

1973 Senate Bill 170

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CHAPTER 323, Laws of 1973

AN ACT to renumber 146.32 (3); to amend 146.30 (1) (a) and 146.32 (2); and to create 146.001, 146.305 and 146.32 (3) (b) and (c), (5) and (6) of the statutes, relating to licensing and standards for adult group foster homes, granting rule-making powers and providing penalties.

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

SECTION 1. 146.001 of the statutes is created to read:

146.001 Definitions. In this chapter unless the context otherwise requires:

(1) "Department" means the department of health and social services.

SECTION 2. 146.30 (1) (a) of the statutes, as affected by chapter 122, laws of 1973, is amended to read:

146.30 (1) (a) A "nursing home" means any building, structure, institution, boarding home, convalescent home, agency or other place, not limited by enumeration, for the reception and care or treatment for not less than 72 hours in any week of 3 or more unrelated patients who by reason of disability, whether physical or mental, including mental retardation and mental illness, are in need of nursing home services. To the extent that a county institution provides "nursing home" services as described in this paragraph, it shall be deemed a nursing home under this section. "Nursing home" does not otherwise include institutions under the jurisdiction of or subject to the supervision of the department, including but not limited to child care institutions, child care centers, day care centers, day nurseries, nursery schools, foster homes and group foster homes for adults or children, child welfare agencies, child placing agencies, mental health clinics, tuberculosis sanatoria, maternity homes, maternity hospitals, hotels, and general and special purpose hospitals, except any part thereof which comes within the definition of a "nursing home". A "nursing home" shall not include the offices of persons licensed by the state to treat the sick. The reception and care or treatment in a household or family of a person related by blood to the head of such household or family, or to his or her spouse, within the degree of consanguinity of first cousin, shall not constitute the premises to be a "nursing home".

SECTION 3. 146.305 of the statutes is created to read:

146.305 Licensing, regulation and accreditation of adult group foster homes. (1) **DEFINITIONS.** In this section, "adult group foster home" is a facility which provides room and board and other personal services such as assistance in dressing, bathing, eating, ambulation or general supervision for 3 or more unrelated adults for 72 or more hours in any week.

(2) **STANDARDS.** The department shall develop, establish and enforce standards for the health, safety and welfare of persons in adult group foster homes and promulgate and enforce rules consistent with this section. These rules shall include standards relating to the admission, evaluation and dismissal of these persons. These standards shall be developed by program specialists in the department knowledgeable about the needs of prospective residents of these facilities. The department of industry, labor and human relations shall assist the department in promulgation of the rules under this section. The department shall also request information and assistance from the Wisconsin state medical society and the Wisconsin fire chiefs association. The senate committee on health, education and welfare and the assembly health and social services committee may suspend rules issued under this section within 60 days after their publication.

(3) **ADMINISTRATION.** (a) The administration of this section shall be under the department which shall make or cause to be made such inspections and investigations as it deems necessary.

(b) With approval of the department, the county board of any county having a population of 500,000 or more may, in an effort to assure compliance with this section,

establish a program for the inspection of adult group foster homes within its jurisdiction. If a county agency deems such action necessary after inspection, the county agency may, after notifying the department, withdraw any persons receiving county support for care in an adult group foster home failing to comply with this section or rules established hereunder.

(c) If the department, after considering the recommendation of a welfare director of any county or after evaluating information provided by inspection personnel, determines that an emergency exists which places any person's health, safety or welfare in jeopardy, the department may immediately withdraw or may authorize the county to withdraw any person who receives county or state support for care in an adult group foster home which fails to comply with the standards established by this section or by the rules promulgated hereunder.

(4) LICENSING, INSPECTION AND REGULATION. The department shall register, license, inspect and regulate adult group foster homes as provided in this section.

(5) APPLICATION FOR REGISTRATION AND LICENSE. (a) Registration shall be in writing in such form and contain such information as the department requires.

(b) The application for a license shall be in writing upon forms provided by the department and shall contain such information as the department requires.

(6) ISSUANCE OF LICENSE; INSPECTION AND INVESTIGATION; ANNUAL RENEWAL; NONTRANSFERABLE; CONTENT. (a) The department shall issue a license if the applicant is fit and qualified, and if adult group foster home facilities meet the requirements established by this section. The department, or its designee, shall make such inspections and investigations as are necessary to determine the conditions existing in each case and file written reports. The department may designate and use full-time city or county health departments as its agents in making such inspections and investigations, including such subsequent inspections and investigations as are deemed necessary or advisable; but the department shall reimburse the city or county furnishing such service at the rate of \$25 per year per license issued in such municipality.

(b) A license, unless sooner suspended or revoked, shall be renewable annually on July 1, upon filing by the licensee, and approval by the department of an annual report and application for renewal on forms provided by the department.

(c) Each license shall be issued only for the premises and persons named in the application and shall not be transferable or assignable. The license shall be posted in a conspicuous place in the adult group foster home. If application for renewal is not so filed, such license is automatically canceled as of the date of its expiration. Any license granted shall state the maximum bed capacity for which granted, the person to whom granted, the date, the expiration date and such additional information and special limitations as the department, by rule, may prescribe.

(7) DENIAL, SUSPENSION OR REVOCATION OF LICENSE; NOTICE. The department, after notice to the applicant or licensee, may deny, suspend or revoke a license in any case in which the department finds that there has been a substantial failure to comply with the requirements of this section and the rules established hereunder. No state or federal funds passing through the state treasury shall be paid to an adult group foster home not having a valid or provisional license issued under this section.

(8) FAILURE TO REGISTER OR OPERATING WITHOUT LICENSE; PENALTY. No person, acting jointly or severally with any other person, may conduct, maintain, operate, or permit to be maintained or operated, or participate in the conducting, maintenance or operation of an adult group foster home, unless within 60 days after the effective date

of this act (1973) such home is registered with the department, or licensed as an adult group foster home within a period of time specified by the department. Any person who violates this section shall be fined not more than \$100 for the first offense and not more than \$200 for each subsequent offense, and each day of continuing violation after the first conviction shall be considered a separate offense.

(9) RIGHT OF INJUNCTION. (a) *Licensed adult group foster homes.* Notwithstanding the existence or pursuit of any other remedy, the department may, upon the advice of the attorney general, who shall represent the department in all proceedings, maintain an action in the name of the state in the circuit court for injunction or other process against any licensee, owner, operator, administrator or representative of any owner of an adult group foster home to restrain and enjoin the repeated violation of any of the provisions of this section or rules adopted by the department under this section where the violation affects the health, safety or welfare of the residents.

(b) *Unlicensed adult group foster homes.* Notwithstanding the existence or pursuit of any other remedy, the department may, upon the advice of the attorney general, who shall represent the department in all proceedings, maintain an action in the name of the state for injunction or other process against any person or agency to restrain or prevent the establishment, conduct, management or operation of an adult group foster home without a license or without being registered.

(c) *Enforcement by counties maintaining inspection programs.* The county board of any county conducting inspections under sub. (3) (b) may, upon notifying the department that an adult group foster home is in violation of this section or the rules established hereunder, authorize the district attorney to maintain an action in the name of the state in circuit court for injunction or other process against such adult group foster home, its owner, operator, administrator or representative, to restrain and enjoin repeated violations where such violations affect the health, safety or welfare of the residents.

(10) PROVISIONAL LICENSES. A provisional license, if approved by the department, may be issued to any adult group foster home, the facilities of which are in use or needed for residents, but which is temporarily unable to conform to all the rules established under this section. A provisional license may not be issued for more than one year.

(11) FORFEITURE. Any person acting or claiming to act in behalf of the owner of an adult group foster home who violates any provision of this section or any rule adopted by the department under this section shall forfeit not less than \$10 nor more than \$1,000 for each such offense. Each day of violation shall constitute a separate offense under this section.

SECTION 4. 146.32 (2) of the statutes is amended to read:

146.32 (2) LICENSING AND STANDARD SETTING AUTHORITY. The state department of health and social services shall license ~~and may~~ develop, establish and enforce standards for the care, treatment, health, safety, welfare and comfort of persons in residential care institutions, and for the construction, general hygiene, maintenance and operation of such institutions, and ~~may shall~~ adopt and enforce rules for such purposes. These standards shall be developed by program specialists in the department knowledgeable about the needs of prospective residents of residential care institutions.

SECTION 5. 146.32 (3) of the statutes is renumbered 146.32 (3) (a).

SECTION 6. 146.32(3) (b) and (c) of the statutes are created to read:

146.32 (3) (b) With approval of the department, the county board of any county having a population of 500,000 or more may, in an effort to assure compliance with this section, establish a program for the inspection of residential care institutions within its jurisdiction. If a county agency conducting inspections under this paragraph finds that a residential care institution fails to comply with this section or rules established hereunder, the county agency shall promptly notify the department. If the county agency deems such action necessary after medical, nursing and social services evaluation by its inspection personnel, the county agency or its medical officer in charge of residential care institution care may, after notifying the department, withdraw any residential care institution patient receiving county support for care in an institution failing to comply with this section or rules established hereunder.

(c) If the department, after considering the recommendation of a welfare director of any county or after evaluating information provided by inspection personnel, determines that an emergency exists which places the patient's health, safety or welfare in jeopardy, the department may immediately withdraw or may authorize the county to withdraw any residential care institution patient who receives county or state support for care in an institution which fails to comply with the standards established by this section or by rules established hereunder.

SECTION 7. 146.32 (5) and (6) of the statutes are created to read:

146.32 (5) RIGHT OF INJUNCTION. (a) *Licensed residential care institutions.* Notwithstanding the existence or pursuit of any other remedy, the department may, upon the advice of the attorney general, who shall represent the department in all proceedings, maintain an action in the name of the state in the circuit court for injunction or other process against any licensee, owner, operator, administrator or representative of any owner of a residential care institution to restrain and enjoin the repeated violation of any of the provisions of this section or administrative rules adopted by the department under this section where the violation affects the health, safety or welfare of the patients.

(b) *Unlicensed residential care institutions.* Notwithstanding the existence or pursuit of any other remedy, the department may, upon the advice of the attorney general who shall represent the department in all proceedings, maintain an action in the name of the state for injunction or other process against any person or agency to restrain or prevent the establishment, conduct, management or operation of a residential care institution without a license or without being registered.

(c) *Enforcement by counties maintaining inspection programs.* The county board of any county conducting inspections under sub. (3) (b) may, upon notifying the department that a residential care institution is in violation of this section or the rules established hereunder, authorize the district attorney to maintain an action in the name of the state in circuit court for injunction or other process against such residential care institution, its owner, operator, administrator or representative, to restrain and enjoin repeated violations where such violations affect the health, safety or welfare of the patients.

(6) FORFEITURE. Any owner, operator, administrator or officers, directors, agents, employes or other persons acting or claiming to act in behalf of the owner of a residential care institution who violate any provision of this section or any rule adopted by the department under this section shall forfeit not less than \$10 nor more than

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\$1,000 for each such offense. Each day of violation shall constitute a separate offense under this section.
