

 <b>WRAPAROUND MILWAUKEE Policy &amp; Procedure</b>	Date Issued:  5/21/03	Reviewed: 7/22/11 By: MG Last Revision: 8/31/11	Section:  ADMINISTRATION	Policy No:  044	Pages:  1 of 2 (1 Attachment)
	<input checked="" type="checkbox"/> Wraparound <input checked="" type="checkbox"/> Wraparound-REACH <input checked="" type="checkbox"/> FISS <input checked="" type="checkbox"/> Project O-Yeah	Effective Date:  1/1/12	Subject:  <b>MINIMUM NECESSARY ACCESS TO CLIENT PROTECTED HEALTH INFORMATION</b>		

## I. POLICY

It is the policy of Wraparound Milwaukee to allow minimum necessary access to client specific protected health information (PHI). Protected health information, as defined in 45CFR Part 164.501 of the Standards for Privacy of Individually Identifiable Health Information, is “individually identifiable health information” that is transmitted by electronic media; maintained in any medium as described in 162.103 of the subchapter, or transmitted or maintained in any form or medium (except education records covered by the Family Education Rights and Privacy Act). PHI will be maintained by Wraparound Milwaukee by allowing “minimum necessary access” as outlined in the HIPAA Privacy Standards.

Minimum Necessary Access is applied to workforce access to protected health information and to disclosures of protected health information by Wraparound Milwaukee.

## II. PROCEDURE

### A. Workforce Use.

Wraparound Milwaukee will limit access to Protected Health Information (both written and electronic) by its workforce to include only the minimum necessary information required to complete assigned job duties.

### B. Routine Disclosures.

Wraparound Milwaukee limits routine disclosures to:

1. Disclosures allowed under Wisconsin Statute DHS 51.30 (*see Attachment*).
2. Disclosures necessary for purposes of payment or operations (i.e., CHIPS billing).
3. Disclosures to Business Associates (i.e., clients records maintained by Care Coordination Agencies).
4. Disclosures authorized by the individual client, the client’s guardian or for a client who is an emancipated minor, under applicable law, a person who has authority to act on behalf of the minor as their personal representative.

Routine disclosures are limited to the information necessary to achieve the purpose of the disclosure.

### C. Other Disclosures.

Disclosures unless allowed or required by law, require the authorization of the individual client, the client’s guardian or for a client who is an emancipated minor, under applicable law, a person who has authority to act on behalf of the minor as their personal representative.

Non-routine disclosures are reviewed on an individual basis to assure compliance with Minimum Necessary Standards established in the HIPAA Privacy Standards and Wraparound Policies and Procedures. Individuals authorized to review requests for disclosure of protected health information



individual's dangerousness to be evidenced by acts, attempts, threats, omissions or behavior referred to in sub. (1) (a) 2. Prior law allowed commitment of such an individual upon a showing that there was a substantial likelihood, based on the treatment record, that he or she would be a proper subject for commitment if treatment were withdrawn. [Bill 765–A]

**Judicial Council Note, 1988:** The amendment to sub. (2) allows notice of hearings to be given by telephone. The time at which such notice is given and the person to whom it is given must be noted in the case file. [Re Order effective Jan. 1, 1988]

The role of an attorney appointed under sub. (4), 1975 stats., [now (3)] is discussed. State ex rel. Memmel v. Mundy, 75 Wis. 2d 276, 249 N.W.2d 573 (1977).

The due process standard for hearings under this section is more flexible than the standard for criminal proceedings. In Matter of Parham, 95 Wis. 2d 21, 289 N.W.2d 326 (Ct. App. 1979).

The 14–day time limit in sub. (7) (c) is mandatory and refers to calendar days, not business days. State ex rel. Lockman v. Gerhardtstein, 107 Wis. 2d 325, 320 N.W.2d 27 (Ct. App. 1982).

Criminal and civil commitments are not substantially the same. State v. Smith, 113 Wis. 2d 497, 335 N.W.2d 376 (1983).

A person may be a proper subject for treatment even though a cure is unlikely. In Matter of Mental Condition of C.J. 120 Wis. 2d 355, 354 N.W.2d 219 (Ct. App. 1984).

The 45–day limit in sub. (13) (g) 2. applies only to an original commitment order and does not bar subsequent extensions of the order. In Matter of M.J. 122 Wis. 2d 525, 362 N.W.2d 190 (Ct. App. 1984).

The use of telephone testimony by physicians did not violate the petitioner's due process rights. In Matter of W.J.C. 124 Wis. 2d 238, 369 N.W.2d 162 (Ct. App. 1985).

Hearings under sub. (12) are open unless the court grants the subject individual's motion for closure. Wisconsin State Journal v. Circuit Court for Dane County, 131 Wis. 2d 515, 389 N.W.2d 73 (Ct. App. 1986).

An individual's counsel may not withdraw a jury demand without the individual's consent. In Matter of S.B., 138 Wis. 2d 409, 406 N.W.2d 408 (1987).

Sub. (13) (c) 2. does not permit the committing court to specify a treatment method in addition to the facility. In Matter of J.R.R. 145 Wis. 2d 431, 427 N.W.2d 137 (Ct. App. 1988).

Under sub. (13) (g) 3. an individual has a right to a jury trial in proceedings to extend a commitment. In Matter of Mental Condition of G.O.T. 151 Wis. 2d 629, 445 N.W.2d 697 (Ct. App. 1989).

There is a bright–line rule prohibiting a circuit court from accepting petitions drafted by persons not authorized to do so under sub. (4). In Matter of S.P.B. 159 Wis. 2d 393, 464 N.W.2d 102 (Ct. App. 1990).

The services of appointed counsel for non–indigent individuals in civil commitment hearing should be paid for by the county. State ex rel. Chiarkas v. Skow, 160 Wis. 2d 123, 465 N.W.2d 625 (1991).

The assurance of representation by adversary counsel under sub. (3) does not preclude self–representation when a waiver of counsel is knowingly and competently made. In Matter of Condition of S.Y. 162 Wis. 2d 320, 469 N.W.2d 836 (1991).

The sub. (16) (c) provision for a hearing on a petition within 30 days of filing is directory and violation is not grounds for release. State v. R.R.E. 162 Wis. 2d 698, 470 N.W.2d 283 (1991).

When a recommitment hearing under sub. (13) (g) 3. is before the same judge who conducted the original commitment proceeding, a request for substitution under s. 801.58 is not allowed. Serocki v. Circuit Court for Clark County, 163 Wis. 2d 152, 471 N.W.2d 49 (1991).

Sub. (15) does not authorize the appeal of a court commissioner's order to the court of appeals; proper review is a new hearing by the circuit court. In Matter of Mental Condition of C.M.B. 165 Wis. 2d 703, 478 N.W.2d 385 (1992).

An involuntary commitment may not be ordered on summary judgment. Matter of Mental Condition of Shirley J.C. 172 Wis. 2d 371, 493 N.W.2d 382 (Ct. App. 1992).

A probable cause determination made by a court commissioner under sub. (7) may be reviewed by the circuit court, but nothing gives the subject a right to review. Factors to consider in deciding whether to grant review are discussed. Milwaukee County v. Louise M. 205 Wis. 2d 162, 555 N.W.2d 807 (1996), 95–0291.

The 14–day deadline under sub. (7) (c) is subject to reasonable extension when the need for the extension is caused solely by the conduct and manipulation of the detained subject. County of Milwaukee v. Edward S. 2001 WI App 169, 247 Wis. 2d 87, 633 N.W.2d 241, 00–1003.

By expressing the time requirement in sub. (7) (a) in terms of hours rather than days, the legislature manifested its intent that the clock start running immediately “after the individual arrives at the facility,” rather than the next day. The “exclude–the–first–day” rule of s. 990.001 (4) (a) and (d) does not apply in the context of this section under which 72 hours means 72 hours. Matter of the Mental Commitment of Ryan E. M. 2002 WI App 71, 252 Wis. 2d 490, 642 N.W.2d 592, 01–1175.

Sub. (1) (a) 2. e. is constitutional. It does not: 1) allow involuntary commitment upon a finding of mental illness alone and contains an ascertainable standard of commitment, and thus is not vague or overbroad; 2) create a class of persons who can be involuntarily committed upon a finding of mere mental or emotional harm, and thus does not violate equal protection; and 3) violate substantive due process because the constitution does not require proof of imminent physical harm prior to commitment for treatment. State v. Dennis H. 2002 WI 104, 255 Wis. 2d 359, 647 N.W.2d 851, 01–0374.

A corporation counsel has discretion to refuse to file a petition for examination after receiving signed statements under oath that meet the requirements contained in sub. (1) if the corporation counsel determines that it is not in the interests of the public to file the petition. A good faith discretionary determination on the part of the corporation counsel that the filing of a petition for examination would not be in the interests of the public is not susceptible to challenge in a mandamus action. OAG 4–10.

Under sub. (2), a court can entertain proceedings for involuntary commitment of a person admitted as a voluntary inpatient. 68 Atty. Gen. 97.

Sub. (14) requires a sheriff to transport the subject of a petition under s. 51.20 at all stages of the proceedings, regardless of reimbursement. 68 Atty. Gen. 225.

An individual in the custody of a sheriff for transport to, from, and during an involuntary commitment hearing has rights to the least restrictive restraint appropriate. 71 Atty. Gen. 183.

The duties and obligations of a corporation counsel in involuntary civil commitment proceedings under this chapter are discussed. 79 Atty. Gen. 129.

Under sub. (14), the director of the county department under s. 51.42 or 51.437 may request the sheriff of the county in which an individual was placed under emergency detention to transport that individual to another designated inpatient facility prior to the initial court hearing under ch. 51, and the sheriff must do so within a reasonable time. 80 Atty. Gen. 299.

The state cannot confine, without more, nondangerous persons capable of surviving safely in freedom alone or with help from family or friends. O'Connor v. Donaldson, 422 U.S. 563.

Due process does not require states to use the “beyond a reasonable doubt” standard in civil commitment proceedings. Addington v. Texas, 441 U.S. 418 (1979).

In signing a commitment application, a county employee was in essence acting as a witness in a judicial proceeding and as such was entitled to immunity. Martens v. Tremble, 481 F. Supp. 831 (1979).

Persons confined in a state hospital under ss. 51.20, 51.37, 971.14, 971.17 and 975.06 are being subjected to punishment within the meaning of the cruel and unusual punishment clause. Flakes v. Percy, 511 F. Supp. 1325 (1981).

Beyond Overt Violence: Wisconsin's Progressive Civil Commitment Statute as a Marker of a New Era in Mental Health Law. Erickson, Vitacco, and Van Rybroek, 89 MLR 359 (2005).

The privilege against self–incrimination in civil commitment proceedings. 1980 WLR 697.

**51.22 Care and custody of persons. (1)** Except as provided in s. 51.20 (13) (a) 4. or 5., any person committed under this chapter shall be committed to the county department under s. 51.42 or 51.437 serving the person's county of residence, and such county department shall authorize placement of the person in an appropriate facility for care, custody and treatment according to s. 51.42 (3) (as) 1r. or 51.437 (4rm) (a).

**(2)** Except for admissions that do not involve the department or a county department under s. 51.42 or 51.437 or a contract between a treatment facility and the department or a county department, admissions under ss. 51.10, 51.13, and 51.45 (10) shall be through the county department under s. 51.42 or 51.437 serving the person's county of residence, or through the department if the person to be admitted is a nonresident of this state. Admissions through a county department under s. 51.42 or 51.437 shall be made in accordance with s. 51.42 (3) (as) 1r. or 51.437 (4rm) (a). Admissions through the department shall be made in accordance with sub. (3).

**(3)** Whenever an admission is made through the department, the department shall determine the need for inpatient care of the individual to be admitted. Unless a state–operated facility is used, the department may only authorize care in an inpatient facility which is operated by or under a purchase of service contract with a county department under s. 51.42 or 51.437 or an inpatient facility which is under a contractual agreement with the department. Except in the case of state treatment facilities, the department shall reimburse the facility for the actual cost of all authorized care and services from the appropriation under s. 20.435 (7) (da). For collections made under the authority of s. 46.10 (16), moneys shall be credited or remitted to the department no later than 60 days after the month in which collections are made. Such collections are also subject to s. 46.036 or special agreement. Collections made by the department under ss. 46.03 (18) and 46.10 shall be deposited in the general fund.

**(4)** If a patient is placed in a facility authorized by a county department under s. 51.42 or 51.437 and the placement is outside the jurisdiction of that county department under s. 51.42 or 51.437, the placement does not transfer the patient's residence to the county of the facility's location while such patient is under commitment or placement.

**(5)** The board to which a patient is committed shall provide the least restrictive treatment alternative appropriate to the patient's needs, and movement through all appropriate and necessary treatment components to assure continuity of care.

**History:** 1975 c. 430; 1977 c. 428; 1983 a. 27 s. 2202 (20); 1983 a. 474; 1985 a. 176; 1989 a. 31; 2001 a. 16; 2005 a. 387, 444; 2009 a. 28.

The standard for determining whether the state has adequately protected a patient's rights is whether professional judgment was in fact exercised. Youngberg v. Romeo, 457 U.S. 307 (1982).

**51.30 Records. (1) DEFINITIONS.** In this section:

(ag) “Health care provider” has the meaning given in s. 146.81 (1) (a) to (p).

(am) “Registration records” include all the records of the department, county departments under s. 51.42 or 51.437, treatment facilities, and other persons providing services to the department, county departments, or treatment facilities, that are created in the course of providing services to individuals for mental illness, developmental disabilities, alcoholism, or drug dependence.

(b) “Treatment records” include the registration and all other records that are created in the course of providing services to individuals for mental illness, developmental disabilities, alcoholism, or drug dependence and that are maintained by the department; by county departments under s. 51.42 or 51.437 and their staffs; by treatment facilities; or by psychologists licensed under s. 455.04 (1) or licensed mental health professionals who are not affiliated with a county department or treatment facility. Treatment records do not include notes or records maintained for personal use by an individual providing treatment services for the department, a county department under s. 51.42 or 51.437, or a treatment facility, if the notes or records are not available to others.

(2) INFORMED CONSENT. An informed consent for disclosure of information from court or treatment records to an individual, agency, or organization must be in writing and must contain the following: the name of the individual, agency, or organization to which the disclosure is to be made; the name of the subject individual whose treatment record is being disclosed; the purpose or need for the disclosure; the specific type of information to be disclosed; the time period during which the consent is effective; the date on which the consent is signed; and the signature of the individual or person legally authorized to give consent for the individual.

(3) ACCESS TO COURT RECORDS. (a) Except as provided in pars. (b), (bm), (c), and (d), the files and records of the court proceedings under this chapter shall be closed but shall be accessible to any individual who is the subject of a petition filed under this chapter.

(b) An individual’s attorney or guardian ad litem and the corporation counsel shall have access to the files and records of the court proceedings under this chapter without the individual’s consent and without modification of the records in order to prepare for involuntary commitment or recommitment proceedings, reexaminations, appeals, or other actions relating to detention, admission, or commitment under this chapter or ch. 971, 975, or 980.

(bm) Authorized representatives of the department of corrections, the department of health services, the department of justice, or a district attorney shall have access to the files and records of court proceedings under this chapter for use in the prosecution of any proceeding or any evaluation conducted under ch. 980, if the files or records involve or relate to an individual who is the subject of the proceeding or evaluation. The court in which the proceeding under ch. 980 is pending may issue any protective orders that it determines are appropriate concerning information made available or disclosed under this paragraph. Any representative of the department of corrections, the department of health services, the department of justice, or a district attorney may disclose information obtained under this paragraph for any purpose consistent with any proceeding under ch. 980.

(c) The files and records of court proceedings under this chapter may be released to other persons with the informed written consent of the individual, pursuant to lawful order of the court which maintains the records or under s. 51.20 (13) (cv) 4.

(d) The department of corrections shall have access to the files and records of court proceedings under this chapter concerning an individual required to register under s. 301.45. The department of corrections may disclose information that it obtains under this paragraph as provided under s. 301.46.

(4) ACCESS TO REGISTRATION AND TREATMENT RECORDS. (a) *Confidentiality of records.* Except as otherwise provided in this chapter and ss. 118.125 (4), 610.70 (3) and (5), 905.03 and 905.04, all treatment records shall remain confidential and are privileged to the subject individual. Such records may be released only to the

persons designated in this chapter or ss. 118.125 (4), 610.70 (3) and (5), 905.03 and 905.04, or to other designated persons with the informed written consent of the subject individual as provided in this section. This restriction applies to elected officials and to members of boards appointed under s. 51.42 (4) (a) or 51.437 (7) (a).

(b) *Access without informed written consent.* Notwithstanding par. (a), treatment records of an individual may be released without informed written consent in the following circumstances, except as restricted under par. (c):

1. To an individual, organization or agency designated by the department or as required by law for the purposes of management audits, financial audits, or program monitoring and evaluation. Information obtained under this paragraph shall remain confidential and shall not be used in any way that discloses the names or other identifying information about the individual whose records are being released. The department shall promulgate rules to assure the confidentiality of such information.

2. To the department, the director of a county department under s. 51.42 or 51.437, or a qualified staff member designated by the director as is necessary for, and only to be used for, billing or collection purposes. Such information shall remain confidential. The department and county departments shall develop procedures to assure the confidentiality of such information.

3. For purposes of research as permitted in s. 51.61 (1) (j) and (4) if the research project has been approved by the department and the researcher has provided assurances that the information will be used only for the purposes for which it was provided to the researcher, the information will not be released to a person not connected with the study under consideration, and the final product of the research will not reveal information that may serve to identify the individual whose treatment records are being released under this subsection without the informed written consent of the individual. Such information shall remain confidential. In approving research projects under this subsection, the department shall impose any additional safeguards needed to prevent unwarranted disclosure of information.

4. Pursuant to lawful order of a court of record.

5. To qualified staff members of the department, to the director of the county department under s. 51.42 or 51.437 which is responsible for serving a subject individual or to qualified staff members designated by the director as is necessary to determine progress and adequacy of treatment, to determine whether the person should be transferred to a less restrictive or more appropriate treatment modality or facility or for the purposes of s. 51.14. Such information shall remain confidential. The department and county departments under s. 51.42 or 51.437 shall develop procedures to assure the confidentiality of such information.

6. Within the treatment facility where the subject individual is receiving treatment confidential information may be disclosed to individuals employed, individuals serving in bona fide training programs or individuals participating in supervised volunteer programs, at the facility when and to the extent that performance of their duties requires that they have access to such information.

7. Within the department to the extent necessary to coordinate treatment for mental illness, developmental disabilities, alcoholism or drug abuse of individuals who have been committed to or who are under the supervision of the department. The department shall promulgate rules to assure the confidentiality of such information.

8. For treatment of the individual in a medical emergency, to a health care provider who is otherwise unable to obtain the individual’s informed consent because of the individual’s condition or the nature of the medical emergency. Disclosure under this subdivision shall be limited to that part of the records necessary to meet the medical emergency.

8g. am. In this subdivision, “diagnostic test results” means the results of clinical testing of biological parameters, but does not mean the results of psychological or neuropsychological testing.

bm. To a health care provider, or to any person acting under the supervision of the health care provider who is involved with an individual's care, if necessary for the current treatment of the individual. Information that may be released under this subdivision is limited to the individual's name, address, and date of birth; the name of the individual's provider of services for mental illness, developmental disability, alcoholism, or drug dependence; the date of any of those services provided; the individual's medications, allergies, diagnosis, diagnostic test results, and symptoms; and other relevant demographic information necessary for the current treatment of the individual.

8m. To appropriate examiners and facilities in accordance with s. 54.36 (3), 971.17 (2) (e), (4) (c), and (7) (c). The recipient of any information from the records shall keep the information confidential except as necessary to comply with s. 971.17.

8s. To appropriate persons in accordance with s. 980.031 (4) and to authorized representatives of the department of corrections, the department of health services, the department of justice, or a district attorney for use in the prosecution of any proceeding or any evaluation conducted under ch. 980, if the treatment records involve or relate to an individual who is the subject of the proceeding or evaluation. The court in which the proceeding under ch. 980 is pending may issue any protective orders that it determines are appropriate concerning information made available or disclosed under this subdivision. Any representative of the department of corrections, the department of health services, the department of justice, or a district attorney may disclose information obtained under this subdivision for any purpose consistent with any proceeding under ch. 980.

9. To a facility which is to receive an individual who is involuntarily committed under this chapter, ch. 48, 938, 971, or 975 upon transfer of the individual from one treatment facility to another. Release of records under this subdivision shall be limited to such treatment records as are required by law, a record or summary of all somatic treatments, and a discharge summary. The discharge summary may include a statement of the patient's problem, the treatment goals, the type of treatment which has been provided, and recommendation for future treatment, but it may not include the patient's complete treatment record. The department shall promulgate rules to implement this subdivision.

10. To a correctional facility or to a probation, extended supervision and parole agent who is responsible for the supervision of an individual who is receiving inpatient or outpatient evaluation or treatment under this chapter in a program that is operated by, or is under contract with, the department or a county department under s. 51.42 or 51.437, or in a treatment facility, as a condition of the probation, extended supervision and parole supervision plan, or whenever such an individual is transferred from a state or local correctional facility to such a treatment program and is then transferred back to the correctional facility. Every probationer, parolee or person on extended supervision who receives evaluation or treatment under this chapter shall be notified of the provisions of this subdivision by the individual's probation, extended supervision and parole agent. Release of records under this subdivision is limited to:

- a. The report of an evaluation which is provided pursuant to the written probation, extended supervision and parole supervision plan.
- b. The discharge summary, including a record or summary of all somatic treatments, at the termination of any treatment which is provided as part of the probation, extended supervision and parole supervision plan.
- c. When an individual is transferred from a treatment facility back to a correctional facility, the information provided under subd. 10. d.
- d. Any information necessary to establish, or to implement changes in, the individual's treatment plan or the level and kind of supervision on probation, extended supervision or parole, as determined by the director of the facility or the treatment director.

In cases involving a person transferred back to a correctional facility, disclosure shall be made to clinical staff only. In cases involving a person on probation, extended supervision or parole, disclosure shall be made to a probation, extended supervision and parole agent only. The department shall promulgate rules governing the release of records under this subdivision.

10m. To the department of justice or a district attorney under s. 980.015 (3) (b), if the treatment records are maintained by an agency with jurisdiction, as defined in s. 980.01 (1d), that has control or custody over a person who may meet the criteria for commitment as a sexually violent person under ch. 980.

11. To the subject individual's counsel or guardian ad litem and the corporation counsel, without modification, at any time in order to prepare for involuntary commitment or recommitment proceedings, reexaminations, appeals, or other actions relating to detention, admission, commitment, or patients' rights under this chapter or ch. 48, 971, 975, or 980.

11m. To the guardian ad litem of the unborn child, as defined in s. 48.02 (19), of a subject individual, without modification, at any time to prepare for proceedings under s. 48.133.

12. To a correctional officer of the department of corrections who has custody of or is responsible for the supervision of an individual who is transferred or discharged from a treatment facility. Records released under this subdivision are limited to notice of the subject individual's change in status.

12m. To any person if the patient was admitted under s. 971.14, 971.17 or 980.06 or ch. 975 or transferred under s. 51.35 (3) or 51.37 and is on unauthorized absence from a treatment facility. Information released under this subdivision is limited to information that would assist in the apprehension of the patient.

15. To personnel employed by a county department under s. 46.215, 46.22, 51.42 or 51.437 in any county where the county department has established and submitted to the department a written agreement to coordinate services to individuals receiving services under this chapter. This information shall be released upon request of such county department personnel, and may be utilized only for the purposes of coordinating human services delivery and case management. This information shall remain confidential, and shall continue to be governed by this section. Information may be released under this subdivision only if the subject individual has received services through a county department under s. 51.42 or 51.437 within 6 months preceding the request for information, and the information is limited to:

- a. The subject individual's name, address, age, birthdate, sex, client-identifying number and primary disability.
- b. The type of service rendered or requested to be provided to the subject individual, and the dates of such service or request.
- c. Funding sources, and other funding or payment information.

16. If authorized by the secretary or his or her designee, to a law enforcement agency upon request if the individual was admitted under ch. 971 or 975 or transferred under s. 51.35 (3) or 51.37. Information released under this subdivision is limited to the individual's name and other identifying information, including photographs and fingerprints, the branch of the court that committed the individual, the crime that the individual is charged with, found not guilty of by reason of mental disease or defect or convicted of, whether or not the individual is or has been authorized to leave the grounds of the institution and information as to the individual's whereabouts during any time period. In this subdivision "law enforcement agency" has the meaning provided in s. 165.83 (1) (b).

17. To the elder-adult-at-risk agency designated under s. 46.90 (2) or other investigating agency under s. 46.90 for the purposes of s. 46.90 (4) and (5), to the county department as defined in s. 48.02 (2g) or the sheriff or police department for the purposes of s. 48.981 (2) and (3), or to the adult-at-risk agency designated under s. 55.043 (1d) for purposes of s. 55.043. The treatment record holder may release treatment record information by initiat-

ing contact with the elder–adult–at–risk agency, adult–at–risk agency, or county department, as defined in s. 48.02 (2g), without first receiving a request for release of the treatment record from the elder–adult–at–risk agency, adult–at–risk agency, or county department.

18. a. In this subdivision, “abuse” has the meaning given in s. 51.62 (1) (ag); “neglect” has the meaning given in s. 51.62 (1) (br); and “parent” has the meaning given in s. 48.02 (13), except that “parent” does not include the parent of a minor whose custody is transferred to a legal custodian, as defined in s. 48.02 (11), or for whom a guardian is appointed under, or s. 54.10 or s. 880.33, 2003 stats.

b. Except as provided in subd. 18. c. and d., to staff members of the protection and advocacy agency designated under s. 51.62 (2) or to staff members of the private, nonprofit corporation with which the agency has contracted under s. 51.62 (3) (a) 3., if any, for the purpose of protecting and advocating the rights of persons with developmental disabilities, as defined under s. 51.62 (1) (am), or mental illness, as defined under s. 51.62 (1) (bm).

c. If the patient, regardless of age, has a guardian appointed under s. 54.10 or s. 880.33, 2003 stats., or if the patient is a minor with developmental disability who has a parent or has a guardian appointed under s. 48.831 and does not have a guardian appointed under s. 54.10 or s. 880.33, 2003 stats., information concerning the patient that is obtainable by staff members of the agency or nonprofit corporation with which the agency has contracted is limited, except as provided in subd. 18. e., to the nature of an alleged rights violation, if any; the name, birth date and county of residence of the patient; information regarding whether the patient was voluntarily admitted, involuntarily committed or protectively placed and the date and place of admission, placement or commitment; and the name, address and telephone number of the guardian of the patient and the date and place of the guardian’s appointment or, if the patient is a minor with developmental disability who has a parent or has a guardian appointed under s. 48.831 and does not have a guardian appointed under s. 54.10 or s. 880.33, 2003 stats., the name, address and telephone number of the parent or guardian appointed under s. 48.831 of the patient.

d. Except as provided in subd. 18. e., any staff member who wishes to obtain additional information about a patient described in subd. 18. c. shall notify the patient’s guardian or, if applicable, parent in writing of the request and of the guardian’s or parent’s right to object. The staff member shall send the notice by mail to the guardian’s or, if applicable, parent’s address. If the guardian or parent does not object in writing within 15 days after the notice is mailed, the staff member may obtain the additional information. If the guardian or parent objects in writing within 15 days after the notice is mailed, the staff member may not obtain the additional information.

e. The restrictions on information that is obtainable by staff members of the protection and advocacy agency or private, nonprofit corporation that are specified in subd. 18. c. and d. do not apply if the custodian of the record fails to promptly provide the name and address of the parent or guardian; if a complaint is received by the agency or nonprofit corporation about a patient, or if the agency or nonprofit corporation determines that there is probable cause to believe that the health or safety of the patient is in serious and immediate jeopardy, the agency or nonprofit corporation has made a good–faith effort to contact the parent or guardian upon receiving the name and address of the parent or guardian, the agency or nonprofit corporation has either been unable to contact the parent or guardian or has offered assistance to the parent or guardian to resolve the situation and the parent or guardian has failed or refused to act on behalf of the patient; if a complaint is received by the agency or nonprofit corporation about a patient or there is otherwise probable cause to believe that the patient has been subject to abuse or neglect by a parent or guardian; or if the patient is a minor whose custody has been transferred to a legal custodian, as defined in s. 48.02 (11) or for whom a guardian that is an agency of the state or a county has been appointed.

19. To state and local law enforcement agencies for the purpose of reporting an apparent crime committed on the premises of an inpatient treatment facility or nursing home, if the facility or home has treatment records subject to this section, or observed by staff or agents of any such facility or nursing home. Information released under this subdivision is limited to identifying information that may be released under subd. 16. and information related to the apparent crime.

20. Except with respect to the treatment records of a subject individual who is receiving or has received services for alcoholism or drug dependence, to the spouse, domestic partner under ch. 770, parent, adult child or sibling of a subject individual, if the spouse, domestic partner, parent, adult child or sibling is directly involved in providing care to or monitoring the treatment of the subject individual and if the involvement is verified by the subject individual’s physician, psychologist or by a person other than the spouse, domestic partner, parent, adult child or sibling who is responsible for providing treatment to the subject individual, in order to assist in the provision of care or monitoring of treatment. Except in an emergency as determined by the person verifying the involvement of the spouse, domestic partner, parent, adult child or sibling, the request for treatment records under this subdivision shall be in writing, by the requester. Unless the subject individual has been adjudicated incompetent in this state, the person verifying the involvement of the spouse, domestic partner, parent, adult child or sibling shall notify the subject individual about the release of his or her treatment records under this subdivision. Treatment records released under this subdivision are limited to the following:

a. A summary of the subject individual’s diagnosis and prognosis.

b. A listing of the medication which the subject individual has received and is receiving.

c. A description of the subject individual’s treatment plan.

21. To a mental health review officer for the purposes of s. 51.14.

22. To a representative of the board on aging and long–term care, in accordance with s. 49.498 (5) (e).

23. To the department under s. 51.03 (2) or to a sheriff, police department or district attorney for purposes of investigation of a death reported under s. 51.64 (2) (a).

24. To the department of corrections for the purpose of obtaining information concerning a person required to register under s. 301.45. The department of corrections may disclose information that it receives under this subdivision as provided under s. 301.46.

25. If the treatment records do not contain information and the circumstances of the release do not provide information that would permit the identification of the individual.

26. To the department of corrections or to a sheriff, to determine if a person incarcerated is complying with the assessment or the driver safety plan ordered under s. 343.30 (1q) (c).

27. For the purpose of entering information concerning the subject individual into the statewide automated child welfare information system established under s. 48.47 (7g).

28. To the department of justice, under the requirements of ss. 51.20 (13) (cv) 4. and 51.45 (13) (i) 4.

(c) *Limitation on release of alcohol and drug treatment records.* Notwithstanding par. (b), whenever federal law or applicable federal regulations restrict, or as a condition to receipt of federal aids require that this state restrict the release of information contained in the treatment records of any patient who receives treatment for alcoholism or drug dependency in a program or facility to a greater extent than permitted under this section, the department may by rule restrict the release of such information as may be necessary to comply with federal law and regulations. Rules promulgated under this paragraph shall supersede this section with respect to alcoholism and drug dependency treatment records in those situations in which they apply.

(cm) *Required access to certain information.* Notwithstanding par. (a), treatment records of an individual shall, upon request, be released without informed written consent, except as restricted under par. (c), to the parent, child, sibling, spouse, or domestic partner under ch. 770 of an individual who is or was a patient at an inpatient facility; to a law enforcement officer who is seeking to determine whether an individual is on unauthorized absence from the facility; and to mental health professionals who are providing treatment to the individual at the time that the information is released to others. Information released under this paragraph is limited to notice as to whether or not an individual is a patient at the inpatient facility and, if the individual is no longer a patient at the inpatient facility, the facility or other place, if known, at which the individual is located. This paragraph does not apply under any of the following circumstances:

1. To the individual's parent, child, sibling, spouse, or domestic partner under ch. 770 who is requesting information, if the individual has specifically requested that the information be withheld from the parent, child, sibling, spouse, or domestic partner.

2. If, in the opinion of the inpatient facility, there is reasonable cause to believe that disclosure of the information would result in danger to the individual.

(d) *Individual access.* 1. Access to treatment records by a subject individual during his or her treatment may be restricted by the director of the treatment facility. However, access may not be denied at any time to records of all medications and somatic treatments received by the individual.

2. The subject individual shall have a right, following discharge under s. 51.35 (4), to a complete record of all medications and somatic treatments prescribed during admission or commitment and to a copy of the discharge summary which was prepared at the time of his or her discharge. A reasonable and uniform charge for reproduction may be assessed.

3. In addition to the information provided under subd. 2., the subject individual shall, following discharge, if the individual so requests, have access to and have the right to receive from the facility a photostatic copy of any or all of his or her treatment records. A reasonable and uniform charge for reproduction may be assessed. The director of the treatment facility or such person's designee and the treating physician have a right to be present during inspection of any treatment records. Notice of inspection of treatment records shall be provided to the director of the treatment facility and the treating physician at least one full day, excluding Saturdays, Sundays and legal holidays, before inspection of the records is made. Treatment records may be modified prior to inspection to protect the confidentiality of other patients or the names of any other persons referred to in the record who gave information subject to the condition that his or her identity remain confidential. Entire documents may not be withheld in order to protect such confidentiality.

4. At the time of discharge all individuals shall be informed by the director of the treatment facility or such person's designee of their rights as provided in this subsection.

(dm) *Destruction, damage, falsification or concealment of treatment records.* No person may do any of the following:

1. Intentionally falsify a treatment record.

2. Conceal or withhold a treatment record with intent to prevent its release to the subject individual under par. (d), to his or her guardian, or to persons with the informed written consent of the subject individual or with intent to prevent or obstruct an investigation or prosecution.

3. Intentionally destroy or damage records in order to prevent or obstruct an investigation or prosecution.

(e) *Notation of release of information.* Each time written information is released from a treatment record, a notation shall be made in the record by the custodian thereof that includes the following: the name of the person to whom the information was released; the identification of the information released; the pur-

pose of the release; and the date of the release. The subject individual shall have access to such release data as provided in par. (d).

(f) *Correction of information.* A subject individual, the parent, guardian, or person in the place of a parent of a minor, or the guardian of an individual adjudicated incompetent may, after having gained access to treatment records, challenge the accuracy, completeness, timeliness, or relevance of factual information in his or her treatment records and request in writing that the facility maintaining the record correct the challenged information. The request shall be granted or denied within 30 days by the director of the treatment facility, the director of the county department under s. 51.42 or 51.437, or the secretary depending upon which person has custody of the record. Reasons for denial of the requested changes shall be given by the responsible officer and the individual shall be informed of any applicable grievance procedure or court review procedure. If the request is denied, the individual, parent, guardian, or person in the place of a parent shall be allowed to insert into the record a statement correcting or amending the information at issue. The statement shall become a part of the record and shall be released whenever the information at issue is released.

(g) *Applicability.* Paragraphs (a), (b), (c), (dm) and (e) apply to all treatment records, including those on which written, drawn, printed, spoken, visual, electromagnetic or digital information is recorded or preserved, regardless of physical form or characteristics.

(5) **MINORS AND INCOMPETENTS.** (a) *Consent for release of information.* The parent, guardian, or person in the place of a parent of a minor or the guardian of an adult adjudicated incompetent in this state may consent to the release of confidential information in court or treatment records. A minor who is aged 14 or more may consent to the release of confidential information in court or treatment records without the consent of the minor's parent, guardian or person in the place of a parent. Consent under this paragraph must conform to the requirements of sub. (2).

(b) *Access to information.* 1. The guardian of an individual who is adjudicated incompetent in this state shall have access to the individual's court and treatment records at all times. The parent, guardian or person in the place of a parent of a developmentally disabled minor shall have access to the minor's court and treatment records at all times except in the case of a minor aged 14 or older who files a written objection to such access with the custodian of the records. The parent, guardian or person in the place of a parent of other minors shall have the same rights of access as provided to subject individuals under this section.

2. A minor who is aged 14 or older shall have access to his or her own court and treatment records, as provided in this section. A minor under the age of 14 shall have access to court records but only in the presence of a parent, guardian, counsel, guardian ad litem or judge and shall have access to treatment records as provided in this section but only in the presence of a parent, guardian, counsel, guardian ad litem or staff member of the treatment facility.

(bm) *Parents denied physical placement.* A parent who has been denied periods of physical placement with a child under s. 767.41 (4) (b) or 767.451 (4) may not have the rights of a parent or guardian under pars. (a) and (b) with respect to access to that child's court or treatment records.

(c) *Juvenile court records.* The court records of juveniles admitted or committed under this chapter shall be kept separately from all other juvenile court records.

(d) *Other juvenile records.* Sections 48.78 and 938.78 do not apply to records covered by this section.

(e) *Temporary guardian for adult alleged to be incompetent.* If an adult is alleged to be incompetent, under the requirements of s. 54.10 (3), to consent to the release of records under this section, but no guardian has been appointed for the individual, consent for the release of records may be given by a temporary guardian who

is appointed for the purpose of deciding upon the release of records.

(f) *Applicability.* Paragraph (a) and (bm) to (e) apply to all treatment records, including those on which written, drawn, printed, spoken, visual, electromagnetic or digital information is recorded or preserved, regardless of physical form or characteristics.

(6) **PRIVILEGES.** Sections 905.03 and 905.04 supersede this section with respect to communications between physicians and patients and between attorneys and clients.

(7) **CRIMINAL COMMITMENTS.** Except as otherwise specifically provided, this section applies to the treatment records of persons who are committed under chs. 971 and 975.

(8) **GRIEVANCES.** Failure to comply with any provisions of this section may be processed as a grievance under s. 51.61 (5), except that a grievance resolution procedure option made available to the patient, as required under s. 457.04 (8), applies to failures to comply by a licensed mental health professional who is not affiliated with a county department or treatment facility. However, use of the grievance procedure is not required before bringing any civil action or filing a criminal complaint under this section.

(9) **ACTIONS FOR VIOLATIONS; DAMAGES; INJUNCTION.** (a) Any person, including the state or any political subdivision of the state, violating this section shall be liable to any person damaged as a result of the violation for such damages as may be proved, together with exemplary damages of not more than \$1,000 for each violation and such costs and reasonable actual attorney fees as may be incurred by the person damaged.

(b) In any action brought under par. (a) in which the court determines that the violator acted in a manner that was knowing and willful, the violator shall be liable for such damages as may be proved together with exemplary damages of not more than \$25,000 for each violation, together with costs and reasonable actual attorney fees as may be incurred. It is not a prerequisite to an action under this subsection that the plaintiff suffer or be threatened with actual damages.

(c) An individual may bring an action to enjoin any violation of this section or to compel compliance with this section, and may in the same action seek damages as provided in this subsection. The individual may recover costs and reasonable actual attorney fees as may be incurred in the action, if he or she prevails.

(10) **PENALTIES.** (a) Whoever does any of the following may be fined not more than \$25,000 or imprisoned for not more than 9 months or both:

1. Requests or obtains confidential information under this section under false pretenses.

2. Discloses confidential information under this section with knowledge that the disclosure is unlawful and is not reasonably necessary to protect another from harm.

3. Violates sub. (4) (dm) 1., 2. or 3.

(b) Whoever negligently discloses confidential information under this section is subject to a forfeiture of not more than \$1,000 for each violation.

(bm) Whoever intentionally discloses confidential information under this section, knowing that the information is confidential, and discloses the information for pecuniary gain may be fined not more than \$100,000 or imprisoned not more than 3 years and 6 months, or both.

(11) **DISCIPLINE OF EMPLOYEES.** Any employee of the department, a county department under s. 51.42 or 51.437 or a public treatment facility who violates this section or any rule promulgated pursuant to this section may be subject to discharge or suspension without pay.

(12) **RULE MAKING.** The department shall promulgate rules to implement this section.

**History:** 1975 c. 430; 1977 c. 26 s. 75; 1977 c. 61, 428; 1979 c. 110 s. 60 (1); 1983 a. 27, 292, 398, 538; 1985 a. 29, 176; 1985 a. 292 s. 3; 1985 a. 332 ss. 97, 98, 251 (1); 1987 a. 352, 355, 362, 367, 399, 403; 1989 a. 31, 334, 336; 1991 a. 39, 189; 1993 a. 196, 445, 479; 1995 a. 169, 440; 1997 a. 35, 231, 237, 283, 292; 1999 a. 32, 78, 79, 109; 2001 a. 16, 38; 2005 a. 25, 344, 387, 388, 406, 434; 2005 a. 443 s. 265; 2005

a. 444, 449, 485; 2007 a. 20 ss. 1817, 9121 (6) (a); 2007 a. 45, 97, 108; 2009 a. 28, 258.

**Cross-reference:** See also chs. DHS 1 and 92, Wis. adm. code.

By entering a plea of not guilty by reason of mental disease or defect, a defendant lost the physician-patient privilege by virtue of s. 905.04 (4) (c) and lost confidentiality of treatment records under s. 51.30 (4) (b) 4. State v. Taylor, 142 Wis. 2d 36, 417 N.W.2d 192 (Ct. App. 1987).

Sec. 905.04 supersedes this section with respect to all relationships listed in s. 905.04 and is not strictly limited to the physician-patient relationship. State v. S.H. 159 Wis. 2d 730, 465 N.W.2d 238 (Ct. App. 1990).

The release of court records "pursuant to lawful order of the court" under sub. (3) (b) is allowable when access fits within or is comparable to one of the exceptions for treatment records under sub. (4) (b) or when a significant interrelationship exists between the records of the civil commitment proceeding at issue and a criminal proceeding involving a violent felony pending prior to the civil commitment. Mental condition of Billy Jo W. 182 Wis. 2d 616, 514 N.W.2d 707 (1994).

Information contained in a treatment record but obtained from another source is not subject to the treatment-records privilege under this section, except that all information that identifies a person as a patient is privileged. Daniel A. v. Walter H. 195 Wis. 2d 971, 537 N.W.2d 103 (Ct. App. 1995), 92-1676.

This section provides an exception to the open records law. Nothing in this section or rules adopted under this section suggests that the director is to weigh the harm to the public interest against the benefit to the public in deciding on access to records. State ex rel. Savinski v. Kimble, 221 Wis. 2d 833, 586 N.W.2d 36 (Ct. App. 1998), 97-3356.

The subject individual of treatment records is the one who receives treatment. Another person mentioned in the records is not a subject individual and not protected by this section. Olson v. Red Cedar Clinic, 2004 WI App 102, 273 Wis. 2d 728, 681 N.W.2d 306, 03-2198.

Statements of emergency detention in the possession of a treatment facility, or a department listed in this section, or in the possession of the police department, are "treatment records" within the meaning of sub. (1) (b), which are expressly exempt from disclosure without written informed consent or a court order under sub. (4) and thus not subject to an open records request. Watton v. Hegerty, 2008 WI 74, 311 Wis. 2d 52, 751 N.W.2d 369, 06-3092.

Sub (4) on its face, and as interpreted in *Watton*, prohibits the release of copies of statements of emergency detention, even if in the possession of the police department. Applying *Watton*, it would be absurd to construe the plain language of sub. (4) to permit release of the police incident report when it contains the same information as the expressly confidential statement of emergency detention. Although *Schuster v. Aitenberg*, 144 Wis. 2d 223, imposes a duty to warn a person threatened with harm on a psychiatrist who hears the threat from a patient, it does not create a public policy exception to sub. (4). Milwaukee Deputy Sheriff's Association v. City of Wauwatosa, 2010 WI App 95, 327 Wis. 2d 206, 787 N.W.2d 438, 09-1924.

The duty to report suspected cases of child abuse or neglect under s. 48.981 (3) (a) prevails over any inconsistent terms in s. 51.30. 68 Atty. Gen. 342.

Except for those services for which parental consent is necessary under s. 51.47 (2), a physician or health care facility may release outpatient or detoxification services information only with consent of a minor patient, provided the minor is 12 years of age or over. 77 Atty. Gen. 187.

Balancing Federal and Wisconsin Medical Privacy Laws. Hartin. Wis. Law. June 2003.

**51.35 Transfers and discharges.** (1) **TRANSFER OF PATIENTS AND RESIDENTS.** (a) Subject to pars. (b), (d), and (dm), the department or the county department under s. 51.42 or 51.437 may transfer any patient or resident who is committed to it, or who is admitted to a treatment facility under its supervision or operating under an agreement with it, between treatment facilities or from a treatment facility into the community if the transfer is consistent with reasonable medical and clinical judgment, consistent with s. 51.22 (5), and, if the transfer results in a greater restriction of personal freedom for the patient or resident, in accordance with par. (e). Terms and conditions that will benefit the patient or resident may be imposed as part of a transfer to a less restrictive treatment alternative. A patient or resident who is committed to the department or a county department under s. 51.42 or 51.437 may be required to take medications and receive treatment, subject to the right of the patient or resident to refuse medication and treatment under s. 51.61 (1) (g) and (h), through a community support program as a term or condition of a transfer. The patient or resident shall be informed at the time of transfer of the consequences of violating the terms and conditions of the transfer, including possible transfer back to a treatment facility that imposes a greater restriction on personal freedom of the patient or resident.

(b) 1. Except as provided in pars. (c) and (d), a transfer of a patient in a mental health institute by the department is subject to the approval of the appropriate county department under ss. 51.42 and 51.437 to which the patient was committed or through which the patient was admitted to the mental health institute.

2. Except as provided in pars. (c) and (d), a transfer of a resident of a center for the developmentally disabled by the department is subject to the approval of the appropriate county department under s. 51.42 or 51.437 to which the resident was

committed or through which the resident was admitted to the center.

3. Except as provided in pars. (c) and (d), a transfer of a patient in a treatment facility other than as specified in subd. 1. or 2. may be made by the department only after the department has notified the appropriate county department under s. 51.42 or 51.437 of its intent to transfer the patient. The patient's guardian, if any, or if a minor his or her parent or person in the place of a parent shall be notified by the department.

(bm) Transfer of a resident by a county department to a center for the developmentally disabled is subject to s. 51.06 (3).

(c) The department may, without approval of the county department under s. 51.42 or 51.437, transfer any patient from a treatment facility to another treatment facility when the condition of the patient requires such transfer without delay. The department shall notify the appropriate county department under s. 51.42 or 51.437 that the transfer has been made. Any patient so transferred may be returned to the treatment facility from which the transfer was made, upon orders from the department or the county department under s. 51.42 or 51.437, when the return would be in the best interests of the patient.

(d) 1. Subject to subd. 2. and par. (dm), the department may, without approval of the appropriate county department under s. 51.42 or 51.437, transfer any patient from a state treatment facility or other inpatient facility to an approved treatment facility which is less restrictive of the patient's personal freedom.

2. Transfer under this paragraph may be made only if the transfer is consistent with the requirements of par. (a), and the department finds that the appropriate county department under s. 51.42 or 51.437 is unable to locate an approved treatment facility in the community, or that the county department has acted in an arbitrary or capricious manner to prevent the transfer of the patient out of the state treatment facility or other inpatient facility contrary to medical and clinical judgment.

(dm) The department may not exercise its authority under par. (a) or (d) 1. to transfer a resident of the southern center for the developmentally disabled to a less restrictive setting unless the resident's guardian or, if the resident is a minor and does not have a guardian, the resident's parent provides explicit written approval and consent for the transfer.

(e) 1. Whenever any transfer between different treatment facilities results in a greater restriction of personal freedom for the patient and whenever the patient is transferred from outpatient to inpatient status, the department or the county department specified under par. (a) shall inform the patient both orally and in writing of his or her right to contact an attorney and a member of his or her immediate family, the right to have counsel provided at public expense, as provided under s. 51.60, and the right to petition a court in the county in which the patient is located or the committing court for a review of the transfer.

2. In addition to the rights and requirements specified in subd. 1., within 24 hours after any transfer which results in a greater restriction of personal freedom for the patient for a period of more than 5 days or any transfer from outpatient to inpatient status for a period of more than 5 days and if the transfer is due to an alleged violation of a condition of a transfer to less restrictive treatment, the department or the county department specified under par. (a) shall ensure that the patient is provided a written statement of the reasons for the transfer and the facts supporting the transfer and oral and written notice of all of the following:

- a. The requirements and rights under subds. 3. to 5.
- b. The patient's right to counsel.
- c. The patient's right to have counsel provided at public expense, as provided under s. 51.60.
- d. The rights of the patient's counsel to investigate the facts specified in the written statement of reasons for the transfer, to consult with the patient prior to the patient's waiving a hearing under subd. 3., to represent the patient at all proceedings on issues

relating to the transfer, and to take any legal steps necessary to challenge the transfer.

3. Within 10 days after the transfer specified in subd. 2., a hearing shall be held on whether the form of treatment resulting from the transfer is least restrictive of the patient's personal liberty, consistent with the treatment needs of the patient, and on whether the patient violated a condition of a transfer to less restrictive treatment that resulted in a transfer under subd. 2. The hearing shall be held before a hearing officer designated by the director of the facility to which the patient has been transferred. The hearing officer may not be a person who has had direct responsibility for making treatment decisions for or providing treatment to the subject individual. The patient may appear at the hearing, either personally or by counsel, and may present and cross-examine witnesses and present documentary evidence. The hearing may be waived by the patient only after consultation with counsel. Any waiver made shall be in writing and witnessed by the patient's counsel.

4. The department or the county department seeking the transfer has the burden of proving, by a preponderance of the evidence, that the form of treatment resulting from the transfer is least restrictive of the patient's personal liberty, consistent with the treatment needs of the patient, and that the patient violated a condition of a transfer to less restrictive treatment that resulted in a transfer under subd. 2. Hearsay evidence is admissible if the hearing officer makes a determination that the evidence is reliable. Hearsay evidence may not be the sole basis for the decision of the hearing officer.

5. The hearing officer shall, as soon as possible after the hearing, issue a written statement setting forth his or her decision, the reasons for the decision and the facts upon which the decision is based. Within 30 days after the date on which the statement is issued, the patient or the department or the county department seeking the transfer may appeal the decision to a court in the county in which the facility to which the patient has been transferred is located or to the committing court.

6. This paragraph does not apply to a return to a more restrictive facility if the return occurs within 7 days after a temporary transfer from that facility and the return was part of a previously established plan of which the patient was notified at the time of the temporary transfer. This paragraph does not apply to a return of an inmate to a state or county treatment facility under s. 51.20 (13) (cm).

(f) The transfer of a patient or resident to a medical facility for nonpsychiatric medical services does not constitute a transfer within the meaning of this chapter and does not require the procedural protections for return to the original facility which are required by this section for other transfers.

**(2) TRANSFER OF CERTAIN DEVELOPMENTALLY DISABLED PATIENTS.** The department may authorize a transfer of a patient from a center for the developmentally disabled to a state treatment facility if the patient is mentally ill and exhibits conduct which constitutes a danger as described in s. 51.20 (1) (a) 2. to himself or herself or to others in the treatment facility where he or she is present. The department shall file a statement of emergency detention with the committing court within 24 hours after receiving the person for emergency detention. The statement shall conform to the requirements specified in s. 51.15 (4).

**(3) TRANSFER OF CERTAIN JUVENILES FROM SECURED JUVENILE FACILITIES.** (a) A licensed psychologist of a juvenile correctional facility or a secured residential care center for children and youth, or a licensed physician of the department of corrections, who has reason to believe that any individual confined in the juvenile correctional facility or secured residential care center for children and youth is, in his or her opinion, in need of services for developmental disability, alcoholism, or drug dependency or in need of psychiatric services, and who has obtained consent to make a transfer for treatment, shall make a report, in writing, to the superintendent of the juvenile correctional facility or secured residen-

tial care center for children and youth, stating the nature and basis of the belief and verifying the consent. In the case of a minor age 14 or older who is in need of services for developmental disability or who is in need of psychiatric services, the minor and the minor's parent or guardian shall consent unless the minor is admitted under s. 51.13 (1) (c) 1. or unless the minor refuses to consent, in which case the minor's parent or guardian may consent on behalf of the minor. In the case of a minor age 14 or older who is in need of services for alcoholism or drug dependency or a minor under the age of 14 who is in need of services for developmental disability, alcoholism, or drug dependency or in need of psychiatric services, only the minor's parent or guardian needs to consent unless the minor is admitted under s. 51.13 (1) (c). The superintendent shall inform, orally and in writing, the minor and the minor's parent or guardian, that transfer is being considered and shall inform them of the basis for the request and their rights as provided in s. 51.13 (3) (am). If the department of corrections, upon review of a request for transfer, determines that transfer is appropriate, that department shall immediately notify the department of health services and, if the department of health services consents, the department of corrections may immediately transfer the individual. The department of health services shall file a petition under s. 51.13 (4) (a) in the court assigned to exercise jurisdiction under chs. 48 and 938 of the county where the treatment facility is located.

(b) The court assigned to exercise jurisdiction under chs. 48 and 938 shall determine, based on the allegations of the petition and accompanying documents, whether the transfer under par. (a) of the minor to an inpatient facility is appropriate and consistent with the needs of the minor and, if the minor is 14 years of age or older and is being transferred for the purpose of receiving services for developmental disability or psychiatric services, whether consent for the transfer was provided by the minor and his or her parent or guardian or whether the minor was admitted under s. 51.13 (1) (c) 1. If the court is unable to make those determinations based on the petition and accompanying documents, the court may order additional information, including an independent evaluation, to be produced as necessary to make those determinations within 14 days after admission, or the court may hold a hearing within 14 days after admission. If a notation of the minor's unwillingness appears on the face of the petition, if the transfer was made under a consent of the minor's parent or guardian despite the minor's refusal, or if a hearing has been requested by the minor or by the minor's counsel, guardian ad litem, parent, or guardian, the court shall order an independent evaluation of the minor, hold a hearing, and appoint counsel or a guardian ad litem for the minor as provided in s. 51.13 (4) (d). The minor shall be informed about how to contact the state protection and advocacy agency designated under s. 51.62 (2) (a). At the conclusion of the hearing, the court shall approve or disapprove the request for transfer. If the minor is under the continuing jurisdiction of the court of another county, the court may order the case transferred together with all appropriate records to that court.

(c) A licensed psychologist of a juvenile correctional facility or a secured residential care center for children and youth or a licensed physician of the department of corrections, who has reason to believe that any individual confined in the juvenile correctional facility or secured residential care center for children and youth, in his or her opinion, has a mental illness, drug dependency, or developmental disability and is dangerous as described in s. 51.20 (1) (a) 2., or is an alcoholic and is dangerous as described in s. 51.45 (13) (a) 1. and 2., shall file a written report with the superintendent of the juvenile correctional facility or secured residential care center for children and youth, stating the nature and basis of the belief. If the superintendent, upon review of the allegations in the report, determines that transfer is appropriate, he or she shall file a petition according to s. 51.20 or 51.45 in the court assigned to exercise jurisdiction under chs. 48 and 938 of the county where the juvenile correctional facility or secured residential care center for children and youth is located. The court shall

hold a hearing according to procedures provided in s. 51.20 or 51.45 (13).

(d) Within a reasonable time before the expiration of the confinement of an individual who is transferred under par. (a), if he or she is still in the treatment facility, the director shall make an application under s. 51.20 or 51.45 (13) to the court of the county in which the hospital is located for an inquiry into the individual's mental and physical condition, and thereafter the proceedings shall be as in other applications under such provisions. Notwithstanding ss. 51.20 (1) (b) and 51.45 (13) (a), the application of the director of the treatment facility alone is sufficient.

(e) The department of corrections may authorize emergency transfer of an individual from a juvenile correctional facility or a secured residential care center for children and youth to a state treatment facility if there is cause to believe that the individual has a mental illness, drug dependency, or developmental disability and exhibits conduct that constitutes a danger as described under s. 51.20 (1) (a) 2. a., b., c., or d. to the individual or to others, has a mental illness, is dangerous, and satisfies the standard under s. 51.20 (1) (a) 2. e., or is an alcoholic and is dangerous as provided in s. 51.45 (13) (a) 1. and 2. The custodian of the sending juvenile correctional facility or secured residential care center for children and youth shall execute a statement of emergency detention or petition for emergency commitment for the individual and deliver it to the receiving state treatment facility. The department of health services shall file the statement or petition with the court within 24 hours after the subject individual is received for detention or commitment. The statement or petition shall conform to s. 51.15 (4) or (5) or 51.45 (12) (b). After an emergency transfer is made, the director of the receiving facility may file a petition for continued commitment under s. 51.20 (1) or 51.45 (13) or may return the individual to the juvenile correctional facility or secured residential care center for children and youth from which the transfer was made. As an alternative to this procedure, the procedure provided in s. 51.15 or 51.45 (12) may be used, except that no individual may be released without the approval of the court that directed confinement in the juvenile correctional facility or secured residential care center for children and youth.

(f) A copy of the patient's rights established in s. 51.61 shall be given and explained to the minor and his or her parent or guardian at the time of admission by the director of the facility or such person's designee.

(g) A minor 14 years of age or older who is transferred to a treatment facility under par. (a) for the purpose of receiving services for developmental disability or psychiatric services and the minor's parent or guardian may request in writing a return to the juvenile correctional facility or secured residential care center for children and youth, except that, if the minor refuses to make the request, the parent or guardian may make the request on behalf of the minor. In the case of a minor 14 years of age or older who is transferred to a treatment facility under par. (a) for the purpose of receiving services for alcoholism or drug dependency or a minor under 14 years of age who is transferred to a treatment facility under par. (a) for the purpose of receiving services for developmental disability, alcoholism, or drug dependency, or psychiatric services, the parent or guardian may make the request. Upon receipt of a request for return from a minor 14 years of age or older, the director shall immediately notify the minor's parent or guardian, if available. A minor 14 years of age or older who requests and whose parent or guardian requests and a minor who was admitted under s. 51.13 (1) (c) who requests discharge in writing shall be returned to the juvenile correctional facility or secured residential care center for children and youth within 48 hours after submission of the request unless a statement is filed for emergency detention or a petition is filed for emergency commitment, involuntary commitment, or protective placement.

(4) DISCHARGE. (a) The county department under s. 51.42 or 51.437 shall grant a discharge from an order of commitment when it determines that the patient no longer meets the standard for

recommitment under s. 51.20 (13) (g). The county department shall grant a discharge to a patient who is voluntarily admitted to an inpatient facility if the treatment director determines that treatment is no longer necessary or if the individual requests such discharge. Discharge or retention of a patient who is voluntarily admitted is subject to the procedures prescribed in ss. 51.10 (5) and 51.13 (7).

(b) The department shall grant a discharge from commitment or from voluntary admission for patients committed or voluntarily admitted to a facility under control of the department. The standards applied by the department in granting a discharge shall be the same as those provided in par. (a). The department may not discharge from a commitment an individual who has been committed to a county department under s. 51.42 or 51.437 without first obtaining approval of that county department. The department may discharge a voluntarily admitted patient if the appropriate county department is notified. Transfers of patients may be made by the department in accordance with sub. (1).

(c) The director of an inpatient facility may grant a discharge or may terminate services to any patient who is voluntarily admitted under s. 51.10 or 51.13 when, on the advice of the treatment staff, such discharge or termination is in the best interests of the patient.

(d) The director of an inpatient facility may, under the requirements of s. 51.10 (5) (c) or 51.13 (7), grant a discharge or may terminate services to any patient admitted under s. 51.10 or 51.13.

(e) A discharge may be issued to a patient who participates in outpatient, aftercare, or follow-up treatment programs. The discharge may permit the patient to receive necessary medication, outpatient treatment, consultation and guidance from the issuing facility at the request of the patient. Such discharge is not subject to withdrawal by the issuing agency.

(f) Notice of discharge shall be filed with the committing court, if any, by the department or the board which granted the discharge. After such discharge, if it becomes necessary for the individual who is discharged to have further care and treatment, and such individual cannot be voluntarily admitted, a new commitment must be obtained, following the procedure for the original commitment.

**(4m) TRANSFER OR DISCHARGE OF PERSONS WITH SERIOUS AND PERSISTENT MENTAL ILLNESS.** The department or county department under s. 51.42 or any person authorized to discharge or transfer patients under this section shall, prior to the discharge of a patient with serious and persistent mental illness from an inpatient facility, or prior to the transfer of a patient with serious and persistent mental illness from inpatient to outpatient status, with the patient's permission if the patient is a voluntary patient, do all of the following:

(a) Refer the patient to the county department under s. 51.42 which is responsible for the patient's care for referral to a community support program in the county to which the patient will be discharged or transferred for evaluation of the need for and feasibility of the provision of community-based services and of the need for and feasibility of the provision of aftercare services.

(b) Assist the patient in applying for any public assistance for which he or she may qualify.

**(5) RESIDENTIAL LIVING ARRANGEMENTS; TRANSITIONARY SERVICES.** The department and any person, director or board authorized to discharge or transfer patients under this section shall ensure that a proper residential living arrangement and the necessary transitional services are available and provided for the patient being discharged or transferred. Under this subsection, a proper residential living arrangement may not include a shelter facility, as defined under s. 560.9808 (1) (d), unless the discharge or transfer to the shelter facility is made on an emergency basis for a period not to exceed 10 days.

**(6) VETERANS.** (a) When the department has notice that any person other than a prisoner is entitled to receive care and treatment in a U.S. department of veterans affairs facility, the person

may petition the department of health services for a transfer to such facility, and that department may procure admission to the facility.

(b) If an individual who is committed under s. 51.37 is entitled to receive care and treatment in a U.S. department of veterans affairs facility, the person may petition the department of health services for a transfer to such facility. If the department declines to grant the request, it shall give the person a written reply, stating the reasons for its position. The decision of the department is subject to review by the court which passed sentence or ordered commitment of the person.

**(7) GUARDIANSHIP AND PROTECTIVE SERVICES.** Prior to discharge from any state treatment facility, the department shall review the possible need of a developmentally disabled individual, aged infirm individual, or individual with other like incapacities for protective services or protective placement under ch. 55 after discharge, including the necessity for appointment of a guardian. The department shall petition for guardianship, or for protective services or protective placement for the person if needed. When the department makes a petition for guardianship under this subsection, it shall not be appointed as guardian.

**(8) HOME VISITS AND LEAVES AUTHORIZED.** (a) The department or the county department under s. 51.42 or 51.437 may grant to a patient or resident who is committed to it under this chapter, or who is admitted or transferred under this chapter to a facility under its supervision or operating under a contractual agreement with it, a home visit for up to 15 days, or a leave for employment or education purposes in which the patient or resident is not absent from the facility for more than 15 days.

(b) If a patient or resident who is detained under s. 51.15, committed under s. 51.20 or transferred under sub. (3) does not return to the treatment facility by the time designated in the granting of the home visit or leave, the director of the treatment facility may request the sheriff of the county in which the individual is found to return the individual to the facility. The sheriff shall act in accordance with s. 51.39.

(c) This subsection does not apply to persons transferred from a prison or jail under s. 51.37 (5).

(d) A home visit or leave does not constitute a transfer under this chapter, and does not require a hearing under this section or s. 51.61.

**History:** 1975 c. 430 ss. 18, 81; 1977 c. 26, 29, 428; 1979 c. 110 s. 60 (1); 1981 c. 74 s. 2; 1981 c. 314 s. 144; 1983 a. 27, 441, 474; 1985 a. 29, 176, 332; 1987 a. 366, 403; 1989 a. 31, 56, 107; 1991 a. 39; 1993 a. 451; 1995 a. 27 ss. 3258m, 3259m, 9126 (19); 1995 a. 77, 292; 1997 a. 35; 1999 a. 9; 2001 a. 16 ss. 1967f to 1967j, 4034zi; 2003 a. 33; 2005 a. 22, 264, 344, 387, 444; 2007 a. 20 ss. 1818 to 1819, 9121 (6) (a); 2007 a. 96; 2009 a. 28.

**NOTE:** 1987 Wis. Act 366, which amended this section, contains notes by the Legislative Council following many of the statutes affected.

Sub. (1) (c) mandates that a patient transferred to a more restrictive environment receive a hearing within 10 days of the transfer. A circuit court is without jurisdiction to effectuate a transfer to inpatient status if a hearing is not provided within 10 days. *Fond du Lac County v. Elizabeth M. P.* 2003 WI App 232, 267 Wis. 2d 739, 672 N.W.2d 88, 02–3221.

**51.37 Criminal commitments; mental health institutes.** (1) All commitments under s. 975.01, 1977 stats., and s. 975.02, 1977 stats., and under ss. 971.14 (5), 971.17 and 975.06 shall be to the department.

(3) The Mendota and Winnebago mental health institutes may be used for the custody, care and treatment of persons committed or transferred thereto pursuant to this section and chs. 971 and 975.

(4) The department may, with the approval of the committing court and the county department under s. 51.42 or 51.437, and subject to s. 51.35, transfer to the care and custody of a county department under s. 51.42 or 51.437 any person in an institution of the department committed under s. 971.14 or 971.17, if in its opinion, the mental condition of the person is such that further care is required and can be properly provided under the direction of the county department under s. 51.42 or 51.437.

(5) (a) When a licensed physician or licensed psychologist of a state prison, of a county jail or of the department of corrections