

1993 Senate Bill 434

Date of enactment: April 15, 1994
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1993 WISCONSIN ACT 327

AN ACT *to renumber* 50.01 (1) (a); *to renumber and amend* 50.01 (1) (b) and 50.032 (1); *to amend* 50.01 (1) (intro.), 50.01 (1g) (intro.), 50.02 (1), 50.032 (title), 50.032 (2) and (3) to (6), 59.97 (15) (bm), 59.97 (15) (i) and (j), 60.63 (3), 60.63 (10) and (11), 62.23 (7) (i) 2m, 62.23 (7) (i) 9 and 10 and 101.01 (2) (f) and (g); *to repeal and recreate* 50.02 (2) (am); and *to create* 50.01 (1) (b), 50.032 (1g), 50.033, 59.97 (15) (br), 60.63 (3m) of the and 62.23 (7) (i) 2r of the statutes, **relating to**: changing the definition of an adult family home and a community-based residential facility, creating licensure and zoning requirements for certain adult family homes, 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. 50.01 (1) (intro.) of the statutes is amended to read:

50.01 (1) (intro.) “Adult family home” means a one of the following:

(a) A private residence to which all of the following apply:

SECTION 2. 50.01 (1) (a) of the statutes is renumbered 50.01 (1) (a) 1.

SECTION 3. 50.01 (1) (b) of the statutes is renumbered 50.01 (1) (a) 2. and amended to read:

50.01 (1) (a) 2. The private residence was licensed under s. 48.62 as a foster home for the care of the adults specified in ~~par. (a) subd. 1~~ at least 12 months before any of the adults attained 18 years of age.

SECTION 4. 50.01 (1) (b) of the statutes is created to read:

50.01 (1) (b) A place that meets the definition under sub. (1g), except sub. (1g) (e), and except that only 3 or 4 unrelated adults reside there.

SECTION 5. 50.01 (1g) (intro.) of the statutes is amended to read:

50.01 (1g) (intro.) “Community-based residential facility” means a place where ~~3~~ 5 or more unrelated adults reside in which care, treatment or services above the level

of room and board but not including nursing care are provided to persons residing in the facility as a primary function of the facility. “Community-based residential facility” does not include any of the following:

SECTION 6. 50.02 (1) of the statutes is amended to read:

50.02 (1) DEPARTMENTAL AUTHORITY. The department may provide uniform, statewide licensing, inspection and regulation of community-based residential facilities and nursing homes as provided in this subchapter. The department ~~may~~ shall certify, inspect and otherwise regulate adult family homes, as specified under s. 50.032 and shall license adult family homes, as specified under s. 50.033. Nothing in this subchapter may be construed to limit the authority of the department of industry, labor and human relations or of municipalities to set standards of building safety and hygiene, but any local orders of municipalities shall be consistent with uniform, statewide regulation of community-based residential facilities. The department may not prohibit any nursing home from distributing over-the-counter drugs from bulk supply. The department may consult with nursing homes as needed and may provide specialized consultations when requested by any nursing home, separate from its inspection process, to scrutinize any particular questions the nursing home raises. The department shall, by rule, define “specialized consultation”.

SECTION 7. 50.02 (2) (am) of the statutes is repealed and recreated to read:

50.02 (2) (am) The department shall promulgate all of the following rules with respect to adult family homes:

1. For the purposes of s. 50.032, defining the term “permanent basis” and establishing minimum requirements for certification, certification application procedures and forms, standards for operation and procedures for monitoring, inspection, decertification and appeal of decertification. The rules shall be designed to protect and promote the health, safety and welfare of the disabled adults receiving care and maintenance in certified adult family homes.

2. For the purposes of s. 50.033, establishing minimum requirements for licensure, licensure application procedures and forms, standards for operation and procedures for monitoring, inspection, revocation and appeal of revocation.

SECTION 8. 50.032 (title) of the statutes is amended to read:

50.032 (title) Certification of certain adult family homes.

SECTION 9. 50.032 (1) of the statutes is renumbered 50.032 (1m), and 50.032 (1m) (b), as renumbered, is amended to read:

50.032 (1m) (b) A county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437 may certify an adult family home that is located in the county. The department ~~may~~ shall certify an adult family home in a county that elects not to certify adult family homes.

SECTION 10. 50.032 (1g) of the statutes is created to read:

50.032 (1g) **DEFINITION.** In this section, “adult family home” has the meaning given in s. 50.01 (1) (a).

SECTION 11. 50.032 (2) and (3) to (6) of the statutes are amended to read:

50.032 (2) **REGULATION.** Standards for operation of certified adult family homes and procedures for application for certification, monitoring, inspection, decertification and appeal of decertification shall be under rules promulgated by the department under s. 50.02 (2) (am) 1. Certification shall be for a term not to exceed 12 months from the date of issuance and is not transferable.

(3) **INVESTIGATION OF ALLEGED VIOLATIONS.** If the department or a certifying county department under sub. (1) (1m) (b) is advised or has reason to believe that any person is violating this section or the rules promulgated under s. 50.02 (2) (am) 1, the department or the certifying county department shall make an investigation to determine the facts. For the purposes of this investigation, the department or the certifying county department may inspect the premises where the violation is alleged to occur. If the department or the certifying county department finds that the requirements of this section and of rules under s. 50.02 (2) (am) 1 are met, the department or the certifying county department may certify the prem-

ises under this section. If the department or the certifying county department finds that a person is violating this section or the rules under s. 50.02 (2) (am) 1, the department or the certifying county department may institute an action under sub. (5) or (6).

(4) **DECERTIFICATION.** A certified adult family home may be decertified because of the substantial and intentional violation of this section or of rules promulgated by the department under s. 50.02 (2) (am) 1 or because of failure to meet the minimum requirements for certification. The operator of the certified adult family home shall be given written notice of any decertification and the grounds for the decertification. Any adult family home certification applicant or operator of a certified adult family home may, if aggrieved by the failure to issue or renew the certification or by decertification, appeal under the procedures specified by the department by rule under s. 50.02 (2) (am) 1.

(5) **INJUNCTION.** The department or a certifying county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437 may commence an action in circuit court to enjoin the operation of an adult family home that is not certified under sub. (1) (1m) or that is certified and has repeatedly used methods of operation in substantial violation of the rules promulgated under s. 50.02 (2) (am) 1 or that endanger the health, safety or welfare of any disabled adult receiving care and maintenance in an adult family home.

(6) **PENALTIES.** Any person who violates this section or rules promulgated under s. 50.02 (2) (am) 1 may be fined not more than \$500 or imprisoned for not more than one year in the county jail or both.

SECTION 12. 50.033 of the statutes is created to read:

50.033 Licensure of certain adult family homes.

(1) **DEFINITION.** In this section, “adult family home” has the meaning given in s. 50.01 (1) (b).

(1m) **LICENSURE.** (a) No person may operate an adult family home unless the adult family home is licensed under this section.

(b) A county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437 may license an adult family home that is located in the county. The department shall license an adult family home in a county that elects not to license adult family homes.

(2) **REGULATION.** Standards for operation of licensed adult family homes and procedures for application for licensure, monitoring, inspection, revocation and appeal of revocation shall be under rules promulgated by the department under s. 50.02 (2) (am) 2. Licensure shall be for a term not to exceed 12 months from the date of issuance and is not transferable.

(3) **INVESTIGATION OF ALLEGED VIOLATIONS.** If the department or a licensing county department under sub. (1m) (b) is advised or has reason to believe that any person is violating this section or the rules promulgated under s. 50.02 (2) (am) 2, the department or the licensing

1993 Senate Bill 434

county department shall make an investigation to determine the facts. For the purposes of this investigation, the department or the licensing county department may inspect the premises where the violation is alleged to occur. If the department or the licensing county department finds that the requirements of this section and of rules under s. 50.02 (2) (am) 2 are met, the department or the licensing county department may, if the premises are not licensed, license the premises under this section. If the department or the licensing county department finds that a person is violating this section or the rules under s. 50.02 (2) (am) 2, the department or the licensing county department may institute an action under sub. (5).

(4) LICENSE REVOCATION. The license of a licensed adult family home may be revoked because of the substantial and intentional violation of this section or of rules promulgated by the department under s. 50.02 (2) (am) 2 or because of failure to meet the minimum requirements for licensure. The operator of the licensed adult family home shall be given written notice of any revocation and the grounds for the revocation. Any adult family home licensure applicant or operator of a licensed adult family home may, if aggrieved by the failure to issue or renew the license or by revocation, appeal under the procedures specified by the department by rule under s. 50.02 (2) (am) 2.

(5) INJUNCTION. The department or a licensing county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437 may commence an action in circuit court to enjoin the operation of an adult family home that is not licensed under sub. (1m) or that is licensed and has repeatedly used methods of operation in substantial violation of the rules promulgated under s. 50.02 (2) (am) 2 or that endanger the health, safety or welfare of any adult receiving care and maintenance in an adult family home.

(6) PENALTIES. Any person who violates this section or rules promulgated under s. 50.02 (2) (am) 2 may be fined not more than \$500 or imprisoned for not more than one year in the county jail or both.

SECTION 13. 59.97 (15) (bm) of the statutes is amended to read:

59.97 (15) (bm) A foster family home which is the primary domicile of a foster parent and which is licensed under s. 48.62 or an adult family home certified under s. 50.032 (1) (1m) (b) shall be a permitted use in all residential areas and is not subject to pars. (a) and (b) except that foster homes operated by corporations, child welfare agencies, churches, associations or public agencies shall be subject to pars. (a) and (b).

SECTION 14. 59.97 (15) (br) of the statutes is created to read:

59.97 (15) (br) 1. No adult family home described in s. 50.01 (1) (b) may be established within 2,500 feet, or any lesser distance established by an ordinance of the city, town or village, of any other adult family home

described in s. 50.01 (1) (b) or any community living arrangement. An agent of an adult family home described in s. 50.01 (1) (b) may apply for an exception to this requirement, and the exception may be granted at the discretion of the city.

2. An adult family home described in s. 50.01 (1) (b) that meets the criteria specified in subd. 1 and that is licensed under s. 50.033 (1m) (b) is permitted in the city, town or village without restriction as to the number of adult family homes and may locate in any residential zone, without being required to obtain special zoning permission except as provided in par. (i).

SECTION 15. 59.97 (15) (i) and (j) of the statutes are amended to read:

59.97 (15) (i) Not less than 11 months nor more than 13 months after the first licensure of an adult family home under s. 50.033 or of a community living arrangement and every year thereafter, the common council, town board or village board of a city, town or village in which a licensed adult family home or a community living arrangement is located may make a determination as to the effect of the adult family home or community living arrangement on the health, safety or welfare of the residents of the city, town or village. The determination shall be made according to the procedures provided under par. (j). If the common council, town board or village board determines that a ~~community living arrangement's~~ the existence in the city, town or village of a licensed adult family home or a community living arrangement poses a threat to the health, safety or welfare of the residents of the city, town or village, the common council, town board or village board may order the adult family home or community living arrangement to cease operation unless special zoning permission is obtained. The order is subject to judicial review under s. 68.13, except that a free copy of the transcript may not be provided to the licensed adult family home or community living arrangement. The licensed adult family home or community living arrangement shall cease operation within 90 days after the date of the order, or the date of final judicial review of the order, or the date of the denial of special zoning permission, whichever is later.

(j) A determination under par. (i) shall be made after a hearing before the common council, town board or village board. The city, town or village shall provide at least 30 days' notice to the licensed adult family home or the community living arrangement that such a hearing will be held. At the hearing, the licensed adult family home or the community living arrangement may be represented by counsel and may present evidence and call and examine witnesses and cross-examine other witnesses called. The common council, town board or village board may call witnesses and may issue subpoenas. All witnesses shall be sworn by the common council, town board or village board. The common council, town board or village board shall take notes of the testimony and shall

mark and preserve all exhibits. The common council, town board or village board may, and upon request of the licensed adult family home or the community living arrangement shall, cause the proceedings to be taken by a stenographer or by a recording device, the expense thereof to be paid by the city, town or village. Within 20 days after the hearing, the common council, town board or village board shall mail or deliver to the licensed adult family home or the community living arrangement its written determination stating the reasons therefor. The determination shall be a final determination.

SECTION 16. 60.63 (3) of the statutes is amended to read:

60.63 (3) A foster family home which is the primary domicile of a foster parent and which is licensed under s. 48.62 or an adult family home certified under s. 50.032 ~~(1)~~ (1m) (b) shall be a permitted use in all residential areas and is not subject to subs. (1) and (2) except that foster homes operated by corporations, child welfare agencies, churches, associations or public agencies shall be subject to subs. (1) and (2).

SECTION 17. 60.63 (3m) of the statutes is created to read:

60.63 (3m) (a) No adult family home described in s. 50.01 (1) (b) may be established within 2,500 feet, or any lesser distance established by an ordinance of the town, of any other adult family home described in s. 50.01 (1) (b) or any community living arrangement. An agent of an adult family home described in s. 50.01 (1) (b) may apply for an exception to this requirement, and the exception may be granted at the discretion of the town.

(b) An adult family home described in s. 50.01 (1) (b) that meets the criteria specified in par. (a) and that is licensed under s. 50.033 (1m) (b) is permitted in the town without restriction as to the number of adult family homes and may locate in any residential zone, without being required to obtain special zoning permission except as provided in sub. (10).

SECTION 18. 60.63 (10) and (11) of the statutes are amended to read:

60.63 (10) Not less than 11 months nor more than 13 months after the first licensure of an adult family home under s. 50.033 or of a community living arrangement and every year thereafter, the town board of a town in which a licensed adult family home or a community living arrangement is located may make a determination as to the effect of the adult family home or community living arrangement on the health, safety or welfare of the residents of the town. The determination shall be made according to the procedures provided under sub. (11). If the town board determines that ~~a community living arrangement's~~ the existence in the town of a licensed adult family home or a community living arrangement poses a threat to the health, safety or welfare of the residents of the town, the town board may order the adult family home or community living arrangement to cease

operation unless special zoning permission is obtained. The order is subject to judicial review under s. 68.13, except that a free copy of the transcript may not be provided to the licensed adult family home or community living arrangement. The licensed adult family home or community living arrangement must cease operation within 90 days after the date of the order, or the date of final judicial review of the order, or the date of the denial of special zoning permission, whichever is later.

(11) A determination made under sub. (10) shall be made after a hearing before the town board. The town shall provide at least 30 days' notice to the licensed adult family home or the community living arrangement that such a hearing will be held. At the hearing, the licensed adult family home or the community living arrangement may be represented by counsel and may present evidence and call and examine witnesses and cross-examine other witnesses called. The town board may call witnesses and may issue subpoenas. All witnesses shall be sworn by the town board. The town board shall take notes of the testimony and shall mark and preserve all exhibits. The town board may, and upon request of the licensed adult family home or the community living arrangement shall, cause the proceedings to be taken by a stenographer or by a recording device, the expense thereof to be paid by the town. Within 20 days after the hearing, the town board shall deliver to the licensed adult family home or the community living arrangement its written determination stating the reasons therefor. The determination shall be a final determination.

SECTION 19. 62.23 (7) (i) 2m of the statutes is amended to read:

62.23 (7) (i) 2m. A foster family home which is the primary domicile of a foster parent and which is licensed under s. 48.62 or an adult family home certified under s. 50.032 ~~(1)~~ (1m) (b) shall be a permitted use in all residential areas and is not subject to subs. 1 and 2 except that foster homes operated by corporations, child welfare agencies, churches, associations or public agencies shall be subject to subs. 1 and 2. **SECTION 20.** 62.23 (7) (i) 2r of the statutes is created to read:

62.23 (7) (i) 2r. a. No adult family home described in s. 50.01 (1) (b) may be established within 2,500 feet, or any lesser distance established by an ordinance of the city, of any other adult family home described in s. 50.01 (1) (b) or any community living arrangement. An agent of an adult family home described in s. 50.01 (1) (b) may apply for an exception to this requirement, and the exception may be granted at the discretion of the city.

b. An adult family home described in s. 50.01 (1) (b) that meets the criteria specified in subd. 2r. a. and that is licensed under s. 50.033 (1m) (b) is permitted in the city without restriction as to the number of adult family homes and may locate in any residential zone, without being required to obtain special zoning permission except as provided in subd. 9.

1993 Senate Bill 434

SECTION 21. 62.23 (7) (i) 9. and 10. of the statutes are amended to read:

62.23 (7) (i) 9. Not less than 11 months nor more than 13 months after the first licensure of an adult family home under s. 50.033 or of a community living arrangement and every year thereafter, the common council of a city in which a licensed adult family home or a community living arrangement is located may make a determination as to the effect of the adult family home or community living arrangement on the health, safety or welfare of the residents of the city. The determination shall be made according to the procedures provided under subd. 10. If the common council determines that ~~a community living arrangement's~~ the existence in the city of a licensed adult family home or a community living arrangement poses a threat to the health, safety or welfare of the residents of the city, the common council may order the adult family home or community living arrangement to cease operation unless special zoning permission is obtained. The order is subject to judicial review under s. 68.13, except that a free copy of the transcript may not be provided to the adult family home or community living arrangement. The adult family home or community living arrangement must cease operation within 90 days after the date of the order, or the date of final judicial review of the order, or the date of the denial of special zoning permission, whichever is later.

10. A determination made under subd. 9 shall be made after a hearing before the common council. The city shall provide at least 30 days' notice to the licensed adult family home or the community living arrangement that such a hearing will be held. At the hearing, the licensed adult family home or the community living arrangement may be represented by counsel and may present evidence and call and examine witnesses and cross-examine other witnesses called. The common council may call witnesses and may issue subpoenas. All witnesses shall be sworn by the common council. The common council shall take notes of the testimony and shall mark and preserve all exhibits. The common council may, and upon request of the licensed adult family home or the community living arrangement shall, cause the proceedings to be taken by a stenographer or by a recording device, the expense thereof to be paid by the city. Within 20 days after the hearing, the common council shall mail or deliver to the licensed adult family home or the community living arrangement its written determination stating the reasons therefor. The determination shall be a final determination.

SECTION 22. 101.01 (2) (f) and (g) of the statutes are amended to read:

101.01 (2) (f) "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 private domestic service which does not involve the use of mechanical power or 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 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 an adult family home ~~certified under s. 50.032 (1) (b)~~, as defined in s. 50.01 (1), or, except for the purposes of s. 101.11, a previously constructed building used as a community-based residential facility, as defined in s. 50.01 (1g), which serves 20 or fewer unrelated residents.

(g) "Public building" means 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 (1g) which serves 20 or fewer unrelated residents or an adult family home ~~certified under s. 50.032 (1) (b)~~, as defined in s. 50.01 (1).

SECTION 23. Nonstatutory provisions; health and social services. (1) RULES FOR LICENSED ADULT FAMILY HOMES. Notwithstanding section 50.02 (2) (am) 2 of the statutes, as affected by this act, before the first day of the 7th month beginning after the effective date of this subsection the rules promulgated by the department of health and social services under section 50.02 (2) (am), 1991 stats., shall apply to adult family homes that are required to be licensed under section 50.033 of the statutes, as created by this act.

SECTION 24. Effective date. This act takes effect on the first day of the 7th month beginning after publication.