

1975 Senate Bill 338

Date published: June 5, 1976

CHAPTER 413, Laws of 1975
(Not signed by Governor) *

AN ACT to repeal 146.30 (3), (5) to (14), 146.305, 146.32, chapter 160 (title) and 456.06; to renumber chapter 50, 140.10 to 140.29, 146.30 (title) (1), (2) and (4m) and 160.01 to 160.37; to renumber and amend 146.30 (4); to amend 101.01 (2) (a) and (h) and 149.03 (2), as renumbered; and to create 46.03 (21), 101.11 (3) and 101.125 and chapter 50 of the statutes, relating to regulation and

* Deposited in the Executive Office on May 21, 1976, and returned without the Governor's signature on June 1, 1976.

Because of the expiration of the 6-day period under *Section 10 of Article V* of the Wisconsin Constitution, 1975 Senate Bill 338 became law without the approval of the Governor.

licensing functions of the department of health and social services, granting rule-making authority and providing a penalty.

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

SECTION 1. 46.03 (21) of the statutes is created to read:

46.03 (21) **UNIFORM REGULATION AND LICENSING.** The department shall promulgate rules to establish licensing and program compliance standards for care and residential facilities, hospitals, hotels, restaurants and the vending of food and beverages after due consideration of the relationship of a licensing code to other related licensing codes, the need for uniform administration, the need to maximize the use of federal funds and the need to encourage the development and operation of needed facilities statewide. In establishing licensing standards designed to ensure that the facility qualifies for federal financial participation, the department shall establish federal regulations as the base requirement. The department may promulgate such additional health and safety standards as it determines to be in the public interest.

SECTION 2. Chapter 50 of the statutes is renumbered chapter 149, and 149.03 (2), as renumbered, is amended to read:

149.03 (2) ~~Nursing homes as defined in s. 146.30 and residential care institutions under s. 146.32~~ Community based residential facilities under ch. 50 shall request a certificate of approval from the department in order to provide care for patients suffering from chronic tuberculosis based on rules and standards adopted by the department after receiving the advice of the advisory committee on tuberculosis control.

SECTION 3. Chapter 50 of the statutes is created to read:

CHAPTER 50
UNIFORM LICENSURE
SUBCHAPTER I
CARE AND SERVICE RESIDENTIAL FACILITIES
(to precede s. 50.01)

50.01 Community-based residential facilities. (1) **DEFINITIONS.** (a) "Community-based residential facility" means a place where 3 or more unrelated adults reside in which care, treatment or services above the level of room and board but less than skilled nursing care is provided to persons residing in the facility. Such care, treatment or services is provided as a primary function of such facility.

(b) "Primary function" means the basic or essential care, treatment or services provided to residents of a facility.

(2) **DEPARTMENTAL AUTHORITY.** (a) Except as provided in s. 50.03 (2) (b) and (4) (a), the department shall have exclusive authority to register, license, inspect and regulate community-based residential facilities.

(b) The department shall establish several levels and types of community-based residential care facilities as provided in s. 50.03 (1) (a), including a category or categories designed to enable facilities to qualify for federal funds.

50.03 Licensing, powers and duties. (1) **CONSIDERATIONS IN ESTABLISHING HEALTH AND SAFETY STANDARDS.** (a) In setting standards, the department shall consider the residents' needs and abilities, the increased cost in relation to proposed benefits to be received, the services to be provided by the facility, the relationship between the physical structure and the objectives of the program conducted in the facility and the primary functions of the facility.

(b) The department shall promulgate rules to establish a procedure for waiver of standards developed under this section. The department may limit the duration of the waiver.

(2) ADMINISTRATION. (a) The department 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 facilities licensed under this section within its jurisdiction. If a county agency deems such action necessary after inspection, the county agency may, after notifying the department, withdraw from the facility any persons receiving county support for care in a facility which fails to comply with the standards established by this section or rules established under this section.

(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 jeopardizes any person's health, safety or welfare, the department may immediately withdraw or may authorize the county to withdraw from the facility any person who receives county or state support for care in a facility licensed under this section which fails to comply with the standards established by this section or by the rules promulgated under this section.

(3) APPLICATION FOR REGISTRATION AND LICENSE. (a) Registration shall be in writing in a form specified by the department and shall 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.

(4) ISSUANCE OF LICENSE. (a) The department shall issue a license if it finds the applicant to be fit and qualified, and if it finds that the facility meets 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 shall file written reports. The department may designate and use full-time city or county agencies as its agents in making such inspections and investigations, including such subsequent inspections and investigations as are deemed necessary or advisable. 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) Unless sooner revoked or suspended, a license shall be reviewed annually on a date set by the department upon filing by the licensee and approval by the department of an annual report and application for renewal.

(c) Unless sooner revoked or suspended, a license shall be valid for one year. Annually at such time and in such form as the department requires, the applicant shall submit an annual report and application for renewal of the license. If the report and application are approved, the license shall be renewed for an additional one-year period. If application for renewal and a complete annual report are not timely filed, the department shall issue a warning to the licensee. If application for renewal is not made within 30 days thereafter, the license shall be canceled.

(d) The department, after due notice to the applicant or licensee, may deny any application or suspend or revoke a license in any case in which it is found that there has been substantial failure to comply with this section or rules established under this section.

(e) 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 community-based residential facility. Any license granted shall state the maximum bed capacity allowed, the person to whom the license is

granted, the date, the expiration date, the minimal services which the institution shall provide as a condition of its licensure and such additional information and special limitations as the department, by rule, may prescribe.

(5) 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 under this section. No state or federal funds passing through the state treasury shall be paid to a facility not having a valid license issued under this section.

(6) FAILURE TO REGISTER OR OPERATING WITHOUT LICENSE; PENALTY. No person may conduct, maintain, operate, or permit to be maintained or operated a facility required to be licensed under this section unless such facility is licensed within a period of time specified by the department. Any person who violates this subsection shall be fined not more than \$100 for the first offense and not more than \$200 for each subsequent offense, with each day of continuing violation constituting a separate offense.

(7) RIGHT OF INJUNCTION. (a) *Licensed facility.* Notwithstanding the existence or pursuit of any other remedy, the department may, upon the advice of the attorney general, 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 facility 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 facility.* Notwithstanding the existence or pursuit of any other remedy, the department may, upon the advice of the attorney general, 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, management or operation of any community-based residential facility without a license or without being registered.

(c) *Enforcement by counties maintaining inspection programs.* The county board of any county conducting inspections under sub. (2) (b) may, upon notifying the department that a community-based residential facility is in violation of this section or the rules established under this section, 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 facility, its owner, operator, administrator or representative, to restrain and enjoin repeated violations where such violations affect the health, safety or welfare of the residents.

(8) FORFEITURE. Any person acting or claiming to act in behalf of the owner of a facility who violates 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, with each day of violation constituting a separate offense.

(9) EXCEPTION FOR CHURCHES OPPOSED TO MEDICAL TREATMENT. Nothing in this section shall be so construed as to give authority to supervise or regulate or control the remedial care or treatment of individual patients who are adherents of a church or religious denomination which subscribes to the act of healing by prayer and the principles of which are opposed to medical treatment and who are residents in any facility operated by a member or members, or by an association or corporation composed of members of such church or religious denomination, if the facility admits only adherents of such church or denomination and is so designated; nor shall the existence of any of the above conditions alone militate against the licensing of such a home or institution. Such facility shall comply with all rules and regulations relating to sanitation and safety of the premises and be subject to inspection thereof. Nothing

in this subsection shall modify or repeal any laws, rules and regulations governing the control of communicable diseases.

(10) UNIFORM ACCOUNTING SYSTEM. The department shall establish a uniform classification of accounts and accounting procedures for each level of licensure which shall be based on generally accepted accounting principles and which reflect the allocation of revenues and expenses by primary functions, to be used by the department in carrying out this subsection. Each facility subject to this subsection shall satisfactorily establish with the department by a date set by the department that it has instituted the uniform accounting system as required in this subsection or is making suitable progress in the establishment of each system. Failure to do so shall make the nursing home or other facility subject to the penalties of sub. (6).

SUBCHAPTER II

HOSPITALS

(to precede s. 50.20)

SUBCHAPTER III

HOTELS, RESTAURANTS AND VENDING OF FOODS AND BEVERAGES

(to precede s. 50.50)

SECTION 3m. 101.01 (2) (a) and (h) of the statutes are amended to read:

101.01 (2) (a) ~~The phrase “place~~ “Place of employment” includes every place, whether indoors or out or underground and the premises appurtenant thereto where either temporarily or permanently any industry, trade or business is carried on, or where any process or operation, directly or indirectly related to any industry, trade or business, is carried on, and where any person is, directly or indirectly, employed by another for direct or indirect gain or profit, but does not include any place where persons are employed in ~~(a) private domestic service which does not involve the use of mechanical power or (b) in farming.~~ “Farming” includes those activities specified in s. 102.04 (3), and also includes the transportation of farm products, supplies or equipment directly to the farm by the operator of said farm or his employes for use thereon, if such activities are directly or indirectly for the purpose of producing commodities for market, or as an accessory to such production. When used with relation to building codes, “place of employment” does not include a previously constructed building used as a community-based residential facility as defined in s. 50.01 (1) which serves 20 or fewer unrelated residents, except for the purposes of s. 101.11.

~~(h) The term “public~~ “Public building” ~~as used in ss. 101.01 to 101.25 means and includes~~ any structure, including exterior parts of such building, such as a porch, exterior platform or steps providing means of ingress or egress, used in whole or in part as a place of resort, assemblage, lodging, trade, traffic, occupancy, or use by the public or by 3 or more tenants. When used in relation to building codes, “public building” does not include a previously constructed building used as a community-based residential facility as defined in s. 50.01 (1) which serves 20 or fewer unrelated residents.

SECTION 3r. 101.11 (3) of the statutes is created to read:

101.11 (3) This section applies to community-based residential facilities as defined in s. 50.01 (1).

SECTION 3t. 101.125* of the statutes is created to read:

101.125* Building requirements for certain residential facilities. The department, after consultation with the department of health and social services, shall develop a building code for previously constructed buildings converted to use as community-based residential facilities as defined in s. 50.01 (1) which serve between 9 and 20 unrelated residents. In setting standards, the department shall consider the criteria enumerated in ss. 46.03 (21) and 50.03 (1) (a), and in addition shall consider the relationship of the development and enforcement of the code to any relevant codes of the department of health and social services. The objectives of the code shall be to guarantee health and safety and to maintain insofar as possible a homelike environment. The department shall consult with the residential facilities council in developing the code.

SECTION 4. 140.10 to 140.29 of the statutes are renumbered 50.20 to 50.39.

SECTION 5. 146.30 (title), (1) and (2) of the statutes are renumbered 50.02 (title), (1) and (2).

SECTION 6. 146.30 (3) of the statutes is repealed.

SECTION 7. 146.30 (4) of the statutes is renumbered 50.02 (3) and amended to read:

50.02 (3) LICENSING, INSPECTION AND REGULATION. The department ~~may shall~~ register, license, inspect and regulate nursing homes as provided in ~~this section~~ s. 50.03.

SECTION 8. 146.30 (4m) of the statutes is renumbered 50.02 (4).

SECTION 9. 146.30 (5) to (14) of the statutes are repealed.

SECTION 10. 146.305 of the statutes is repealed.

SECTION 11. 146.32 of the statutes is repealed.

SECTION 12. Chapter 160 (title) of the statutes is repealed.

SECTION 13. 160.01 to 160.10 of the statutes are renumbered 50.50 to 50.61.

SECTION 14. 160.21 and 160.22 of the statutes are renumbered 50.70 and 50.71.

SECTION 15. 160.31 to 160.37 of the statutes are renumbered 50.80 to 50.85.

SECTION 16. 456.06 of the statutes is repealed.

SECTION 16m. **Residential facilities council.** There is created a residential facilities council which shall advise the department of industry, labor and human relations on the promulgation of the residential facilities building code required under section 101.125 of the statutes as created by this act, and which shall disband upon promulgation of such code. The council's membership shall be appointed by the department of health and social services and the department of industry, labor and human relations and shall include:

- (1) A representative of a county department of social services.
- (2) A director of a board under section 51.42 of the statutes.
- (3) A director of a board under section 51.437 of the statutes.
- (4) A person representing the interests of the developmentally disabled.
- (5) A person representing the interests of the aged.
- (6) A provider of residential care services.

* In the printing of the statutes, the section was renumbered to be 101.127 under the authority of section 13.93 (1) (b) of the statutes.

(7) Other persons designated by the secretary of health and social services or the chairman of the department of industry, labor and human relations.

SECTION 17. Program responsibilities. In the list of program responsibilities for the department of health and social services under section 15.191 of the statutes, reference to "ch. 149" and to "ch. 159" are inserted, and reference to "ch. 160" is deleted.

SECTION 18. Cross references. (1) In the sections of the statutes listed below in column A, the references shown in column B are changed to those shown in column C:

A	B	C
Statute Section	Old Cross Reference	New Cross Reference
14.011 (intro.)	50.07 (1) (c)	149.07 (1) (c)
15.221 (intro.)	160.09	50.60
15.221 (intro.)	160.10	50.61
15.251 (intro.)	140.29	50.39
20.435 (1) (c)	50.06 (6)	149.06 (6)
46.175 (1) (gm)	ch. 160	ss. 50.50 to 50.85
	140.24, 146.30	50.02, 50.03
	or 146.32	or 50.33
46.21 (8) (b)	140.11	50.21
49.14 (5)	146.30 (14)	50.03 (11)
49.16 (3)	146.30 (14)	50.03 (11)
49.171 (4)	146.30 (14)	50.03 (11)
49.175 (1), (2), (3)	146.32	50.03
50.23. (2) (a),	140.15	50.24
as renumbered		
(2) (a),	140.16	50.26
as renumbered		
(2) (b),	140.17 to 140.22	50.26 to 50.31
as renumbered		
50.25,	140.15	50.24
as renumbered		
50.30,	140.20	50.29
as renumbered		
50.36,	140.29 (3)	50.39 (3)
as renumbered		
50.39 (3),	50.02	149.02
as renumbered		
(3), as	50.06	149.06
renumbered		
50.51 (1), (2),	160.01	50.50
as renumbered		
50.59,	160.22	50.71
as renumbered		
50.59,	160.36	50.84
as renumbered		
58.06 (2)	50.06	149.06
140.85 (1)	49.14, 49.16,	49.14, 49.16,
	49.171, 50.01,	49.171, 50.02,
	50.02, 51.24,	50.35, 51.24,
	51.25, 58.06,	51.25, 58.06,
	140.26, 146.30	149.01 and 149.02
	and 146.32	
149.02 (3),	50.02	149.02
as renumbered		
149.03 (2)	146.32	50.03
149.06 (6) (b),	s. 50.06	this section
as renumbered		
176.05 (6a)	160.01 (3)	50.50 (3)
200.26 (6) (a) 2	140.26	50.35

(2) In the following sections of the statutes, wherever reference to "ch. 50" appears, substitute "ch. 149": 46.10 (2), 46.106 (1), 49.08 (1), 149.08 as renumbered, 149.09 (1) as renumbered, 204.323 and 253.10 (11).

(3) In the following sections of the statutes, wherever reference to "s. 50.01" or "s. 50.01 (1)" appears, substitute "s. 149.01" or "s. 149.01 (1)", respectively: 46.20 (3), 50.39 (2) and (3) as renumbered, 149.02 (3) as renumbered, 149.03 (1) as renumbered and 149.06 (4) as renumbered.

(4) In the following sections of the statutes, wherever reference to "s. 50.03" appears, substitute "s. 149.03": 49.47 (6) (a) 14, 58.06 (2), 149.02 (3) as

renumbered, 149.04 (1), (2), (3), (4) (a) and (b) and (5) (intro.) and (b) as renumbered and 149.06 (6) (b) as renumbered.

(5) In the following sections of the statutes, wherever reference to "s. 50.04", "s. 50.04 (3)" or "s. 50.04 (5) (a)" appears, substitute reference to "s. 149.04", "s. 149.04 (3)" or "s. 149.04 (5) (a)", respectively: 15.101 (intro.), 20.435 (1) (c), 49.08 (1), 51.27 (3), 58.06 (2), 149.06 (10) as renumbered, 149.08 as renumbered and 149.09 (1) as renumbered.

(6) In the following "sections of the statutes, wherever reference to "s. 50.09" or "s. 50.09 (2)" appears, substitute "s. 149.09" or "s. 149.09 (2)", respectively: 20.435 (9) (ks), 20.913 (2) (b), 58.06 (2), 149.04 (3) and (5) (a) as renumbered, 149.06 (8) as renumbered and 149.095 as renumbered.

(7) In the following sections of the statutes, wherever reference to "ss. 140.10 to 140.22" appears, substitute "ss. 50.20 to 50.31": 20.435 (1) (pa), 50.20 as renumbered, 50.21 (intro.) as renumbered, 50.22 (intro.), (4), (5) and (6) as renumbered and 50.23 (1) as renumbered.

(8) In the following sections of the statutes, wherever reference to "ss. 140.23 to 140.29" appears, substitute "ss. 50.32 to 50.39": 50.32 as renumbered, 50.33 (intro.) as renumbered, 50.34 as renumbered, 50.35 as renumbered, 50.38 as renumbered, 50.39 (1), (2), (3) and (4) as renumbered and 149.03 (1) as renumbered.

(9) In the following sections of the statutes, wherever reference to "s. 140.24", "s. 140.24 (1)" or "s. 140.24 (1) (a) and (c)" appears, substitute "s. 50.33", "s. 50.33 (1)" or "s. 50.33 (1) (a) and (c)", respectively: 77.51 (22m), 149.03 (1) as renumbered, 200.26 (6) (a) 2 and 204.321 (2) (d) 1. b.

(10) In the following sections of the statutes, wherever reference to "s. 146.30" appears, substitute "s. 50.02": 50.39 (3) as renumbered, 149.03 (2) as renumbered, 231.01 (2), 456.01 (6) and 940.29 (7).

SECTION 19. Review of licensing codes The department of health and social services shall review all of its licensing codes and shall recommend amendment of such codes in order to remove arbitrary impediments to the development of community based residential facilities including adult group foster homes, residential care facilities, halfway house and intermediate care facilities. The department shall consider the development of a range of licensing codes which shall have as their objective the equitable and consistent state licensing of all facilities without duplication of inspection or services.

SECTION 19m. Review of rules. No rule promulgated by the department of health and social services for the implementation of this act may take effect until it has been approved by a majority of the members of the assembly committee on health and social services and the senate committee on agriculture, human services, labor and taxation.

SECTION 20. Effective date. The department shall promulgate rules under section 50.01 within one year of the effective date of this act. The act shall take effect upon implementation of the rules so promulgated.
