

Date: October 29, 1998
To: Community-Based Residential Facilities
From: Judy Fryback, Director
Bureau of Quality Assurance

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CBRF 19

**Recent Changes to Chapter 50 of the Wisconsin Statutes Affecting
Community-Based Residential Facilities**

Significant changes to chapter 50 of the Wisconsin statutes became effective through 1997 Wisconsin Act 237 on June 17, 1998, unless otherwise specified in statute. The purpose of this memorandum is to alert CBRFs to those changes which occurred in definitions and in the exceptions under which residents requiring more than three hours of nursing care per week may receive care in the CBRF.

I. Definitions Applicable to CBRFs

Several new definitions were added to chapter 50. These include:

1. "'Basic care' includes periodic skilled nursing services or physical, emotional, social or restorative care."
[s. 50.01(1e), Stats.]
2. "'Intermediate level nursing care' means basic care that is required by a person who has a long-term illness or disability that has reached a relatively stable plateau." [s. 50.01(1t), Stats.]
3. "'Licensed practical nurse' means a nurse who is licensed or has a temporary permit under s. 441.10."
[s. 50.01(1w), Stats.]
4. "'Nursing care' means nursing procedures, other than personal care, that are permitted to be performed by a registered nurse under s. 441.01(3) or by a licensed practical nurse under s. 441.11(3), directly on or to a resident." [s. 50.01(2m), Stats. This replaces s. 83.04(41), Wis. Admin. Code]
5. "'Registered nurse' means a nurse who is licensed under s. 441.06 or permitted under s. 441.08."
[s. 50.01(5r), Stats.]

The definitions of several terms currently in chapter 50 were modified, including:

1. "'Community-based residential facility' means a place where 5 or more ~~unrelated adults reside in which~~ adults who are not related to the operator or administrator and who do not require care above intermediate level nursing care reside and receive care, treatment or services that are above the level of room and board but not including that include no more than 3 hours of nursing care are provided to

~~persons residing in the facility as a primary function of the facility per week per resident.~~ 'Community-based residential facility' does not include any of the following:

(a) A convent or facility owned or operated by members of a religious order exclusively for the reception and care or treatment of members of that order.

(b) A facility or private home that provides care, treatment and services only for victims of domestic abuse, as defined in s. 46.95 (1) (a), and their children.

(c) A shelter facility as defined under s. 16.352 (1) (d).

(d) A place that provides lodging for individuals and in which all of the following conditions are met:

1. Each lodged individual is able to exit the place under emergency conditions without the assistance of another individual.

2. No lodged individual receives from the owner, manager or operator of the place or the owner's, manager's or operator's agent or employe any of the following:

a. Personal care, supervision or treatment, or management, control or supervision of prescription medications.

b. Care or services other than board, information, referral, advocacy or job guidance; location and coordination of social services by an agency that is not affiliated with the owner, manager or operator, for which arrangements were made for an individual before he or she lodged in the place; or, in the case of an emergency, arrangement for the provision of health care or social services by an agency that is not affiliated with the owner, manager or operator.

(e) An adult family home.

(f) A residential care apartment complex.

(g) A residential facility in the village of Union Grove that was authorized to operate without a license under a final judgment entered by a court before January 1, 1982, and that continues to comply with the judgment notwithstanding the expiration of the judgment." [s. 50.01(1g), Stats.]

2. "Operator" means any person licensed or required to be licensed under s. 50.03 (1) or a person who operates an adult family home that is licensed under s. 50.033(1m)(b)." [s. 50.01(4m), Stats.]

3. "Personal care" means assistance with the activities of daily living, such as eating, dressing, bathing and ambulation, but does not include nursing care." [s. 50.01(4o), Stats.]

4. "Resident" means a person who is cared for or treated in ~~any~~ and is not discharged from a nursing home or community-based residential facility or adult family home, irrespective of how admitted." [s. 50.01(6), Stats.]

II. Exceptions to CBRF Care Limitations

1997 Wisconsin Act 237 specifies that certain types of residents may be provided certain types of care under certain circumstances. The Act modifies what is currently addressed in ss. 83.06(1) and 83.34(2), Wis. Admin. Code. In essence, chapter 50 now provides that CBRFs may provide more than three hours of nursing care per week or care above intermediate level nursing care under three circumstances:

1. Residents who have temporary conditions, but who do not have a terminal illness, may receive more than three hours of nursing care per week for up to 30 days. The resident must otherwise be eligible for CBRF care and the facility must have the services to provide the care the resident requires. For example, if a resident now requires the assistance of two staff to transfer, then two staff should be on duty at all times the resident may be expected to need or to request assistance with transfer. If the resident has an infection, then staff should be trained in techniques to prevent the spread of the infection. (Previously, under s. 83.06(1)(a), Wis. Admin. Code, CBRFs could provide such care to such residents for no more than **90** days. The language in Act 237 provided no exceptions to this restriction.) If the CBRF is providing care to more than four such residents or 10% of the CBRF's licensed capacity, whichever is greater, the CBRF must obtain a waiver from the Department to provide such care.
2. Residents who do not have terminal illnesses but who have stable or long-term conditions that require more than three hours of nursing care per week may receive care for more than 30 days if the facility requests or has received a waiver from the Department. The resident must otherwise be eligible for CBRF care and the facility must have the services to provide the care the resident requires. (Previously, under s. 83.06(1)(a), Wis. Admin. Code, CBRFs could provide such care for more than **90** days if the CBRF requested and the Department granted a waiver to do so. Act 237 modified chapter 50 to limit the period the CBRF can provide such care to such residents to no more than 30 days unless the CBRF has obtained a waiver from the Department or has requested such a waiver from the Department and a decision is pending.) In addition, if the CBRF is providing care to more than four such residents or 10% of the CBRF's licensed capacity, whichever is greater, the CBRF must obtain a separate waiver from the Department to provide such care.
3. Residents who have terminal illnesses and whose primary care provider is **NOT** a licensed hospice or licensed home health agency, may receive more than three hours of nursing care per week if the CBRF requests or has received a waiver from the Department.

The specific language of what has become s. 50.035(10), Stats. is as follows:

"(a) Notwithstanding the limitations on the type of care that may be required by and provided to residents under s. 50.01(1g), the following care may be provided in a community-based residential facility under the following circumstances:

1. Subject to par. (b), a community-based residential facility may provide more than three hours of nursing care per week or care above intermediate level nursing care for not more than 30 days to a resident who does not have a terminal illness but who has a temporary condition that requires the care, if all of the following conditions apply:

- a. The resident is otherwise appropriate for the level of care that is limited in a community-based residential facility under s. 50.01(1g).

b. The services necessary to treat the resident's condition are available in the community-based residential facility.

2. Subject to par. (b) and if a community-based residential facility has obtained a waiver from the department or has requested such a waiver from the department and the decision is pending, the community-based residential facility may provide more than three hours of nursing care per week or care above intermediate level nursing care for more than 30 days to a resident who does not have a terminal illness but who has a stable or long-term condition that requires the care, if all of the following conditions apply:

a. The resident is otherwise appropriate for the level of care that is limited in a community-based residential facility under s. 50.01(1g).

b. The services necessary to treat the resident's condition are available in the community-based residential facility.

c. The community-based residential facility has obtained a waiver from the department under this subdivision or has requested such a waiver from the department and the decision is pending.

3. A community-based residential facility may provide more than three hours of nursing care per week or care above intermediate level nursing care to a resident who has a terminal illness and requires the care, under the following conditions:

a. If the resident's primary care provider is a licensed hospice or a licensed home health agency.

b. If the resident's primary care provider is not a licensed hospice or a licensed home health agency, but the community-based residential facility has obtained a waiver of the requirement under subd. 3.a. from the department or has requested such a waiver and the department's decision is pending.

(b) A community-based residential facility may not have a total of more than four residents or 10% of the facility's licensed capacity, whichever is greater, who qualify for care under par. (a)1. or 2. unless the facility has obtained a waiver from the department of the limitation of this paragraph or has requested such a waiver and the department's decision is pending.

(c) The department may grant a waiver of the limitation under par. (a)2. or 3.a. or (b)."

If you wish to review the current version chapter 50 in its entirety, you can access it via the internet at www.legis.state.wi.us and click on "Statutes and Constitution," then on "Wisconsin Statutes and Annotations." The updated version of chapter 50 should be posted at that site. We also intend to provide a link to that site at the BQA website in the near future.

Should you have any questions regarding any of the preceding changes to chapter 50 made by 1997 Wisconsin Act 237, please contact one of the Regional Field Operations Directors (RFOD) listed below:

Southeastern Regional Office
819 N. 6th St., Rm. 875
Milwaukee, WI 53203

Tony Oberbrunner, RFOD (414) 227-4908

Southern Regional Office

3514 Memorial Drive
Madison, WI 53704

Phyllis Tschumper, RFOD

(608) 243-2374

Northeastern Regional Office

200 N. Jefferson St., Suite 211
Green Bay, WI 54301

Pat Benesh, RFOD

(920) 448-5249

Western Regional Office

312 South Barstow, St., Suite #1
Eau Claire, WI 54701-3667

Joe Bronner, RFOD

(715) 836-4753

Northern Regional Office

1853 N. Stevens Street, Suite B
Rhinelander, WI 54501

Marianne Missfeldt, RFOD

(715) 365-2802

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GUIDANCE ON EXCEPTIONS TO CBRF CARE LIMITATIONS

Residents Appropriate for Care in CBRFs

The definition of a CBRF was changed somewhat in 1997 Wisconsin Act 237, effective June 17, 1998. The change, made to the introduction of the definition in s. 50.01(1g), Stats., places parameters on the needs of persons considered to be appropriate for residing in a CBRF:

“Community-based residential facility” means a place where 5 or more ~~unrelated adults reside in which~~ adults who are not related to the operator or administrator and who do not require care above intermediate level nursing care resident and receive care, treatment or services that are above the level of room and board but ~~not including~~ that include no more than 3 hours of nursing care are provided to persons residing in the facility as a primary function of the facility per week per resident.”

Exceptions to Above Definition

1997 Wisconsin Act 237 also incorporated some exceptions to the resident need-based parameters in the above definition. These exceptions allow CBRFs to provide certain types of care to certain types of residents under certain circumstances. In essence, CBRFs may provide **more than 3 hours of nursing care per week or care above intermediate level nursing care** under three circumstances:

Circumstance #1: **For not more than 30 days, for not more than 4 residents or 10% of the CBRF’s licensed capacity, whichever is greater,** the CBRF may provide such care to residents who **do not have terminal illnesses** but who have temporary conditions that require such care **if:**

- a. such residents are otherwise appropriate for CBRF care.

AND

- b. The services necessary to treat such residents’ conditions are available in the CBRF. For example, if the resident requires the assistance of two people to transfer, then two staff people should be in the facility each period of time the resident may need assistance with transfer. If the resident has a communicable infection, then staff should be trained in techniques to prevent the spread of the infection.

(The CBRF can provide such care to more than 4 residents or more than 10% of the CBRF’s licensed capacity, whichever is greater, **if** the CBRF has obtained a waiver from the Department to do so or has requested such a waiver and the Department’s decision is pending.)

Circumstance #2: The CBRF may provide more than 3 hours of nursing care per week or care above intermediate level nursing care **for more than 30 days to not more than 4 residents or 10% of the CBRF’s licensed capacity, whichever is greater,** if the residents needing such care do not have terminal illnesses but have stable or long-term conditions that require such care **if:**

- a. Such residents are otherwise appropriate for CBRF care.

AND

- b. The services necessary to treat such residents' conditions are available in the CBRF. This includes adequate numbers of trained staff, as determined by resident condition and needs.

AND

- c. The community-based residential facility has obtained a waiver from the Department to provide such care or has requested such a waiver from the Department and the Department's decision is pending.

(The CBRF can provide such care to more than 4 residents or more than 10% of the CBRF's licensed capacity, whichever is greater **if** the CBRF has **also** obtained a waiver from the Department to do so or has requested such a waiver and the Department's decision is pending.)

Circumstance #3: The CBRF may provide more than 3 hours of nursing care per week or above intermediate level nursing care to residents **who have a terminal illness** and require such care **if**:

- a. The residents' primary care provider is a licensed hospice or licensed home health agency.

OR

- b. The facility has, or has requested from the Department, a waiver of the requirement that the primary care provider be a licensed hospice or licensed home health agency.

The specific language of these statutory exceptions, found at s. 50.035(10), Stats., is stated below.

S. 50.035(10): Exceptions to CBRF Care Limitations

“(a) Notwithstanding the limitations on the type of care that may be required by and provided to residents under s. 50.01(1g)(intro.), the following care may be provided in a community-based residential facility under the following circumstances:

1. Subject to par. (b), a community-based residential facility may provide more than 3 hours of nursing care per week or care above intermediate level nursing care for not more than 30 days to a resident who does not have a terminal illness but who has a temporary condition that requires the care, if all of the following conditions apply:

- a. The resident is otherwise appropriate for the level of care that is limited in a community-based residential facility under s. 50.01(1g)(intro.).

b. The services necessary to treat the resident's condition are available in the community-based residential facility.

2. Subject to par. (b) and if a community-based residential facility has obtained a waiver from the department or has requested such a waiver from the department and the decision is pending, the community-based residential facility may provide more than 3 hours of nursing care per week or care above intermediate level nursing care for more than 30 days to a resident who does not have a terminal illness but who has a stable or long-term condition that requires the care, if all of the following conditions apply:

a. The resident is otherwise appropriate for the level of care that is limited in a community-based residential facility under s. 50.01(1g)(intro.).

b. The services necessary to treat the resident's condition are available in the community-based residential facility.

c. The community-based residential facility has obtained a waiver from the department under this subdivision or has requested such a waiver from the department and the decision is pending.

3. A community-based residential facility may provide more than 3 hours or nursing care per week or care above intermediate level nursing care to a resident who has a terminal illness and requires the care, under the following conditions:

a. If the resident's primary care provider is a licensed hospice or a licensed home health agency.

b. If the resident's primary care provider is not a licensed hospice or a licensed home health agency, but the community-based residential facility has obtained a waiver of the requirement under subd. 3.a. from the department or has requested such a waiver and the department's decision is pending.

(b) A community-based residential facility may not have a total of more than 4 residents or 10% of the facility's licensed capacity, whichever is greater, who qualify for care under par. (a)1. or 2. unless the facility has obtained a waiver from the department of the limitations of this paragraph or has requested such a waiver and the department's decision is pending.

(c) The department may grant a waiver of the limitation under par. (a)2. or 3.a. or (b)."

Definitions Modified by Act 237

The following three terms, pertinent to care provided in CBRFs, have been added to Chapter 50, Stats.

1. *“Operator”* means any person licensed or required to be licensed under s. 50.03(1) or a person who operates an adult family home that is licensed under s. 50.033(1m)(b).” [s. 50.01(4m), Stats.]
2. *“Personal care”* means assistance with the activities of daily living, such as eating, dressing, bathing and ambulation, but does not include nursing care.” [s. 50.01(4o), Stats.]

3. “‘*Resident*’ means a person who is cared for or treated in ~~any~~ and is not discharged from a nursing home ~~or~~ community-based residential facility or adult family home, irrespective of how admitted.” [s. 50.01(6), Stats.]

New definitions Added by Act 237

Five other definitions, new to ch. 50, Stats., aid in the interpretation of the types of residents for whom a CBRF can care:

1. “‘*Basic care*’ includes periodic skilled nursing services or physical, emotional, social or restorative care.” [s. 50.01(1e), Stats.]
2. “‘*Intermediate level nursing care*’ means basic care that is required by a person who has a long-term illness or disability that has reached a relatively stable plateau.” [s. 50.01(1t), Stats.]
3. “‘*Licensed practical nurse*’ means a nurse who is licensed or has a temporary permit under s. 441.10.” [s. 50.01(1w), Stats.]
4. “‘*Nursing care*’ means nursing procedures, other than personal care, that are permitted to be performed by a registered nurse under s. 441.01(3) or by a licensed practical nurse under s. 441.11(3), directly on or to a resident.” [s. 50.01(2m), Stats.]
5. “‘*Registered nurse*’ means a nurse who is licensed under s. 441.06 or permitted under s. 441.08.” [s. 50.019(5r), Stats.]

These five definitions clarify professional classifications and provide some guidance to CBRFs and BQA surveyors regarding whether someone is an appropriate candidate for, or resident of, a CBRF.