

Ken Brotheridge, Director
Division of Quality Assurance, Bureau of Assisted Living
Wisconsin Department of Health Services
Electronically Delivered

RE: DHS Proposed Changes to DHS 88, Adult Family Homes

Dear Director Brotheridge:

Thank you for taking the time at last Thursday's quarterly meeting to listen to our concerns regarding the proposed, revised DHS 88. The purpose of this letter is to set forth in a more formalized fashion our global concerns on the proposed revision.

The Wisconsin Health Care Association/Wisconsin Center for Assisted Living (WHCA/WiCAL), Disability Service Provider Network (DSPN), and the Wisconsin Assisted Living Association (WALA) each represents assisted living providers, including 3-4 bed licensed Adult Family Homes (AFH) regulated under DHS 88. Thus, our three associations and our member providers continue to have a strong interest in DHS's undertaking of revising Ch. 88.

While our organizations understand and appreciate the intention of the revision of Ch. 88, we and the AFH providers we represent have great concern over the practical realities of the sweeping and unsustainable changes that will create a regulatory and financial burden on current operators which will lead many AFH providers – especially smaller operations – to be forced to close their doors. Many AFHs are run by the owner/operator, meaning one staff member (the owner/operator) caring and providing services for 3-4 residents.

The Ch. 88 Advisory Committee, composed of DHS staff, providers, advocates, and other stakeholders, recently concluded its work of reviewing the Ch. 88 draft section-by-section, line-by-line. Provider associations participated, including WALA (Mike Pochowski) and DSPN (Lisa Davidson). WiCAL staff also attended and participated in the Advisory Committee meetings. Our organizations also have received extensive input from AFH providers on the draft rule.

While it was an important exercise to consider each detail of the draft revision, a common thread emerged throughout the Advisory Committee's work and from our meetings with member providers: taken as a whole, the draft Ch. 88 would result in an impractical regulatory overreach, creating an unworkable environment for many – if not all – Adult Family Homes in Wisconsin.

Throughout the review process, it became evident that the draft Ch. 88 was largely modeled after Ch. 83, regulating Community-Based Residential Facilities (CBRF). In fact, numerous times throughout the review process, it was noted that draft Ch. 88 provisions were carbon copies of Ch. 83. CBRFs range in size from five to 237 beds. Regulating small, 3-4 bed AFHs in the same manner and scope as much larger facility-based settings not only is going to be impractical for providers, but also chips away at the mission of AFH providers to ensure their settings are community-integrated home-like environments. AFH are not facilities, they are small group homes. They should be regulated as such, not as large facilities.

Further, our member providers believe that the draft revision of Ch. 88 goes far beyond the scope of the intended purpose of the revision. When DHS first announced its intention to review and revise Ch. 88, justification given was that 1) there was a need to address higher acuity levels among AFH residents, and 2) the Chapter, which has not been substantially revised since the mid-1990s, needed updates to account for technological advancements and new innovations.

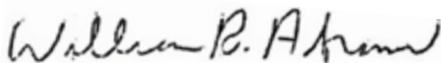
This is understandable and commendable, but the reality is that the draft Ch. 88 presented to the Ch. 88 Advisory Committee strayed significantly from these stated justifications. There are numerous training, documentation, and reporting requirements which would be unfunded mandates that take staff time away from providing direct care/services to residents in the name of paper compliance.

Our organizations and member AFH providers are prepared to participate in the upcoming public comment period upon release of a new version of the Ch. 88 draft. **However, we strongly believe that DHS should heed the concerns of the Ch. 88 Advisory Committee, along with the concerns of AFH providers across the state, to restart the revision process using current Ch. 88 as the basis for revision, rather than largely using Ch. 83 as the foundation for a new, unworkable Ch. 88.**

While our associations request that DHS begin the process anew with the above approach, we would also like to acknowledge the dedicated work of DHS staff throughout the process thus far. We certainly understand and agree that the process has been well-intentioned, although we disagree with the initial outcome of a very burdensome draft proposal. In particular, both Pat Benesh and Cheryl Bott, who oversaw the work of the Advisory Committee, conducted themselves with understanding, patience, and diligence, and we greatly appreciate their time and effort.

Please do not hesitate to reach out to our organizations with any questions.

Sincerely,



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