

STATEMENT OF SCOPE
WISCONSIN DEPARTMENT OF HEALTH SERVICES

CHAPTER: DHS 88
RELATING TO: Licensed Adult Family Homes
RULE TYPE: Permanent
SCOPE TYPE: Revised. This statement of scope modifies SS 108-21, which was approved by the Governor on December 2, 2021, published in the Administrative Register on December 6, 2021, and approved by the Secretary of the Department of Health Services (“the Department”) on December 28, 2021. This revised statement of scope seeks to update policies proposed to be included in the rule.

FINDINGS OF EMERGENCY: Not applicable

SUMMARY

1. Description of rule objective/s

Licensed Adult Family Homes (“AFHs”) provide care, treatment, or services to three or four adults that are above the level of room and board, including up to seven hours per week of nursing care per resident. Currently, there are 2117 AFHs in Wisconsin. Chapter DHS 88 establishes licensing standards for the operation of these AFHs. The Department proposes to update ch. DHS 88 for the purpose of strengthening provisions related to the health, safety and rights of residents. The rule was created on June 1, 1995 and has not been substantially revised since that time.

2. Existing policies relevant to the rule

AFHs have traditionally cared for elders with minor health problems or individuals with mild intellectual disabilities. Over the past several years, a new type of AFH has emerged that provides care to residents with significant medical needs, intellectual disabilities, mental illness, or who are a part of the correctional system. These residents require complex care and highly trained staff to meet their needs. Chapter DHS 88 must be updated to address these needs and ensure adequate protection of AFH residents.

3. Policies proposed to be included in the rule

Pursuant to s. 50.02 (2) (am), Stats., the Department proposes to update ch. DHS 88 to accomplish the following:

- Update and develop policies to improve outcomes and quality of life for residents.
- Facilitate regulatory flexibility in meeting training standards.
- Improve readability and organization of the rule.
- Address increasing acuity in the care levels of residents living in AFHs.
- Establish thresholds for admission and retention.
- Improve assessment and care planning.
- Authorize use of temporary service plans developed and implemented on admission to address immediate needs of residents.
- Update training standards to enhance the ability of staff to meet the evolving needs of persons served by AFHs, including needs for personal care services.
- Develop evidenced-based and nationally recognized standards, which may include staffing requirements, environmental safeguards, and training for facilities that admit and provide care to residents with dementia.

- Establish minimum staff training requirements regarding medication administration, standard precautions, fire safety, first aid and choking, assessment of residents, and individual service plan development.
- Clarify medication administration requirements and the monitoring of psychotropic medication.
- Clarify nurse delegation responsibilities to a non-licensed caregiver to address acuity and allow the facility to provide appropriate care in a time of limited nurse availability.
- Clarify requirements to provide or arrange for services to meet the needs of residents in the areas of personal care, supervision, leisure time activities, community activities, family and social contacts, communication skills, health monitoring, and behavior management.
- Update provisions relating to reporting, investigating, and documenting allegations of caregiver misconduct to include resident protection.
- Establish an infection control program based on current standards of practice to prevent the development and transmission of communicable disease and infection.
- Modernize environmental accessibility requirements to meet the needs of residents with physical and intellectual disabilities.
- Establish standards that require facilities to develop, implement and maintain a quality assurance and quality improvement program.
- Establish a relocation planning process that includes notification to the Department and adequate time for the resident to choose and visit the admitting facility prior to moving.

4. Analysis of policy alternative

The Department has determined that oversight of AFHs is not adequate to ensure a minimum standard of care for vulnerable residents, and to protect the health, safety, and rights residents. There are no reasonable alternatives to updating the rule.

5. Statutory authority for the rule

a. Explanation of authority to promulgate the proposed rule

The Department is authorized to promulgate rules that establish minimum requirements for licensure, licensure application procedures and forms, standards for operation and procedures for monitoring, inspection, revocation and appeal of revocation.

b. Statute/s that authorize/s the promulgation of the proposed rule

Section 50.02 (2) (am) 2., Stats., reads:

The department shall promulgate all of the following rules with respect to 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 50.033 (2), Stats., reads:

REGULATION. Except as provided in sub. (2d), standards for operation of licensed adult family homes and procedures for application for licensure, monitoring, inspection, revocation and appeal of revocation under this section shall be under rules promulgated by the department under s. 50.02 (2) (am) 2. An adult family home licensure is valid until revoked under this section. Licensure is not transferable. The biennial licensure fee for a licensed adult family home is \$171, except that the department may, by rule, increase the amount of the fee. The fee is payable to the county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437, if the county department licenses the adult family home under sub. (1m) (b), and is payable to the department, on a schedule determined by the department if the department licenses the adult family home

under sub. (1m) (b).

c. Statute/s or rule/s that will affect the proposed rule or be affected by it

The Department is not aware of other statutes or rules that will affect the proposed rule or be affected by it.

6. Estimates of the amount of time that state employees will spend to develop the rule and other necessary resources

The Department estimates that staff will spend approximately 1040 staff hours for rulemaking. The Department may form an advisory committee to assist in developing the rule.

7. Description of all of the entities that may be affected by the rule, including any local governmental units, businesses, economic sectors, or public utility ratepayers who may reasonably be anticipated to be affected by the rule

The entities that may be affected by the proposed rule are licensed AFHs, residents and resident representatives of licensed AFHs, AFH staff, Managed Care Organizations, and Provider Associations.

8. Summary and preliminary comparison of any existing or proposed federal regulation that is intended to address the activities to be regulated by the rule

There appear to be no existing or proposed federal regulations that address the activities to be regulated by the proposed rule.

9. Anticipated economic impact, locally or state wide

The proposed rule may have a moderate to significant economic impact.

10. Agency contacts

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