



September 18, 2023

Mr. Ken Brotheridge
Director, Bureau of Assisted Living
Department of Health Services
1 West Wilson Street
Madison, WI 53703

Delivered electronically: Kenneth.brotheridge@dhs.wisconsin.gov

RE: DHS 88 updated draft

Dear Mr. Brotheridge,

Thank you for the opportunity to serve on the Advisory Committee informing the update of DHS 88 regulating Wisconsin 3-4 bed Adult Family Homes. DSPN is the state's leading trade association for organizations that provide support to people with disabilities. DSPN represents the interests of disability service providers that provide both residential and non-residential services.

These services include community-based and center-based vocational and day services, supported employment, job development, training and placement, competitive integrated employment, care management, Community Based Residential Facilities (CBRFs), Adult Family Homes (AFHs), supported living arrangements, Adult Day Care Center (ADCC) services, early intervention, and other services that enable people with disabilities and economic disadvantages to live and work in their local communities.

The revisions to DHS 88 present an opportunity to address several issues that have evolved since the inception of the rule. We request the Department use this opportunity to:

- ***Preserve the unique identity of Adult Family Homes as a lesser restrictive living environment***
- ***Eliminate unfunded mandates and***
- ***Foster an environment that is favorable for careers in long-term care***

The existing provider network is already fragile. While the rule has undergone some revision, there exists ample opportunity for improvement. The current requirements will have the unintended consequences of reducing access to services and a disrupted, diminished quality of life for our most vulnerable.



We request the rule clarify which training courses are accepted by DHS to satisfy this requirement. We suggest DHS utilize the new Certified Direct Care Professional program to meet training requirements for all staff working within facilities governed by the rule.

Currently CBRF licensed providers can contest adverse department action through Charter 50.03 (11) Judicial review. Unfortunately, unlike CBRF licensed providers, no such review process is currently available under Chapter 50.033 Licensure of Certain Adult Family Homes. Thus, under DHS 88 and pursuant to s. [50.033 \(6\)](#), Stats., any person who violates s. [50.033](#), Stats., or this chapter may be fined not more than \$500 or imprisoned for not more than one year in the county jail or both. Based upon the current and proposed absence of an appeal process for AFH providers, the Department has the authority to pass judgment without due process. We request the Department incorporate this into the final draft.

We also believe further clarification is needed regarding nursing delegation. Recognizing this is governed both by DHS and the Board of Nursing, we will pursue a clear definition of delegation. Given the existing workforce challenges, clarification can help reduce the need for a Registered Nurse to be onsite.

While we appreciate the 5-year transition period of sprinkler installation for existing Class "C" AFHs, the fire safety compliance burden to Class "B" and "C" providers will be significant. Many of the leading causes of fire are not allowed in AFHs. The economic impact of regulatory compliance for safety must be incorporated into provider payment.

An AFH is a residential setting, yet the rule proposes these homes must adhere to commercial building code. This will cause new AFH buildings to be more costly and burdensome to build and maintain, with a higher burden on smaller providers not part of a corporate structure.

Unfortunately, there will be an increase in closures of long-term care facilities due to some of the proposed requirements in DHS 88. This is not the outcome anyone wants.

Thank you for your consideration. We look forward to working with you on this important effort.

Sincerely,

Lisa M. Davidson
CEO