless
20 it submits a written application for approval of the change to the department and
21 obtains the department's approval.

22 **SECTION 9.** 50.03 (4) (a) 1. b. of the statutes is amended to read:

23 50.03 (4) (a) 1. b. Except as provided in sub. (4m) (b), the department shall issue
24 a license for a community-based residential facility if it finds the applicant to be fit
25 and qualified, if it finds that the community-based residential facility meets the

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1 requirements established by this subchapter, all applicable zoning ordinances and
2 the requirements of s. 59.69 (15) (b), 60.63 (1) and (2) or 62.23 (7) (i) 1. and 2.,
3 whichever is applicable, and if the community-based residential facility has paid the
4 license fee under s. 50.037 (2) (a). In determining whether to issue a license for a
5 community-based residential facility, the department may consider any action by
6 the applicant or by an employe of the applicant that constitutes a substantial failure
7 by the applicant or employe to protect and promote the health, safety or welfare of
8 a resident. The department may deny licensure to or not renew licensure for any
9 person who conducted, maintained, operated or permitted to be maintained or
10 operated a community-based residential facility for which licensure was revoked.
11 The department, or its designee, shall make such inspections and investigations as
12 are necessary to determine the conditions existing in each case and shall file written
13 reports. Before renewing the license of any community-based residential facility,
14 the department shall consider all complaints filed under sub. (2) (f) during the
15 current license period and the disposition of each. The department shall promulgate
16 rules defining "fit and qualified" for the purposes of this subd. 1. b.

17 **SECTION 10.** 50.03 (4) (a) 3. of the statutes is amended to read:

18 50.03 (4) (a) 3. Within 10 working days after receipt of an application applying
19 for initial licensure of a community-based residential facility or within 10 working
20 days after applying for approval of a change in the client group served, the
21 department applicant shall notify the city, town or village planning commission, or
22 other appropriate city, town or village agency if there is no planning commission, of
23 receipt submission of the application. The department notification shall request
24 state that the planning commission or agency may send to the department, within
25 30 after the date of the notification, days a description of any specific hazards which

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1 may affect the health and safety of the residents of the community-based residential
2 facility. The applicant shall send a copy of the notification to the department. No
3 license may be ~~granted~~ issued and no approval of a change in the client group served
4 may be granted to a community-based residential facility until the ~~30-day~~ 45-day
5 period has expired or until the department receives the response of the planning
6 commission or agency, whichever is sooner. In ~~granting~~ issuing a license or granting
7 approval of a change in the client group served, the department shall give full
8 consideration to such hazards determined by the planning commission or agency.
9 Prior to issuing a license or granting approval of a change in the client group served,
10 the department shall work with the applicant to address each of the hazards
11 described. If the department issues a license or approves a change in the client group
12 served, the department shall respond in writing to the planning commission or
13 agency addressing each of the hazards described and stating why the license was
14 issued or approval granted despite the hazards.

15 **SECTION 11.** 50.03 (4) (a) 4. of the statutes is created to read:

16 50.03 (4) (a) 4. Within 10 working days after submitting an application for
17 department approval of a change in the client group served, the applicant shall notify
18 the community advisory committee established under par. (g) or, if there is no
19 community advisory committee, shall establish one that conforms to the
20 requirements of par. (g).

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

22 50.03 (4) (g) Prior to initial licensure of a community-based residential facility,
23 the applicant for licensure shall ~~make a good faith effort to~~ establish a community
24 advisory committee consisting of representatives from the proposed
25 community-based residential facility, appointed by the proposed community-based

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1 residential facility, representatives of the neighborhood in which the proposed
2 community-based residential facility will be located and a local unit of government
3 appointed by the mayor or city manager, village president or town board chairperson
4 or his or her designee and representatives of the city, village or town appointed by
5 the mayor or city manager, village president or town board chairperson or his or her
6 designee. A majority of the members of the community advisory committee shall be
7 representatives of the neighborhood, and representatives of the city, village or town,
8 in which the proposed community-based residential facility will be located. The
9 community advisory committee shall provide a forum for communication for those
10 persons interested in the proposed community-based residential facility. Any
11 committee established under this paragraph shall continue in existence after
12 licensure to make recommendations to the licensee regarding the impact of the
13 community-based residential facility on the neighborhood. The department shall
14 determine compliance with this paragraph both prior to and after initial licensure.

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

16 50.03 (4) (h) 1. If the city, town or village planning commission, or other
17 appropriate city, town or village agency if there is no planning commission, describes
18 any specific hazards under par. (a) 3., if the community advisory committee
19 expresses any concerns regarding the impact of the proposed community-based
20 residential facility or proposed change in the client group served on the neighborhood
21 or if the department, following its investigation under par. (a) 1., has any concerns
22 regarding any specific hazards as described in par. (a) 3. or regarding the impact of
23 the proposed community-based residential facility or proposed change in the client
24 group served on the neighborhood, the department may issue the license or approve

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1 the proposed change in the client group served subject to any conditions that the
2 department may impose to address those specific 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 14. Initial applicability.**

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

16 (END)