WRAPAROUND MILWAUKEE Policy & Procedure	Date Issued: 9/18/02	Reviewed: 5/23/12 By: MG Last Revision: 9/10/12	Section: ADMINISTRATION	Policy No: 042	Pages: 1 of 2 (6 Attachments)
☒ Wraparound ☒ Wraparound-REACH ☐ FISS ☒ Project O-Yeah	Effective Date: 1/1/13	Subject: CLIENT RIGHTS			

I. POLICY

It is the policy of Wraparound Milwaukee that the rights of every client be honored and respected regarding their personal well-being and the provision of services.

Per Wisconsin Statute Sec. 51.61 (1) and HFS 94 of the Wisconsin Administrative Code, if you receive any type of services for mental illness, alcoholism, drug abuse or a developmental disability, a client has certain rights (*see Attachment 1 – Wisconsin Statute Sec. 51.61 (1), Attachment 2 – Wisconsin Administrative Code HFS 94 and Attachment 3 – Wisconsin Statute 51.30*).

II. PROCEDURE

A. All clients must be informed of their rights verbally and in written form.

B. Care Coordinators/Transition Specialists are responsible for the following:

1. Distribution of the CLIENT RIGHTS AND COMPLAINT/GRIEVANCE PROCEDURE handout (*see Attachment 4*).
2. Explaining the Client Rights and Complaint/Grievance Procedure information to the client.
3. Obtaining the signature of the client and/or legal guardian on the Wraparound Milwaukee CONSENT /ACKNOWLEDGEMENT FORM (*see Attachment 5*) or the Project O-YEAH CONSENT FOR TREATMENT FORM (*see Attachment 6)*.

<u>This process must occur within 7 days of enrollment</u>.

C. Instructions for Care Coordinators/Transition Specialists when informing clients of their legal rights.

1. Provide the client/legal guardian with a copy of the Client Rights and Complaint/Grievance Procedure handout (*see Attachment 4).*
2. Ask the client/legal guardian to read the Client Rights and Complaint/Grievance Procedure handout, providing assistance as needed.
3. Ask the client/legal guardian if he or she understands his or her rights. Encourage the client to ask questions and to bring up any concerns he or she may have about his or her rights. Discuss the client's questions or concerns with him or her. If you are unable to answer the client's questions, tell the client to contact the Wraparound Milwaukee Quality Assurance Department at the number listed on the handout.
4. Ask the client/legal guardian to initial and sign the Wraparound Milwaukee Consent/Acknowledgment Form for Wraparound/REACH clients (*see Attachment 5*) or the Project O-YEAH Consent for Treatment form for O-YEAH clients (*see Attachment 6)*. Explain to the client/legal guardian that signing this form indicates that he or she has received the Client Rights and Complaint/Grievance Procedure handout and that he or she has been given the opportunity to have the Client Rights read to him or her.
5. Sign the Wraparound Milwaukee Consent/Acknowledgment Form Acknowledgement Form (witness signature) or the Project O-YEAH Consent for Treatment form (witness signature) and date it. Put the form in the "Consents Section" of the client's chart.

D. Special Instructions for Non-English speaking clients.

It is important that clients/legal guardians be informed of his or her rights in a language that he or she can understand. If the client/legal guardian does not speak English, an Interpreter who can effectively and appropriately convey the information to the client/legal guardian must be provided.

E. The "Wraparound Milwaukee Consent/Acknowledgement Form" and the "Project O-YEAH Consent for Treatment form" expire one year after the date it is signed.

At this time, the Care Coordinator/Transition Specialist **must** again verbally inform the client of his/her rights. The client may request another copy of the Client Rights and Complaint/Grievance Procedure handout. A Client Rights and Complaint/Grievance Procedure handout **must** be provided if there has been a statutory change in any of the rights since the initial signing. Another Consent/Acknowledgement Form (*see Attachment* 5) must be completed at this time and every subsequent year that the youth is in the program.

F. Providers in the Wraparound Provider Network must also follow the Wisconsin Administrative Code – HFS 94 and Wisconsin State Statute – Chapter 51 laws and guidelines, as applicable.

Clients are given a copy of the "Client Rights and Complaint/Grievance Procedure" handout upon their enrollment into Wraparound Milwaukee/REACH/O-YEAH and sign the "Wraparound Milwaukee Consent/Acknowledgement Form" or the "Project O-YEAH Consent for Treatment form" on a yearly basis. As the form was written to encompass the services a client/family may receive through the Wraparound Provider Network, Provider Agencies are not required to have clients sign another Consent/Acknowledgement Form unless they chose to do so.

Reviewed & Approved by: Bruce Kamradt
Bruce Kamradt, Director

The revision of Wisconsin's law of alcoholism and intoxication. Robb, 58 MLR 88.

Wisconsin's new alcoholism act encourages early voluntary treatment. 1974 WBB No. 3.

51.46 Priority for pregnant women for private treatment for alcohol or other drug abuse. For inpatient or outpatient treatment for alcohol or other drug abuse, the first priority for services that are available in privately operated facilities, whether on a voluntary or involuntary basis, is for pregnant women who suffer from alcoholism, alcohol abuse or drug dependency.

History: 1997 a. 292.

51.47 Alcohol and other drug abuse treatment for minors without parental consent. (1) Except as provided in subs. (2) and (3), any physician or health care facility licensed, approved, or certified by the state for the provision of health services may render preventive, diagnostic, assessment, evaluation, or treatment services for the abuse of alcohol or other drugs to a minor 12 years of age or over without obtaining the consent of or notifying the minor's parent or guardian and may render those services to a minor under 12 years of age without obtaining the consent of or notifying the minor's parent or guardian, but only if a parent with legal custody or guardian of the minor under 12 years of age cannot be found or there is no parent with legal custody of the minor under 12 years of age. An assessment under this subsection shall conform to the criteria specified in s. 938.547 (4). Unless consent of the minor's parent or guardian is required under sub. (2), the physician or health care facility shall obtain the minor's consent prior to billing a 3rd party for services under this section. If the minor does not consent, the minor shall be solely responsible for paying for the services, which the department shall bill to the minor under s. 46.03 (18) (b).

(2) The physician or health care facility shall obtain the consent of the minor's parent or guardian:

(a) Before performing any surgical procedure on the minor, unless the procedure is essential to preserve the life or health of the minor and the consent of the minor's parent or guardian is not readily obtainable.

(b) Before administering any controlled substances to the minor, except to detoxify the minor under par. (c).

(c) Before admitting the minor to an inpatient treatment facility, unless the admission is to detoxify the minor for ingestion of alcohol or other drugs.

(d) If the period of detoxification of the minor under par. (c) extends beyond 72 hours after the minor's admission as a patient.

(3) The physician or health care facility shall notify the minor's parent or guardian of any services rendered under this section as soon as practicable.

(4) No physician or health care facility rendering services under sub. (1) is liable solely because of the lack of consent or notification of the minor's parent or guardian.

History: 1979 c. 331; 1985 a. 281; 2001 a. 16.

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

51.48 Alcohol and other drug testing, assessment, and treatment of minor without minor's consent. A minor's parent or guardian may consent to have the minor tested for the presence of alcohol or other drugs in the minor's body or to have the minor assessed by an approved treatment facility for the minor's abuse of alcohol or other drugs according to the criteria specified in s. 938.547 (4). If, based on the assessment, the approved treatment facility determines that the minor is in need of treatment for the abuse of alcohol or other drugs, the approved treatment facility shall recommend a plan of treatment that is appropriate for the minor's needs and that provides for the least restrictive form of treatment consistent with the minor's needs. That treatment may consist of outpatient treatment, day treatment, or, if the minor is admitted in accordance with s. 51.13, inpatient treatment. The parent or guardian of the minor may consent to the treatment recommended under this section. Consent of the minor for testing, assessment, or treatment under this section is not required.

History: 1999 a. 9; 2001 a. 16.

51.59 Incompetency not implied. (1) No person is deemed incompetent to manage his or her affairs, to contract, to hold professional, occupational or motor vehicle operator's licenses, to marry or to obtain a divorce, to vote, to make a will or to exercise any other civil right solely by reason of his or her admission to a facility in accordance with this chapter or detention or commitment under this chapter.

(2) This section does not authorize an individual who has been involuntarily committed or detained under this chapter to refuse treatment during such commitment or detention, except as provided under s. 51.61 (1) (g) and (h).

History: 1977 c. 428; 1987 a. 366.

51.60 Appointment of counsel. (1) ADULTS. (a) In any situation under this chapter in which an adult individual has a right to be represented by counsel, the individual shall be referred as soon as practicable to the state public defender, who shall appoint counsel for the individual under s. 977.08 without a determination of indigency.

(b) Except as provided in s. 51.45 (13) (b) 2., par. (a) does not apply if the individual knowingly and voluntarily waives counsel.

(2) MINORS. In any situation under this chapter in which a minor has a right to be represented by counsel, counsel for the minor shall be appointed as provided in s. 48.23 (4).

(3) RETAINED COUNSEL. Notwithstanding subs. (1) and (2), an individual subject to proceedings under this chapter is entitled to retain counsel of his or her own choosing at his or her own expense.

History: 2007 a. 20.

51.605 Reimbursement for counsel provided by the state. (1) INQUIRY. At or after the conclusion of a proceeding under this chapter in which the state public defender has provided counsel for an adult individual, the court may inquire as to the individual's ability to reimburse the state for the costs of representation. If the court determines that the individual is able to make reimbursement for all or part of the costs of representation, the court may order the individual to reimburse the state an amount not to exceed the maximum amount established by the public defender board under s. 977.075 (4). Upon the court's request, the state public defender shall conduct a determination of indigency under s. 977.07 and report the results of the determination to the court.

(2) PAYMENT. Reimbursement ordered under this section shall be made to the clerk of courts of the county where the proceedings took place. The clerk of courts shall transmit payments under this section to the county treasurer, who shall deposit 25 percent of the payment amount in the county treasury and transmit the remainder to the secretary of administration. Payments transmitted to the secretary of administration shall be deposited in the general fund and credited to the appropriation account under s. 20.550 (1) (L).

(3) REPORT. By January 31st of each year, the clerk of courts for each county shall report to the state public defender the total amount of reimbursements ordered under sub. (1) in the previous calendar year and the total amount of reimbursements paid to the clerk under sub. (2) in the previous year.

History: 2007 a. 20.

51.61 Patients rights. (1) In this section, "patient" means any individual who is receiving services for mental illness, developmental disabilities, alcoholism or drug dependency, including any individual who is admitted to a treatment facility in accordance with this chapter or ch. 48 or 55 or who is detained, committed or placed under this chapter or ch. 48, 55, 971, 975 or 980,

or who is transferred to a treatment facility under s. 51.35 (3) or 51.37 or who is receiving care or treatment for those conditions through the department or a county department under s. 51.42 or 51.437 or in a private treatment facility. "Patient" does not include persons committed under ch. 975 who are transferred to or residing in any state prison listed under s. 302.01. In private hospitals and in public general hospitals, "patient" includes any individual who is admitted for the primary purpose of treatment of mental illness, developmental disability, alcoholism or drug abuse but does not include an individual who receives treatment in a hospital emergency room nor an individual who receives treatment on an outpatient basis at those hospitals, unless the individual is otherwise covered under this subsection. Except as provided in sub. (2), each patient shall:

(a) Upon admission or commitment be informed orally and in writing of his or her rights under this section. Copies of this section shall be posted conspicuously in each patient area, and shall be available to the patient's guardian and immediate family.

(b) 1. Have the right to refuse to perform labor which is of financial benefit to the facility in which the patient is receiving treatment or service. Privileges or release from the facility may not be conditioned upon the performance of any labor which is regulated by this paragraph. Patients may voluntarily engage in therapeutic labor which is of financial benefit to the facility if such labor is compensated in accordance with a plan approved by the department and if:

a. The specific labor is an integrated part of the patient's treatment plan approved as a therapeutic activity by the professional staff member responsible for supervising the patient's treatment;

b. The labor is supervised by a staff member who is qualified to oversee the therapeutic aspects of the activity;

c. The patient has given his or her written informed consent to engage in such labor and has been informed that such consent may be withdrawn at any time; and

d. The labor involved is evaluated for its appropriateness by the staff of the facility at least once every 120 days.

2. Patients may also voluntarily engage in noncompensated therapeutic labor which is of financial benefit to the facility, if the conditions for engaging in compensated labor under this paragraph are met and if:

a. The facility has attempted to provide compensated labor as a first alternative and all resources for providing compensated labor have been exhausted;

b. Uncompensated therapeutic labor does not cause layoffs of staff hired by the facility to otherwise perform such labor; and

c. The patient is not required in any way to perform such labor. Tasks of a personal housekeeping nature are not to be considered compensable labor.

3. Payment to a patient performing labor under this section shall not be applied to costs of treatment without the informed, written consent of such patient. This paragraph does not apply to individuals serving a criminal sentence who are transferred from a state correctional institution under s. 51.37 (5) to a treatment facility.

(cm) Have the rights specified under subd. 1. to send and receive sealed mail, subject to the limitations specified under subd. 2.

1. Patients have an unrestricted right to send sealed mail and receive sealed mail to or from legal counsel, the courts, government officials, private physicians, and licensed psychologists, and have reasonable access to letter writing materials including postage stamps. A patient shall also have a right to send sealed mail and receive sealed mail to or from other persons, subject to physical examination in the patient's presence if there is reason to believe that such communication contains contraband materials or objects that threaten the security of patients, prisoners, or staff. Such reasons shall be written in the individual's treatment record. The officers and staff of a facility may not read any mail covered by this subdivision.

2. The rights of a patient detained or committed under ch. 980 to send and receive sealed mail are subject to the following limitations:

a. An officer or staff member of the facility at which the patient is placed may delay delivery of the mail to the patient for a reasonable period of time to verify whether the person named as the sender actually sent the mail; may open the mail and inspect it for contraband; or may, if the officer or staff member cannot determine whether the mail contains contraband, return the mail to the sender along with notice of the facility mail policy.

b. The director of the facility or his or her designee may, in accordance with the standards and the procedure under sub. (2) for denying a right for cause, authorize a member of the facility treatment staff to read the mail, if the director or his or her designee has reason to believe that the mail could pose a threat to security at the facility or seriously interfere with the treatment, rights, or safety of others.

(d) Except in the case of a person who is committed for alcoholism, have the right to petition the court for review of the commitment order or for withdrawal of the order or release from commitment as provided in s. 51.20 (16).

(e) Except in the case of a patient who is admitted or transferred under s. 51.35 (3) or 51.37 or under ch. 971 or 975, have the right to the least restrictive conditions necessary to achieve the purposes of admission, commitment or protective placement, under programs, services and resources that the county board of supervisors is reasonably able to provide within the limits of available state and federal funds and of county funds required to be appropriated to match state funds.

(f) Have a right to receive prompt and adequate treatment, rehabilitation and educational services appropriate for his or her condition, under programs, services and resources that the county board of supervisors is reasonably able to provide within the limits of available state and federal funds and of county funds required to be appropriated to match state funds.

(fm) Have the right to be informed of his or her treatment and care and to participate in the planning of his or her treatment and care.

(g) Have the following rights, under the following procedures, to refuse medication and treatment:

1. Have the right to refuse all medication and treatment except as ordered by the court under subd. 2., or in a situation in which the medication or treatment is necessary to prevent serious physical harm to the patient or to others. Medication and treatment during this period may be refused on religious grounds only as provided in par. (h).

2. At or after the hearing to determine probable cause for commitment but prior to the final commitment order, other than for a subject individual who is alleged to meet the commitment standard under s. 51.20 (1) (a) 2. e., the court shall, upon the motion of any interested person, and may, upon its own motion, hold a hearing to determine whether there is probable cause to believe that the individual is not competent to refuse medication or treatment and whether the medication or treatment will have therapeutic value and will not unreasonably impair the ability of the individual to prepare for or participate in subsequent legal proceedings. If the court determines that there is probable cause to believe the allegations under this subdivision, the court shall issue an order permitting medication or treatment to be administered to the individual regardless of his or her consent. The order shall apply to the period between the date of the issuance of the order and the date of the final order under s. 51.20 (13), unless the court dismisses the petition for commitment or specifies a shorter period. The hearing under this subdivision shall meet the requirements of s. 51.20 (5), except for the right to a jury trial.

3. Following a final commitment order, other than for a subject individual who is determined to meet the commitment standard under s. 51.20 (1) (a) 2. e., have the right to exercise informed consent with regard to all medication and treatment unless the

committing court or the court in the county in which the individual is located, within 10 days after the filing of the motion of any interested person and with notice of the motion to the individual's counsel, if any, the individual and the applicable counsel under s. 51.20 (4), makes a determination, following a hearing, that the individual is not competent to refuse medication or treatment or unless a situation exists in which the medication or treatment is necessary to prevent serious physical harm to the individual or others. A report, if any, on which the motion is based shall accompany the motion and notice of motion and shall include a statement signed by a licensed physician that asserts that the subject individual needs medication or treatment and that the individual is not competent to refuse medication or treatment, based on an examination of the individual by a licensed physician. The hearing under this subdivision shall meet the requirements of s. 51.20 (5), except for the right to a jury trial. At the request of the subject individual, the individual's counsel or applicable counsel under s. 51.20 (4), the hearing may be postponed, but in no case may the postponed hearing be held more than 20 days after a motion is filed.

3m. Following a final commitment order for a subject individual who is determined to meet the commitment standard under s. 51.20 (1) (a) 2. e., the court shall issue an order permitting medication or treatment to be administered to the individual regardless of his or her consent.

4. For purposes of a determination under subd. 2. or 3., an individual is not competent to refuse medication or treatment if, because of mental illness, developmental disability, alcoholism or drug dependence, and after the advantages and disadvantages of and alternatives to accepting the particular medication or treatment have been explained to the individual, one of the following is true:

a. The individual is incapable of expressing an understanding of the advantages and disadvantages of accepting medication or treatment and the alternatives.

b. The individual is substantially incapable of applying an understanding of the advantages, disadvantages and alternatives to his or her mental illness, developmental disability, alcoholism or drug dependence in order to make an informed choice as to whether to accept or refuse medication or treatment.

(h) Have a right to be free from unnecessary or excessive medication at any time. No medication may be administered to a patient except at the written order of a physician. The attending physician is responsible for all medication which is administered to a patient. A record of the medication which is administered to each patient shall be kept in his or her medical records. Medication may not be used as punishment, for the convenience of staff, as a substitute for a treatment program, or in quantities that interfere with a patient's treatment program. Except when medication or medical treatment has been ordered by the court under par. (g) or is necessary to prevent serious physical harm to others as evidenced by a recent overt act, attempt or threat to do such harm, a patient may refuse medications and medical treatment if the patient is a member of a recognized religious organization and the religious tenets of such organization prohibit such medications and treatment. The individual shall be informed of this right prior to administration of medications or treatment whenever the patient's condition so permits.

(i) 1. Except as provided in subd. 2., have a right to be free from physical restraint and isolation except for emergency situations or when isolation or restraint is a part of a treatment program. Isolation or restraint may be used only when less restrictive measures are ineffective or not feasible and shall be used for the shortest time possible. When a patient is placed in isolation or restraint, his or her status shall be reviewed once every 30 minutes. Each facility shall have a written policy covering the use of restraint or isolation that ensures that the dignity of the individual is protected, that the safety of the individual is ensured, and that there is regular, frequent monitoring by trained staff to care for bodily needs as may be required. Isolation or restraint may be used for emergency situations only when it is likely that the patient may physically harm himself or herself or others. The treatment director shall specifically designate physicians who are authorized to order isolation or restraint, and shall specifically designate licensed psychologists who are authorized to order isolation. If the treatment director is not a physician, the medical director shall make the designation. In the case of a center for the developmentally disabled, use shall be authorized by the director of the center. The authorization for emergency use of isolation or restraint shall be in writing, except that isolation or restraint may be authorized in emergencies for not more than one hour, after which time an appropriate order in writing shall be obtained from the physician or licensed psychologist designated by the director, in the case of isolation, or the physician so designated in the case of restraint. Emergency isolation or restraint may not be continued for more than 24 hours without a new written order. Isolation may be used as part of a treatment program if it is part of a written treatment plan, and the rights specified in this subsection are provided to the patient. The use of isolation as a part of a treatment plan shall be explained to the patient and to his or her guardian, if any, by the person who provides the treatment. A treatment plan that incorporates isolation shall be evaluated at least once every 2 weeks. Patients who have a recent history of physical aggression may be restrained during transport to or from the facility. Persons who are committed or transferred under s. 51.35 (3) or 51.37 or under ch. 971 or 975, or who are detained or committed under ch. 980, and who, while under this status, are transferred to a hospital, as defined in s. 50.33 (2), for medical care may be isolated for security reasons within locked facilities in the hospital. Patients who are committed or transferred under s. 51.35 (3) or 51.37 or under ch. 971 or 975, or who are detained or committed under ch. 980, may be restrained for security reasons during transport to or from the facility.

2. Patients in the maximum security facility at the Mendota Mental Health Institute may be locked in their rooms during the night shift and for a period of no longer than one hour and 30 minutes during each change of shift by staff to permit staff review of patient needs. Patients detained or committed under ch. 980 and placed in a facility specified under s. 980.065 may be locked in their rooms during the night shift, if they reside in a maximum or medium security unit in which each room is equipped with a toilet and sink, or if they reside in a unit in which each room is not equipped with a toilet and sink and the number of patients outside their rooms equals or exceeds the number of toilets in the unit, except that patients who do not have toilets in their rooms must be given an opportunity to use a toilet at least once every hour, or more frequently if medically indicated. Patients in the maximum security facility at the Mendota Mental Health Institute, or patients detained or committed under ch. 980 and placed in a facility specified under s. 980.065, may also be locked in their rooms on a unit–wide or facility–wide basis as an emergency measure as needed for security purposes to deal with an escape or attempted escape, the discovery of a dangerous weapon in the unit or facility or the receipt of reliable information that a dangerous weapon is in the unit or facility, or to prevent or control a riot or the taking of a hostage. A unit–wide or facility–wide emergency isolation order may only be authorized by the director of the unit or facility where the order is applicable or his or her designee. A unit–wide or facility–wide emergency isolation order affecting the Mendota Mental Health Institute must be approved within one hour after it is authorized by the director of the Mendota Mental Health Institute or the director's designee. An emergency order for unit–wide or facility–wide isolation may only be in effect for the period of time needed to preserve order while dealing with the situation and may not be used as a substitute for adequate staffing. During a period of unit–wide or facility–wide isolation, the status of each patient shall be reviewed every 30 minutes to ensure the safety and comfort of the patient, and each patient who is locked in a room without a toilet shall be given an opportunity to use a toilet at least once every hour, or more frequently if medically indicated. Each

unit in the maximum security facility at the Mendota Mental Health Institute and each unit in a facility specified under s. 980.065 shall have a written policy covering the use of isolation that ensures that the dignity of the individual is protected, that the safety of the individual is secured, and that there is regular, frequent monitoring by trained staff to care for bodily needs as may be required. The isolation policies shall be reviewed and approved by the director of the Mendota Mental Health Institute or the director's designee, or by the director of the facility specified under s. 980.065 or his or her designee, whichever is applicable.

(j) Have a right not to be subjected to experimental research without the express and informed consent of the patient and of the patient's guardian after consultation with independent specialists and the patient's legal counsel. Such proposed research shall first be reviewed and approved by the institution's research and human rights committee created under sub. (4) and by the department before such consent may be sought. Prior to such approval, the committee and the department shall determine that research complies with the principles of the statement on the use of human subjects for research adopted by the American Association on Mental Deficiency, and with the regulations for research involving human subjects required by the U.S. department of health and human services for projects supported by that agency.

(k) Have a right not to be subjected to treatment procedures such as psychosurgery, or other drastic treatment procedures without the express and informed consent of the patient after consultation with his or her counsel and legal guardian, if any. Express and informed consent of the patient after consultation with the patient's counsel and legal guardian, if any, is required for the use of electroconvulsive treatment.

(L) Have the right to religious worship within the facility if the patient desires such an opportunity and a member of the clergy of the patient's religious denomination or society is available to the facility. The provisions for such worship shall be available to all patients on a nondiscriminatory basis. No individual may be coerced into engaging in any religious activities.

(m) Have a right to a humane psychological and physical environment within the hospital facilities. These facilities shall be designed to afford patients with comfort and safety, to promote dignity and ensure privacy. Facilities shall also be designed to make a positive contribution to the effective attainment of the treatment goals of the hospital.

(n) Have the right to confidentiality of all treatment records, have the right to inspect and copy such records, and have the right to challenge the accuracy, completeness, timeliness or relevance of information relating to the individual in such records, as provided in s. 51.30.

(o) Except as otherwise provided, have a right not to be filmed or taped, unless the patient signs an informed and voluntary consent that specifically authorizes a named individual or group to film or tape the patient for a particular purpose or project during a specified time period. The patient may specify in the consent periods during which, or situations in which, the patient may not be filmed or taped. If a patient is adjudicated incompetent, the consent shall be granted on behalf of the patient by the patient's guardian. A patient in Goodland Hall at the Mendota Mental Health Institute, a patient detained or committed under ch. 980, or a patient who is in the legal custody of or under the supervision of the department of corrections, may be subject to video surveillance or filmed or taped without the patient's consent, except that such a patient may not be filmed in patient bedrooms or bathrooms without the patient's consent unless the patient is engaged in dangerous or disruptive behavior. A treatment activity involving a patient committed or detained under ch. 980 may be filmed or taped if the purpose of the recording is to assess the quality of the treatment activity or to facilitate clinical supervision of the staff involved in the treatment activity.

(p) Have reasonable access to a telephone to make and receive telephone calls within reasonable limits.

(q) Be permitted to use and wear his or her own clothing and personal articles, or be furnished with an adequate allowance of clothes if none are available. Provision shall be made to launder the patient's clothing.

(r) Be provided access to a reasonable amount of individual secure storage space for his or her own private use.

(s) Have reasonable protection of privacy in such matters as toileting and bathing.

(t) Be permitted to see visitors each day.

(u) Have the right to present grievances under the procedures established under sub. (5) on his or her own behalf or that of others to the staff or administrator of the treatment facility or community mental health program without justifiable fear of reprisal and to communicate, subject to par. (p), with public officials or with any other person without justifiable fear of reprisal.

(v) Have the right to use his or her money as he or she chooses, except to the extent that authority over the money is held by another, including the parent of a minor, a court–appointed guardian of the patient's estate or a representative payee. If a treatment facility or community mental health program so approves, a patient or his or her guardian may authorize in writing the deposit of money in the patient's name with the facility or program. Any earnings attributable to the money accrue to the patient. The treatment facility or community mental health program shall maintain a separate accounting of the deposited money of each patient. The patient or his or her guardian shall receive, upon written request by the patient or guardian, a written monthly account of any financial transactions made by the treatment facility or community mental health program with respect to the patient's money. If a patient is discharged from a treatment facility or community mental health program, all of the patient's money, including any attributable accrued earnings, shall be returned to the patient. No treatment facility or community mental health program or employee of such a facility or program may act as representative payee for a patient for social security, pension, annuity or trust fund payments or other direct payments or monetary assistance unless the patient or his or her guardian has given informed written consent to do so or unless a representative payee who is acceptable to the patient or his or her guardian and the payer cannot be identified. A community mental health program or treatment facility shall give money of the patient to him or her upon request, subject to any limitations imposed by guardianship or representative payeeship, except that an inpatient facility may, as a part of its security procedures, limit the amount of currency that is held by a patient and may establish reasonable policies governing patient account transactions.

(w) 1. Have the right to be informed in writing, before, upon or at a reasonable time after admission, of any liability that the patient or any of the patient's relatives may have for the cost of the patient's care and treatment and of the right to receive information about charges for care and treatment services.

2. If the patient is a minor, if the patient's parents may be liable for the cost of the patient's care and treatment and if the patient's parents can be located with reasonable effort, the treatment facility or community mental health program shall notify the patient's parents of any liability that the parents may have for the cost of the patient's care and treatment and of their right to receive information under subd. 3., except that a minor patient's parents may not be notified under this subdivision if the minor patient is receiving care under s. 51.47 without the consent of the minor patient's parent or guardian.

3. A patient, a patient's relative who may be liable for the cost of the patient's care and treatment, or a patient's guardian may request information about charges for care and treatment services at the treatment facility or community mental health program. If

a treatment facility or community mental health program receives such a request, the treatment facility or community mental health program shall promptly provide to the individual making the request written information about the treatment facility's or community mental health program's charges for care and treatment services. Unless the request is made by the patient, the guardian of a patient adjudicated incompetent in this state, the parent or guardian of a minor who has access to the minor's treatment records under s. 51.30 (5) (b) 1., or a person designated by the patient's informed written consent under s. 51.30 (4) (a) as a person to whom information may be disclosed, information released under this subdivision is limited to general information about the treatment facility's or community mental health program's charges for care and treatment services and may not include information which may not be disclosed under s. 51.30.

(x) Have the right to be treated with respect and recognition of the patient's dignity and individuality by all employees of the treatment facility or community mental health program and by licensed, certified, registered or permitted providers of health care with whom the patient comes in contact.

(y) Have the right, if provided services by a licensed mental health professional who is not affiliated with a county department or treatment facility, to be notified by the professional in writing of the grievance resolution procedure option that the professional makes available to the patient, as required under s. 457.04 (8).

(2) A patient's rights guaranteed under sub. (1) (p) to (t) may be denied for cause after review by the director of the facility, and may be denied when medically or therapeutically contraindicated as documented by the patient's physician, licensed psychologist, or licensed mental health professional in the patient's treatment record. The individual shall be informed in writing of the grounds for withdrawal of the right and shall have the opportunity for a review of the withdrawal of the right in an informal hearing before the director of the facility or his or her designee. There shall be documentation of the grounds for withdrawal of rights in the patient's treatment record. After an informal hearing is held, a patient or his or her representative may petition for review of the denial of any right under this subsection through the use of the grievance procedure provided in sub. (5) or, for review of the denial of a right by a licensed mental health professional who is not affiliated with a county department or treatment facility, through the use of one of the grievance resolution procedure options required under s. 457.04 (8). Alternatively, or in addition to the use of the appropriate grievance procedure, a patient or his or her representative may bring an action under sub. (7).

(3) The rights accorded to patients under this section apply to patients receiving services in outpatient and day–service treatment facilities, as well as community mental health programs, insofar as applicable.

(4) (a) Each facility which conducts research upon human subjects shall establish a research and human rights committee consisting of not less than 5 persons with varying backgrounds to assure complete and adequate review of research activities commonly conducted by the facility. The committee shall be sufficiently qualified through the maturity, experience and expertise of its members and diversity of its membership to ensure respect for its advice and counsel for safeguarding the rights and welfare of human subjects. In addition to possessing the professional competence necessary to review specific activities, the committee shall be able to ascertain the acceptability of proposals in terms of commitments of the facility and federal regulations, applicable law, standards of professional conduct and practice, and community attitudes.

(b) No member of a committee may be directly involved in the research activity or involved in either the initial or continuing review of an activity in which he or she has a conflicting interest, except to provide information requested by the committee.

(c) No committee may consist entirely of persons who are officers, employees or agents of or are otherwise associated with the facility, apart from their membership on the committee.

(d) No committee may consist entirely of members of a single professional group.

(e) A majority of the membership of the committee constitutes a quorum to do business.

(5) (a) The department shall establish procedures to assure protection of patients' rights guaranteed under this chapter, and shall, except for the grievance procedures of the Mendota and Winnebago mental health institutes and the state centers for the developmentally disabled, implement a grievance procedure which complies with par. (b) to assure that rights of patients under this chapter are protected and enforced by the department, by service providers and by county departments under ss. 51.42 and 51.437. The procedures established by the department under this subsection apply to patients in private hospitals or public general hospitals.

(b) The department shall promulgate rules that establish standards for the grievance procedure used as specified in par. (a) by the department, county departments under ss. 51.42 and 51.437 and service providers. The standards shall include all of the following components:

1. Written policies and procedures regarding the uses and operation of the grievance system.

2. A requirement that a person, who is the contact for initiating and processing grievances, be identified within the department and in each county department under ss. 51.42 and 51.437 and be specified by each service provider.

3. An informal process for resolving grievances.

4. A formal process for resolving grievances, in cases where the informal process fails to resolve grievances to the patient's satisfaction.

5. A process for notification of all patients of the grievance process.

6. Time limits for responses to emergency and nonemergency grievances, as well as time limits for deciding appeals.

7. A process which patients may use to appeal unfavorable decisions within the department or county department under s. 51.42 or 51.437 or through the service provider.

8. A process which may be used to appeal final decisions under subd. 7. of the department, county department under s. 51.42 or 51.437 or service provider to the department of health services.

9. Protections against the application of sanctions against any complainant or any person, including an employee of the department, county department under s. 51.42 or 51.437 or service provider who assists a complainant in filing a grievance.

(c) Each county department of community programs shall attach a statement to an application for recertification of its community mental health programs or treatment facilities that are operated by or under contract with the county. The statement shall indicate if any complaints or allegations of violations of rights established under this section were made during the certification period immediately before the period of recertification that is requested and shall summarize any complaints or allegations made. The statement shall contain the date of the complaint or allegation, the disposition of the matter and the date of disposition. The department shall consider the statement in reviewing the application for recertification.

(d) No person may intentionally retaliate or discriminate against any patient or employee for contacting or providing information to any official or to an employee of any state protection and advocacy agency, or for initiating, participating in, or testifying in a grievance procedure or in an action for any remedy authorized under this section. Whoever violates this paragraph may be fined

not more than $1,000 or imprisoned for not more than 6 months or both.

(e) A licensed mental health professional who is not affiliated with a county department or treatment facility shall notify in writing each patient to whom the professional provides services of the procedure to follow to resolve a grievance. The notice shall provide an option that the professional makes available to the patient, as required under s. 457.04 (8). Paragraphs (a) and (b) do not apply to this paragraph.

(6) Subject to the rights of patients provided under this chapter, the department, county departments under s. 51.42 or 51.437, and any agency providing services under an agreement with the department or those county departments have the right to use customary and usual treatment techniques and procedures in a reasonable and appropriate manner in the treatment of patients who are receiving services under the mental health system, for the purpose of ameliorating the conditions for which the patients were admitted to the system. The written, informed consent of any patient shall first be obtained, unless the person has been found not competent to refuse medication and treatment under s. 51.61 (1) (g) or the person is a minor 14 years of age or older who is receiving services for alcoholism or drug abuse or a minor under 14 years of age who is receiving services for mental illness, developmental disability, alcoholism, or drug abuse. In the case of such a minor, the written, informed consent of the parent or guardian is required, except as provided under an order issued under s. 51.13 (1) (c) or 51.14 (3) (h) or (4) (g), or as provided in s. 51.47. If the minor is 14 years of age or older and is receiving services for mental illness or developmental disability, the written, informed consent of the minor and the minor's parent or guardian is required, except that a refusal of either such a minor 14 years of age or older or the minor's parent or guardian to provide written, informed consent for admission or transfer to an approved inpatient treatment facility is reviewable under s. 51.13 (1) (c) 1., (3), or (4), or 51.35 (3) (b), and a refusal of either a minor 14 years of age or older or the minor's parent or guardian to provide written, informed consent for outpatient mental health treatment is reviewable under s. 51.14.

(7) (a) Any patient whose rights are protected under this section who suffers damage as the result of the unlawful denial or violation of any of these rights may bring an action against the person, including the state or any political subdivision thereof, which unlawfully denies or violates the right in question. The individual may recover any damages as may be proved, together with exemplary damages of not less than $100 for each violation and such costs and reasonable actual attorney fees as may be incurred.

(b) Any patient whose rights are protected under this section may bring an action against any person, including the state or any political subdivision thereof, which willfully, knowingly and unlawfully denies or violates any of his or her rights protected under this section. The patient may recover such damages as may be proved together with exemplary damages of not less than $500 nor more than $1,000 for each violation, together with costs and reasonable actual attorney fees. It is not a prerequisite to an action under this paragraph that the plaintiff suffer or be threatened with actual damages.

(c) Any patient whose rights are protected under this section may bring an action to enjoin the unlawful violation or denial of rights under this section and may in the same action seek damages as provided in this section. The individual may also recover costs and reasonable actual attorney fees if he or she prevails.

(d) Use of the grievance procedure established under sub. (5) is not a prerequisite to bringing an action under this subsection.

(7m) Whoever intentionally deprives a patient of the ability to seek redress for the alleged violation of his or her rights under this section by unreasonably precluding the patient from doing any of the following may be fined not more than $1,000 or imprisoned for not more than 6 months or both:

(a) Using the grievance procedure specified in sub. (5).

(b) Communicating, subject to sub. (1) (p), with a court, government official or staff member of the protection and advocacy agency that is designated under s. 51.62 or with legal counsel.

(8) Any informed consent which is required under sub. (1) (a) to (i) may be exercised by the patient's legal guardian if the patient has been adjudicated incompetent and the guardian is so empowered, or by the parent of the patient if the patient is a minor.

(9) Except for grievance resolution procedure options specified under s. 457.04 (8) (a), (b), and (c), the department shall promulgate rules to implement this section.

(10) No person who, in good faith, files a report with the appropriate examining board concerning the violation of rights under this section by persons licensed, certified, registered or permitted under ch. 441, 446, 450, 455 or 456, or who participates in an investigation of an allegation by the appropriate examining board, is liable for civil damages for the filing or participation.

History: 1975 c. 430; 1977 c. 428 ss. 96 to 109, 115; 1981 c. 20; 1981 c. 314 s. 144; 1983 a. 189 s. 329 (5); 1983 a. 293, 357, 538; 1985 a. 176; 1987 a. 366, 367, 403; 1989 a. 31; 1993 a. 184, 445, 479; 1995 a. 27 s. 9126 (19); 1995 a. 92, 268, 292; 1997 a. 292; 2001 a. 16 ss. 1993j to 1993w, 4034zk, 4034zl; 2001 a. 104; 2005 a. 387, 434, 444; 2007 a. 20 s. 9121 (6) (a); 2007 a. 97; 2009 a. 28; 2011 a. 32.

Cross-reference: See also ch. DHS 94, Wis. adm. code.

A patient in a state facility can recover fees under sub. (7) (c) from the county. Matter of Protective Placement of J. S. 144 Wis. 2d 670, 425 N.W.2d 15 (Ct. App. 1988).

The court may order an agency to do planning and the implementation work necessary to fulfill the obligation to order placement conforming to ss. 55.06 (9) (a) and 51.61 (1) (e). In Matter of J.G.S. 159 Wis. 2d 685, 465 N.W.2d 227 (Ct. App. 1990).

A nurse's decision to take a mental health patient on a recreational walk is not treatment under sub. (1) (f), and no cause of action was created under this section for injuries incurred when the patient fell. Erbstoeaer v. American Casualty Co. 169 Wis. 2d 637, 486 N.W.2d 549 (Ct. App. 1992).

Sub. (1) (g) 4. is not merely illustrative; it establishes the only standard by which a court may determine whether a patient is competent to refuse psychotropic medication. Factors to be considered in determining whether this competency standard is met are discussed. Mental Condition of Virgil D. 189 Wis. 2d 1, 524 N.W.2d 894 (1994).

Sub. (1) (k) is unconstitutionally overbroad because it prevents all patients unable to give "express and informed" consent from receiving electroconvulsive treatment under any circumstances, even when the treatment may be life saving. Professional Guardianships, Inc. v. Ruth E.J. 196 Wis. 2d 794, 540 N.W.2d 213 (Ct. App. 1995), 95–2010.

Court commissioners have the authority to conduct hearings under s. 51.61 (1) (g). Carol J. R. v. County of Milwaukee, 196 Wis. 2d 882, 540 N.W.2d 233 (Ct. App. 1995), 94–0688.

In an action for negligence and malpractice, when a provider's treatment techniques or deficiencies were part and parcel of the plaintiff's claim, it was appropriate to award costs and attorney fees under sub. (7) (a). Wright v. Mercy Hospital, 206 Wis. 2d 449, 557 N.W.2d 846 (Ct. App. 1996), 95–2289.

Sub. (7) contemplates two separate and distinct causes of action. Par. (a) applies when the denial of a patient's rights have caused actual damages. Par. (b) does not require damages, but allows recovery if the patient's rights were violated willfully, knowingly, and unlawfully. Schaidler v. Mercy Medical Center of Oshkosh, Inc. 209 Wis. 2d 457, 563 N.W.2d 554 (Ct. App. 1997), 96–0645.

This section and ch. 980 provide the statutory basis for a court to issue an involuntary medication order for individuals who suffer from a chronic mental illness and are committed under ch. 980. State v. Anthony D.B. 2000 WI 94, 237 Wis. 2d 1, 614 N.W.2d 435, 98–0576.

Involuntarily committed persons are entitled to more considerate treatment and conditions of confinement than criminals, but their rights are not absolute. A restriction of rights must be reasonably related to legitimate therapeutic and institutional interests. West v. Macht, 2000 WI App 134, 237 Wis. 2d 265, 614 N.W.2d 34, 99–1710.

Sub. (1) (i) grants broad discretionary power to DHFS sufficient to permit its treatment facilities to transport ch. 980 patients in restraints for security reasons. Nothing requires treatment facilities to exercise discretion for each individual patient rather than on the basis of its experience with ch. 980 patients as a group and the individualized prior finding of sexual dangerousness that each ch. 980 patient has had made. Thielman v. Leean, 2003 WI App 33, 260 Wis. 2d 253, 659 N.W.2d 73, 02–0888.

A "patient" under sub. (1) includes a person receiving services for developmental disabilities. Under s. 51.437 sheltered employment is one of those services. Sheltered employment did not constitute rehabilitation, and thus the patient's place of sheltered employment was not a treatment facility and the sheltered employee could not bring a sub. (1) (x) claim. That assaults occurred in a restroom did not mean his right to privacy in the restroom under sub. (1) (s) was violated. Sheltered employment may include educational programs, and the patient's complaint stated a claim that the assaults deprived him of his right to prompt and adequate educational services under sub. (1) (f). St. Paul Fire & Marine Insurance Co. v. Keltgen, 2003 WI App 53, 260 Wis. 2d 523, 659 N.W.2d 906, 02–1249.

The exclusive remedy provision of the worker's compensation act, s. 102.03, does not bar a claim under this section when the injuries result from the same set of facts. An entity that acted both as both sheltered employer and developmentally disabled service provider did not possess a dual persona, allowing both worker's compensation recovery and tort recovery for the same act. St. Paul Fire & Marine Insurance Co. v. Keltgen, 2003 WI App 53, 260 Wis. 2d 523, 659 N.W.2d 906, 02–1249.

The injured patients and families compensation fund under ch. 655 is not a person "who violates the right in question," as this section requires. The fund does not provide any treatment and could never violate any of the rights proscribed in this section. As a result, there is no basis to conclude that it is subject to costs and reasonable actual

attorney fees. Hess v. Fernandez, 2005 WI 19, 278 Wis. 2d 283, 692 N.W.2d 655, 03–0327.

Patients civilly committed under ch. 980 are not employees under federal or Wisconsin minimum wage law. Tran v. Speech, 2010 WI App 58, 324 Wis. 2d 567; 782 N.W.2d 107, 09–0884.

Nonconsensual drug therapy did not violate due process. Stensvad v. Reivitz, 601 F. Supp. 128 (1985).

Sub. (1) (e) and (i) do not restrict the discretion of institution administrators to restrain patients during transport. Thielman v. Leean, 140 F. Supp. 2d 982 (2001). Affirmed. 282 F.3d 478 (2002).

51.62 Protection and advocacy system. (1) DEFINITIONS. In this section:

(ag) "Abuse" has the meaning given in s. 46.90 (1) (a).

(am) "Developmental disability" means a severe, chronic disability of a person that is characterized by all of the following:

1. Is attributable to a mental or physical impairment or a combination of a mental and a physical impairment.

2. Is manifested before the person has attained the age of 22.

3. Is likely to continue indefinitely.

4. Results in substantial functional limitation in at least 3 of the following areas of major life activity:

a. Self–care.

b. Receptive and expressive language.

c. Learning.

d. Mobility.

e. Self–direction.

f. Capacity for independent living.

g. Economic self–sufficiency.

5. Requires a combination and sequence of special interdisciplinary or generic care, treatment or other services that are of lifelong or extended duration and are individually planned and coordinated.

(ar) "Financial exploitation" has the meaning given in s. 46.90 (1) (ed).

(b) "Inpatient health care facility" has the meaning provided under s. 50.135 (1), except that it does include community–based residential facilities as defined under s. 50.01 (1g).

(bm) "Mental illness" means mental disease to such extent that a person so afflicted requires care and treatment for his or her welfare, or the welfare of others, or of the community and is an inpatient or resident in a facility rendering care or treatment or has been discharged from the facility for not more than 90 days.

(br) "Neglect" has the meaning given in s. 46.90 (1) (f).

(c) "Protection and advocacy agency" means an entity designated by the governor to implement a system to protect and advocate the rights of persons with developmental disabilities, as authorized under 42 USC 6012 or mental illness, as authorized under 42 USC 10801 to 10851.

(2) DESIGNATION. (a) The governor shall designate as the protection and advocacy agency a private, nonprofit corporation that is independent of all of the following:

1. A state agency.

2. The board for people with developmental disabilities and the council on mental health.

3. An agency that provides treatment, services or habilitation to persons with developmental disabilities or mental illness.

(b) After the governor has designated a protection and advocacy agency under par. (a), the protection and advocacy agency so designated shall continue in that capacity unless and until the governor redesignates the protection and advocacy agency to another private, nonprofit corporation that meets the requirements of par. (a). The governor may redesignate this private, nonprofit corporation the protection and advocacy agency only if all of the following conditions are met:

1. Good cause exists for the redesignation.

2. Prior notice and an opportunity to comment on a proposed redesignation has been given to all of the following:

a. The board for people with developmental disabilities and the council on mental health.

b. Major organizations, in the state, of persons with developmental disabilities or mental illness and families and representatives of these persons.

(c) If the governor has designated a protection and advocacy agency before July 20, 1985, that entity shall continue in that capacity unless and until the governor redesignates the protection and advocacy agency to another private, nonprofit corporation that meets the requirements of par. (a).

(3) AGENCY POWERS AND DUTIES. (a) The protection and advocacy agency may:

1. Pursue legal, administrative and other appropriate remedies to ensure the protection of the rights of persons with developmental disabilities or mental illness and to provide information on and referral to programs and services addressing the needs of persons with developmental disabilities or mental illness.

2. Have access to records as specified under ss. 51.30 (4) (b) 18. and 146.82 (2) (a) 9.

2m. Have immediate access to any individual with mental illness or developmental disability, regardless of age, who has requested services or on whose behalf services have been requested from the protection and advocacy agency or concerning whom the protection and advocacy agency has reasonable cause to believe that abuse, neglect, financial exploitation, or a violation of rights of the individual has occurred.

3. Contract with a private, nonprofit corporation to confer to that corporation the powers and duties specified for the protection and advocacy agency under this subsection, except that the corporation may have access to records as specified under ss. 51.30 (4) (b) 18. and 146.82 (2) (a) 9. only if all of the following conditions are met:

a. The contract of the corporation with the protection and advocacy agency so provides.

b. The department has approved the access.

(b) The protection and advocacy agency shall pay reasonable costs related to the reproducing or copying of patient health care or treatment records.

(3m) FUNDING. From the appropriation under s. 20.435 (7) (md), the department shall distribute $75,000 in each fiscal year to the protection and advocacy agency for performance of community mental health protection and advocacy services.

(4) DEPARTMENTAL DUTIES. The department shall provide the protection and advocacy agency with copies of annual surveys and plans of correction for intermediate care facilities for persons with an intellectual disability on or before the first day of the 2nd month commencing after completion of the survey or plan.

History: 1985 a. 29; 1987 a. 161 s. 13m; 1987 a. 399; 1989 a. 31; 1993 a. 27; 1995 a. 27, 169; 1997 a. 27, 35; 2005 a. 388; 2007 a. 20, 153; 2009 a. 180; 2011 a. 126.

The Wisconsin statutory scheme does not give an agency express authority to investigate incidents of abuse and neglect or to obtain patient records, but under federal law any state system established to protect the rights of persons with developmental disabilities has that authority. Wisconsin Coalition for Advocacy v. Czaplewski, 131 F. Supp. 2d 1039 (2001).

51.63 Private pay for patients. Any person may pay, in whole or in part, for the maintenance and clothing of any mentally ill, developmentally disabled, alcoholic or drug dependent person at any institution for the treatment of persons so afflicted, and his or her account shall be credited with the sums paid. The person may also be likewise provided with such special care in addition to those services usually provided by the institution as is agreed upon with the director, upon payment of the charges therefor.

History: 1975 c. 430.

51.64 Reports of death required; penalty; assessment. (1) In this section:

(a) "Physical restraint" includes all of the following:

1. A locked room.

Chapter DHS 94

PATIENT RIGHTS AND RESOLUTION OF PATIENT GRIEVANCES

Note: Corrections in chapter HFS 94 made under s. 13.93 (2m) (b) 1., 6. and 7., Stats., Register, June, 1996, No. 486. Chapter HFS 94 was renumbered to chapter DHS 94 under s. 13.92 (4) (b) 1., Stats., and corrections made under s. 13.92 (4) (b) 7., Stats., Register November 2008 No. 635. **Chapter DHS 94 was reprinted Register December 2010 No. 660 to reflect Note revisions.**

Subchapter I — General Provisions

DHS 94.01 Authority, purpose and applicability. **(1)** AUTHORITY AND PURPOSE. This chapter is promulgated under the authority of s. 51.61 (5) (b) and (9), Stats., to implement s. 51.61, Stats., concerning the rights of patients receiving treatment for mental illness, a developmental disability, alcohol abuse or dependency or other drug abuse or dependency.

(2) TO WHOM THE RULES APPLY. (a) Except as provided in par. (b), this chapter applies to the department, to county departments established under s. 46.23, 51.42 or 51.437, Stats., and to all treatment facilities and other service providers, whether or not under contract to a county department, including the state–operated mental health institutes and centers for the developmentally disabled, habilitation or rehabilitation programs, programs certified under ch. DHS 61 and facilities licensed under ch. DHS 124 which also provide treatment for alcoholic, drug dependent, mentally ill or developmentally disabled persons. This chapter also applies to correctional institutions in which inmates receive treatment for mental disorders, but only in relation to patient rights specified in s. 51.61 (1) (a), (d), (f), (g), (h), (j) and (k), Stats. This chapter does not apply to a hospital emergency room.

Note: The mental health treatment of inmates of correctional institutions is governed by ch. DOC 314. The application of ch. DHS 94 to correctional institutions is consistent with ss. DOC 314.02 (9) and 314.04 (1) (c).

(b) Subchapter III does not apply to the grievance procedures of the state mental health institutes, the state centers for persons with developmental disabilities or units housing patients committed under ch. 980, Stats., nor does it apply to individual private practitioners who deliver services through offices that are not part of a program.

History: Cr. Register, January, 1987, No. 373, eff. 2–1–87; correction in (2) made under s. 13.93 (2m) (b) 7., Stats., Register, June, 1995, No. 474; am. (1), renum. (2) to be (2) (a) and am., cr. (2) (b), Register, June, 1996, No. 486, eff. 7–1–96; corrections in (2) made under s. 13.92 (4) (b) 7., Stats., Register November 2008 No. 635.

DHS 94.02 Definitions. In this chapter:

(1) "Body cavity search" means a strip search in which body cavities are inspected by the entry of an object or fingers into body cavities.

(2) "Body search" means a personal search, a strip search or a body cavity search of a patient.

(3) "Client," as used in subch. III, means a patient.

(4) "Client rights specialist" means a person designated by a program or a coalition of programs to facilitate informal resolution of concerns where requested and to conduct program level reviews of grievances and make proposed factual findings, determinations of merit and recommendations for resolution which are provided to the program manager and the client.

(5) "Coalition of programs," as used in subch. III, means a group of programs which have joined together for the explicit purpose of operating a combined grievance resolution system.

(6) "Community placement" means a living situation which is arranged with the assistance of a case manager or service coordinator or a person or agency performing tasks similar to those performed by a case manager or service coordinator and which is either a residential setting that is directed and controlled by the individual or his or her guardian or a place licensed or certified as a residential care facility or care home for either adults or children by representatives of the state or county government pursuant to a comprehensive individualized plan of care or service.

(7) "Concern" means a complaint, disagreement or dispute which a client or a person on behalf of a client may have with a program or program staff which the client chooses to resolve through the informal resolution process pursuant to s. DHS 94.40 (4).

(8) "County department" means the county department of human services established under s. 46.23, Stats., the county department of community programs established under s. 51.42, Stats., or the county department of developmental disabilities services established under s. 51.437, Stats.

(9) "Court order" means a lawful order of a court of competent jurisdiction.

(10) "Department" means the Wisconsin department of health services.

(11) "Director" means the administrator of a treatment facility or the person directing the activities of any other service provider.

(12) "Drastic treatment procedure" means an extraordinary or last resort treatment method which places the patient at serious risk for permanent psychological or physical injury, including psychosurgery, convulsive therapy other than electroconvulsive therapy and behavior modification using painful stimuli.

(13) "Emergency" means that it is likely that the patient may physically harm himself or herself or others.

(14) "Emergency situation" means a situation in which, based on the information available at the time, there is reasonable cause to believe that a client or a group of clients is at significant risk of physical or emotional harm due to the circumstances identified in a grievance or concern.

(15) "Financial benefit" means improvement in the functioning of a facility due to patient labor.

(16) "Forensic unit" means an inpatient ward or unit where a majority of the patients are admitted or committed under ch. 971 or 975, Stats., or under s. 51.37 (5), Stats.

(17) "Grievance" means a statement by a grievant that an action or an inaction by a program or its staff has abridged rights guaranteed to the client under s. 51.61, Stats., and this chapter combined with a request that the matter be dealt with through the program's formal grievance resolution process pursuant to s. DHS 94.40 (5).

(18) "Grievance examiner" means a staff person of the department designated by the secretary to conduct first administrative level reviews of grievances appealed from programs operating independently from a county department and second administrative level reviews of grievances filed regarding programs operated by or under contract with a county department.

(19) "Grievance resolution system" means the procedures established by a program or coalition of programs for formally responding to a grievance.

(20) "Grievant" means a client who has lodged a grievance or a person who has lodged a grievance on behalf of a client pursuant to s. DHS 94.49.

(21) "Hospital" has the meaning prescribed in s. 50.33 (2), Stats.

(22) "Informed consent" or "consent" means written consent voluntarily signed by a patient who is competent and who understands the terms of the consent, or by the patient's legal guardian or the parent of a minor, as permitted under s. 51.61 (6) and (8), Stats., without any form of coercion, or temporary oral consent obtained by telephone in accordance with s. DHS 94.03 (2m).

(23) "Inpatient" means a person who is receiving treatment, care, services or supports while residing in an inpatient treatment facility, a residential treatment facility or in any facility or home which is subject to regulation as a place of residence and service provision for patients by the department, a county department or a county department of social services established under s. 46.215 or 46.22, Stats.

(24) "Inpatient treatment facility" has the meaning prescribed for "inpatient facility" in s. 51.01 (10), Stats., and includes the mental health institutes as defined in s. 51.01 (12), Stats., the Milwaukee county mental health center established under s. 51.08, Stats., and county hospitals established under s. 51.09, Stats.

(25) "Institutional review board" means a board established under 45 CFR 46.

(26) "Isolation" means any process by which a person is physically or socially set apart by staff from others but does not include separation for the purpose of controlling contagious disease.

(27) "Least restrictive treatment" means treatment and services which will best meet the patient's treatment and security needs and which least limit the patient's freedom of choice and mobility.

(28) "Mechanical support" means an apparatus that is used to properly align a patient's body or to help a patient maintain his or her balance.

(29) "Medical restraint" means an apparatus or procedure that restricts the free movement of a patient during a medical or surgical procedure or prior to or subsequent to such a procedure to prevent further harm to the patient or to aid in the patient's recovery, or to protect a patient during the time a medical condition exists.

(30) "Outpatient" means a person receiving treatment, care, services or supports from any service provider if the person receiving the services does not reside in a facility or home owned, operated or managed by the service provider.

(31) "Outpatient treatment facility" means a service provider providing services for patients who do not reside in a facility or home owned, operated or managed by the service provider.

(32) "Patient" has the meaning prescribed in s. 51.61 (1) (intro.), Stats.

(33) "Personal search" means a search of the patient's person, including the patient's pockets, frisking his or her body, an examination of the patient's shoes and hat and a visual inspection of the patient's mouth.

(34) "Physical restraint" means any physical hold or apparatus, excluding a medical restraint or mechanical support, that interferes with the free movement of a person's limbs and body.

(35) "Program," as used in subch. III, means any public or private organization or agency, other than Mendota and Winnebago mental health institutes, the state centers for persons with developmental disabilities and the Wisconsin resource center, which provides services or residential care for a client for mental illness, a developmental disability, alcoholism or drug dependency.

(36) "Program director" means the person appointed to administer the county department's programs.

(37) "Program manager," as used in subch. III, refers to the individual in charge of the operation of a program who has the specific authority to approve and implement decisions made through the grievance resolution process.

(38) "Research" means a systematic investigation designed to develop or contribute to generalizable knowledge, except that it does not include an investigation involving only treatment records or routine follow–up questionnaires.

(39) "Residential treatment facility" means a treatment facility or home that provides a 24–hour residential living program and services for inpatients, which is subject to regulation as a place of residence and services for patients by the department or any county department or a county department of social services under s. 46.215 or 46.22, Stats., including a center for the developmentally disabled as defined in s. 51.01 (3), Stats.

(40) "Seclusion" means that form of isolation in which a person is physically set apart by staff from others through the use of locked doors.

(41) "Secretary" means the head of the department.

(42) "Service provider" means an agency, facility or individual providing treatment, care, services or supports to clients.

(43) "Strip search" means a search in which the patient is required to remove all of his or her clothing. Permissible inspection includes examination of the patient's clothing and body and visual inspection of his or her body cavities.

(44) "Treatment" has the meaning prescribed in s. 51.01 (17), Stats.

(45) "Treatment facility" means any publicly or privately operated facility, unit in a facility or agency providing treatment, habilitation or rehabilitation for alcoholic, drug dependent, men-

tally ill or developmentally disabled persons, including an inpatient treatment facility, a residential treatment facility or an outpatient treatment facility.

History: Cr. Register, January, 1987, No. 373, eff. 2–1–87; r. and recr. Register, June, 1996, No. 486, eff. 7–1–96; correction in (8) made under s. 13.93 (2m) (b) 7., Stats., Register January 2002 No. 553; correction in (10) made under s. 13.92 (4) (b) 6., Stats., Register November 2008 No. 635.

DHS 94.03 Informed consent. (1) Any informed consent document required under this chapter shall declare that the patient or the person acting on the patient's behalf has been provided with specific, complete and accurate information and time to study the information or to seek additional information concerning the proposed treatment or services made necessary by and directly related to the person's mental illness, developmental disability, alcoholism or drug dependency, including:

(a) The benefits of the proposed treatment and services;

(b) The way the treatment is to be administered and the services are to be provided;

(c) The expected treatment side effects or risks of side effects which are a reasonable possibility, including side effects or risks of side effects from medications;

(d) Alternative treatment modes and services;

(e) The probable consequences of not receiving the proposed treatment and services;

(f) The time period for which the informed consent is effective, which shall be no longer than 15 months from the time the consent is given; and

(g) The right to withdraw informed consent at any time, in writing.

(2) An informed consent document is not valid unless the subject patient who has signed it is competent, that is, is substantially able to understand all significant information which has been explained in easily understandable language, or the consent form has been signed by the legal guardian of an incompetent patient or the parent of a minor, except that the patient's informed consent is always required for the patient's participation in experimental research, subjection to drastic treatment procedures or receipt of electroconvulsive therapy.

(2m) In emergency situations or where time and distance requirements preclude obtaining written consent before beginning treatment and a determination is made that harm will come to the patient if treatment is not initiated before written consent is obtained, informed consent for treatment may be temporarily obtained by telephone from the parent of a minor patient or the guardian of a patient. Oral consent shall be documented in the patient's record, along with details of the information verbally explained to the parent or guardian about the proposed treatment. Verbal consent shall be valid for a period of 10 days, during which time informed consent shall be obtained in writing.

(3) The patient, or the person acting on the patient's behalf, shall be given a copy of the completed informed consent form, upon request.

(4) When informed consent is refused or withdrawn, no retaliation may be threatened or carried out.

Note: Additional requirements relating to refusal to participate in prescribed treatment are addressed under s. DHS 94.09.

History: Cr. Register, January, 1987, No. 373, eff. 2–1–87; am. (1) (intro.), (a), (b), (d), (e), (f), cr. (2m), Register, June, 1996, No. 486, eff. 7–1–96.

DHS 94.04 Notification of rights. (1) Before or upon admission or, in the case of an outpatient, before treatment is begun, the patient shall be notified orally and given a written copy of his or her rights in accordance with s. 51.61 (1) (a), Stats., and this chapter. Oral notification may be accomplished by showing the patient a video about patient rights under s. 51.61, Stats., and this chapter. The guardian of a patient who is incompetent and the parent of a minor patient shall also be notified, if they are available. Notification is not required before admission or treatment when there is an emergency.

Note: The statute does not make distinctions among types of treatment facilities when it comes to protecting patients' rights. Some rights may be more applicable to patients in inpatient facilities than to patients in less restrictive facilities such as sheltered workshops or outpatient clinics. When informing patients of their rights, facility directors may emphasize those rights that are most applicable to the particular facility, program or services but s. 51.61, Stats., requires notification that other rights exist and may, under some circumstances, apply in a given situation.

(2) Before, upon or at a reasonable time after admission, a patient shall be informed in writing, as required by s. 51.61 (1) (w), Stats., of any liability that the patient or any of the patient's relatives may have for the cost of the patient's care and treatment and of the right to receive information about charges for care and treatment services.

(3) Patients who receive services for an extended period of time shall be orally re–notified of their rights at least annually and be given another copy of their rights in writing if they request a copy or if there has been a statutory change in any of their rights since the time of their admission.

(4) If a patient is unable to understand the notification of rights, written and oral notification shall be made to the parent or guardian, if available, at the time of the patient's admission or, in the case of an outpatient, before treatment is begun, and to the patient when the patient is able to understand.

(5) All notification of rights, both oral and written, shall be in language understood by the patient, including sign language, foreign language or simplified language when that is necessary. A simplified, printed version of patients rights shall be conspicuously posted in each patient area.

Note: A simplified version of patient rights in poster form is available from the Division of Mental Health and Substance Abuse Services, P.O. Box 7851, Madison, WI 53707 or at www.dhs.wisconsin.gov/clientrights.

History: Cr. Register, January, 1987, No. 373, eff. 2–1–87; am. (1), renum. (2), (3) to be (4), (5), cr. (2), (3), Register, June, 1996, No. 486, eff. 7–1–96.

Subchapter II — Patient Rights

DHS 94.05 Limitation or denial of rights. (1) No patient right may be denied except as provided under s. 51.61 (2), Stats., and as otherwise specified in this chapter.

(2) (a) Good cause for denial or limitation of a right exists only when the director or designee of the treatment facility has reason to believe the exercise of the right would create a security problem, adversely affect the patient's treatment or seriously interfere with the rights or safety of others.

(b) Denial of a right may only be made when there are documented reasons to believe there is not a less restrictive way of protecting the threatened security, treatment or management interests.

(c) No right may be denied when a limitation can accomplish the stated purpose and no limitation may be more stringent than necessary to accomplish the purpose.

(3) At the time of the denial or limitation, written notice shall be provided to the patient and the guardian, if any, and a copy of that notice shall be placed in the patient's treatment record. The written notice shall:

(a) Inform the patient and the guardian, if any, of the right to an informal hearing or a meeting with the person who made the decision to limit or deny the right.

(b) State the specific conditions required for restoring or granting the right at issue;

(c) State the expected duration of denial or limitation; and

(d) State the specific reason for the denial or limitation.

(4) Within 2 calendar days following the denial, written notice shall be sent as follows:

(a) If the patient is a county department patient, to the county department's client rights specialist and, in addition, if the patient is in a department–operated facility, to the department's division of care and treatment facilities; and

(b) If the patient is not a county department patient, to the treatment facility's client rights specialist and, in addition, if the patient is in a department–operated facility, to the department's division of care and treatment facilities.

Note: Copies of the rights–denial form may be requested from the Department's website at www.dhs.wisconsin.gov/clientrights or by writing to the Division of Mental Health and Substance Abuse Services, P.O. Box 7851, Madison, WI 53707–7851.

(5) The treatment facility director or that person's designee shall hold an informal hearing or arrange for the person who made the decision to limit or deny the right to hold a meeting within 3 days after receiving a hearing request or a request for a meeting with the person who made the decision from a patient whose rights have been denied or limited. The treatment facility director or designee, in the case of a hearing, or the person who made the decision to limit or deny the right, in the case of a meeting, shall consider all relevant information submitted by or on behalf of the patient when rendering a decision.

(6) The service provider shall inform a patient whose rights are limited or denied in accordance with this subsection that the patient may file a grievance concerning the limitation or denial.

History: Cr. Register, January, 1987, No. 373, eff. 2–1–87; am. (3) (a), (4) (a), (5), r. and recr. (6), Register, June, 1996, No. 486, eff. 7–1–96.

DHS 94.06 Assistance in the exercise of rights. **(1)** Each service provider shall assist patients in the exercise of all rights specified under ch. 51, Stats., and this chapter.

(2) No patient may be required to waive any of his or her rights under ch. 51, Stats., or this chapter as a condition of admission or receipt of treatment and services.

History: Cr. Register, January, 1987, No. 373, eff. 2–1–87; renum and am., cr. (2), Register, June, 1996, No. 486, eff. 7–1–96.

DHS 94.07 Least restrictive treatment and conditions. **(1)** Except in the case of a patient who is admitted or transferred under s. 51.35 (3) or 51.37, Stats., or under ch. 971 or 975, Stats., each patient shall be provided the least restrictive treatment and conditions which allow the maximum amount of personal and physical freedom in accordance with s. 51.61 (1) (e), Stats., and this section.

(2) No patient may be transferred to a setting which increases personal or physical restrictions unless the transfer is justified by documented treatment or security reasons or by a court order.

Note: Refer to ss. 51.35 (1) and 55.15, Stats., for transfer requirements in cases that are different from those covered under s. 51.61 (1) (e), Stats.

(3) Inpatient and residential treatment facilities shall identify all patients ready for placement in less restrictive settings and shall, for each of these patients, notify the county department or the county social services department of the identified county of responsibility, as determined in accordance with s. 51.40, Stats., and shall also notify the patient's guardian and guardian ad litem, if any, and the court with jurisdiction over the patient's ch. 51 or 55, Stats., placement, if any, that the patient is ready for placement in a less restrictive setting. The county department or the county social services department shall then act in accordance with s. 51.61 (1) (e), Stats., to place the patient in a less restrictive setting.

(4) Inpatient and residential treatment facilities shall identify security measures in their policies and procedures and shall specify criteria for the use of each security–related procedure.

History: Cr. Register, January, 1987, No. 373, eff. 2–1–87; am. (1), (3), renum. (5) to be HFS 94.24 (3) (i), Register, June, 1996, No. 486, eff. 7–1–96.

DHS 94.08 Prompt and adequate treatment. All patients shall be provided prompt and adequate treatment, habilitation or rehabilitation, supports, community services and educational services as required under s. 51.61 (1) (f), Stats., and copies of applicable licensing and certification rules and program manuals and guidelines.

Note: Educational requirements for school–age patients in inpatient facilities can be found under chs. 115 and 118, Stats.

History: Cr. Register, January, 1987, No. 373, eff. 2–1–87; am. Register, June, 1996, No. 486, eff. 7–1–96.

DHS 94.09 Medications and other treatment. **(1)** Each patient shall be informed of his or her treatment and care and shall be permitted and encouraged to participate in the planning of his or her treatment and care.

(2) A patient may refuse medications and any other treatment except as provided under s. 51.61 (1) (g) and (h), Stats., and this section.

(3) Any patient who does not agree with all or any part of his or her treatment plan shall be permitted a second consultation for review of the treatment plan as follows:

(a) An involuntary patient may request a second consultation from another staff member who is not directly providing treatment to the patient, and the treatment facility shall make the designated staff member available at no charge to the patient; and

(b) Any patient may, at his or her own expense, arrange for a second consultation from a person who is not employed by the treatment facility to review the patient's treatment record.

(c) Service providers may pay for some or all of the costs of any second consultation allowed under par. (b). Service providers may also enter into agreements with other service providers to furnish consultations for each other's clients.

(4) Except in an emergency when it is necessary to prevent serious physical harm to self or others, no medication may be given to any patient or treatment performed on any patient without the prior informed consent of the patient, unless the patient has been found not competent to refuse medication and treatment under s. 51.61 (1) (g), Stats., and the court orders medication or treatment. In the case of a patient found incompetent under ch. 54, Stats., the informed consent of the guardian is required. In the case of a minor, the informed consent of the parent or guardian is required. Except as provided under an order issued under s. 51.14 (3) (h) or (4) (g), Stats., if a minor is 14 years of age or older, the informed consent of the minor and the minor's parent or guardian is required. Informed consent for treatment from a patient's parent or guardian may be temporarily obtained by telephone in accordance with s. DHS 94.03 (2m).

(5) A voluntary patient may refuse any treatment, including medications, at any time and for any reason, except in an emergency, under the following conditions:

(a) If the prescribed treatment is refused and no alternative treatment services are available within the treatment facility, it is not considered coercion if the facility indicates that the patient has a choice of either participating in the prescribed treatment or being discharged from the facility; and

(b) The treatment facility shall counsel the patient and, when possible, refer the patient to another treatment resource prior to discharge.

(6) The treatment facility shall maintain a patient treatment record for each patient which shall include:

(a) A specific statement of the diagnosis and an explicit description of the behaviors and other signs or symptoms exhibited by the patient;

(b) Documentation of the emergency when emergency treatment is provided to the patient;

(c) Clear documentation of the reasons and justifications for the initial use of medications and for any changes in the prescribed medication regimen; and

(d) Documentation that is specific and objective and that adequately explains the reasons for any conclusions or decisions made regarding the patient.

(7) A physician ordering or changing a patient's medication shall ensure that other members of the patient's treatment staff are informed about the new medication prescribed for the patient and the expected benefits and potential adverse side effects which may affect the patient's overall treatment.

(8) A physician ordering or changing a patient's medication shall routinely review the patient's prescription medication,

including the beneficial or adverse effects of the medication and the need to continue or discontinue the medication, and shall document that review in the patient's treatment record.

(9) Each inpatient and residential treatment facility that administers medications shall have a peer review committee or other medical oversight mechanism reporting to the facility's governing body to ensure proper utilization of medications.

History: Cr. Register, January, 1987, No. 373, eff. 2–1–87; renum. (1) to (8) to be (2) to (9) and am. (4); cr. (1), (3) (c), (6) (d), Register, June, 1996, No. 486, eff. 7–1–96; correction in (4) made under s. 13.92 (4) (b) 7., Stats., Register November 2008 No. 635.

DHS 94.10 Isolation, seclusion and physical restraints. Any service provider using isolation, seclusion or physical restraint shall have written policies that meet the requirements specified under s. 51.61 (1) (i), Stats., and this chapter. Isolation, seclusion or physical restraint may be used only in an emergency, when part of a treatment program or as provided in s. 51.61 (1) (i) 2., Stats. For a community placement, the use of isolation, seclusion or physical restraint shall be specifically approved by the department on a case–by–case basis and by the county department if the county department has authorized the community placement. In granting approval, a determination shall be made that use is necessary for continued community placement of the individual and that supports and safeguards necessary for the individual are in place.

Note: The use of isolation, seclusion or physical restraint may be further limited or prohibited by licensing or certification standards for that service provider.

History: Cr. Register, January, 1987, No. 373, eff. 2–1–87; r. and recr. Register, June, 1996, No. 486, eff. 7–1–96.

DHS 94.11 Electroconvulsive therapy. (1) No patient may be administered electroconvulsive therapy except as specified under s. 51.61 (1) (k), Stats., and this section.

(2) The patient shall be informed that he or she has a right to consult with legal counsel, legal guardian, if any, and independent specialists prior to giving informed consent for electroconvulsive therapy.

(3) A treatment facility shall notify the program director prior to the planned use of electroconvulsive therapy on a county department patient.

(4) Electroconvulsive therapy may only be administered under the direct supervision of a physician.

(5) A service provider performing electroconvulsive therapy shall develop and implement written policies and procedures for obtaining and monitoring informed consent.

History: Cr. Register, January, 1987, No. 373, eff. 2–1–87; cr. (5), Register, June, 1996, No. 486, eff. 7–1–96.

DHS 94.12 Drastic treatment procedures. (1) Drastic treatment procedures may only be used in an inpatient treatment facility or a center for the developmentally disabled as defined in s. 51.01 (3), Stats. No patient may be subjected to drastic treatment procedures except as specified under s. 51.61 (1) (k), Stats., and this section.

(2) The patient shall be informed that he or she has a right to consult with legal counsel, legal guardian, if any, and independent specialists prior to giving informed consent for drastic treatment procedures.

(3) The treatment facility shall notify the program director prior to the planned use of drastic treatment procedures on county department patients.

(4) Each county department shall report monthly to the department the type and number of drastic treatment procedures used on county department patients.

Note: Reports required under sub. (4) should be sent to the area administrator in the appropriate Department regional office. The addresses of all regional offices are available from the Office of Policy Initiatives and Budget, P.O. Box 7850, Madison, WI 53707.

History: Cr. Register, January, 1987, No. 373, eff. 2–1–87.

DHS 94.13 Research and human rights committee. (1) An inpatient or residential treatment facility conducting or permitting research or drastic treatment procedures involving human subjects shall establish a research and human rights committee in accordance with 45 CFR 46, s. 51.61 (4), Stats., and this section.

(2) The committee shall include 2 members who are consumers or who represent either an agency or organization which advocates rights of patients covered by this chapter.

(3) The inpatient or residential treatment facility research and human rights committee shall designate a person to act as consent monitor who shall be authorized to validate informed consent and terminate a patient's participation in a research project or a drastic treatment procedure immediately upon violation of any requirement under this chapter or upon the patient's withdrawal of consent.

History: Cr. Register, January, 1987, No. 373, eff. 2–1–87.

DHS 94.14 Research. (1) All proposed research involving patients shall meet the requirements of s. 51.61 (1) (j), Stats., 45 CFR 46, and this section.

(2) No patient may be subjected to any experimental diagnostic or treatment technique or to any other experimental intervention unless the patient gives informed consent, the patient's informed consent is confirmed by the consent monitor and the research and human rights committee has determined that adequate provisions are made to:

(a) Protect the privacy of the patient;

(b) Protect the confidentiality of treatment records in accordance with s. 51.30, Stats., and ch. DHS 92;

(c) Ensure that no patient may be approached to participate in the research unless the patient's participation is approved by the person who is responsible for the treatment plan of the patient; and

(d) Ensure that the conditions of this section and other requirements under this chapter are met.

History: Cr. Register, January, 1987, No. 373, eff. 2–1–87; correction in (2) (b) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532; correction in (2) (b) made under s. 13.92 (4) (b) 7., Stats., Register November 2008 No. 635.

DHS 94.15 Labor performed by patients. (1) Any labor performed by a patient which is of financial benefit to the treatment facility shall be conducted within the requirements under s. 51.61 (1) (b), Stats., and this section.

(2) Patients may only be required to perform tasks that are equivalent to personal housekeeping chores performed in common or private living areas of an ordinary home. Personal housekeeping tasks may include light cleaning of shared living quarters if all patients sharing those quarters participate as equally as possible in the cleaning chores.

(3) Payment for therapeutic labor authorized under s. 51.61 (1) (b), Stats., shall be made in accordance with wage guidelines established under state and federal law.

(4) Documentation shall be made in the treatment record of any compensated, uncompensated, voluntary or involuntary labor performed by any patient.

(5) The document used to obtain informed consent for application of a patient's wages toward the cost of treatment shall conspicuously state that the patient has the right to refuse consent without suffering any adverse consequences.

History: Cr. Register, January, 1987, No. 373, eff. 2–1–87; am. (2), (3), Register, June, 1996, No. 486, eff. 7–1–96.

DHS 94.16 Religious worship. (1) All inpatients shall be allowed to exercise their right to religious worship as specified under s. 51.61 (1) (L), Stats., and this section.

(2) The director of each treatment facility serving inpatients shall seek clergy to be available to meet the religious needs of the inpatients.

(3) The director or designee shall make reasonable provision for inpatients to attend religious services either inside or outside the facility, except for documented security reasons, and shall honor any reasonable request for religious visitation by the representative of any faith or religion.

(4) Visiting clergy shall have the same access to inpatients as staff clergy except that visiting clergy may be required to work with and be accompanied by staff clergy.

(5) A patient whose disruptive behavior interferes with other patients' right to worship shall be removed from worship services.

History: Cr. Register, January, 1987, No. 373, eff. 2–1–87.

DHS 94.17 Confidentiality of records. All treatment records are confidential. A patient or guardian may inspect, copy and challenge the patient's records as authorized under s. 51.30, Stats., and ch. DHS 92.

History: Cr. Register, January, 1987, No. 373, eff. 2–1–87; correction made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532; correction made under s. 13.92 (4) (b) 7., Stats., Register November 2008 No. 635.

DHS 94.18 Filming and taping. (1) No patient may be recorded, photographed, or filmed for any purpose except as allowed under s. 51.61 (1) (o), Stats., and this section.

(2) A photograph may be taken of a patient without the patient's informed consent only for the purpose of including the photograph in the patient's treatment record.

(3) The informed consent document shall specify that the subject patient may view the photograph or film or hear the recording prior to any release and that the patient may withdraw informed consent after viewing or hearing the material.

History: Cr. Register, January, 1987, No. 373, eff. 2–1–87.

DHS 94.19 Mail. (1) Each inpatient shall be allowed to send and receive sealed mail in accordance with s. 51.61 (1) (cm) 1., Stats., and this section.

(2) Any inpatient who has been determined indigent under the facility's operating policies shall, upon request, be provided with up to 2 stamped non–letterhead envelopes each week and with non–letterhead stationery and other letter–writing materials.

(3) Mail shall be delivered to inpatients promptly by the facility's normal distribution procedures.

(4) Upon request of an inpatient or his or her guardian, mail shall be opened by a facility staff member and read to him or her. The initial request shall be documented in the treatment record.

History: Cr. Register, January, 1987, No. 373, eff. 2–1–87; correction in (1) made under s. 13.93 (2m) (b) 7., Stats., Register December 2003 No. 576.

DHS 94.20 Telephone calls. (1) Inpatients shall be allowed reasonable access to a telephone to make and receive a reasonable number of telephone calls as authorized by s. 51.61 (1) (p), Stats., and this section.

(2) Patients shall be permitted to make an unlimited number of private telephone calls to legal counsel and to receive an unlimited number of private telephone calls from legal counsel.

(3) (a) Except as provided in par. (b), each inpatient shall be permitted to make a reasonable number of private, personal calls. The number and duration of the calls may be limited for legitimate management reasons, but the facility shall provide every patient the opportunity to make at least one private, personal telephone call per day.

(b) This subsection does not prohibit a facility under s. 980.065, Stats., from recording patients' personal telephone calls or monitoring the resulting recordings.

(4) Inpatients who have been determined indigent under a facility's operating policies shall be permitted to make telephone calls under sub. (2), and at least one private, personal call per day free of charge.

(5) Treatment facilities shall provide the number of regular or pay telephones necessary to meet requirements of this section, subject to restrictions imposed by local telephone companies regarding installation of pay telephones.

History: Cr. Register, January, 1987, No. 373, eff. 2–1–87; am. (1), (3), (4), Register, June, 1996, eff 7–1–96; CR 00–151: am. (3) Register January 2002 No. 553, eff. 2–1–02.

DHS 94.21 Visitors. (1) Each inpatient shall be permitted to see visitors each day, as authorized by s. 51.61 (1) (t), Stats., and in accordance with this section.

(2) Adequate and reasonably private space shall be provided to accommodate visitors so that severe time limits need not be set on a visit.

(3) Every visitor who arrives during normal visiting hours shall be permitted to see the patient unless the patient refuses to see the visitor.

(4) The treatment facility may require prior identification of potential visitors and may search visitors but only when there are documented security reasons for screening or searching visitors.

(5) Visits may not be limited to less than one hour, except under documented special circumstances.

History: Cr. Register, January, 1987, No. 373, eff. 2–1–87.

DHS 94.22 Voting. (1) The director of each treatment facility serving inpatients shall ensure that inpatients have an opportunity to vote, unless they are otherwise restricted by law from voting, by:

(a) Surveying all patients 18 years of age or over to ascertain their interest in registering to vote, obtaining absentee ballots and casting ballots. The survey shall be conducted far enough before an election to allow sufficient time for voter registration and acquisition of absentee ballots;

(b) Making arrangements with state and local election officials to register voters and to enable interested inpatients to cast ballots at the facility; and

(c) With a patient's consent, assisting election officials in determining the patient's place of residence for voting purposes.

(2) A treatment facility director may not prohibit an inpatient from receiving campaign literature or placing political advertisements in his or her personal quarters and shall permit candidates to campaign during reasonably regulated times at designated locations on facility property.

History: Cr. Register, January, 1987, No. 373, eff. 2–1–87.

DHS 94.23 Discharge of voluntary patients. (1) When a voluntary inpatient requests a discharge, the facility director or designee shall either release the patient or file a statement of emergency detention with the court as provided under ss. 51.10 (5), 51.13 (7) (b) and 51.15 (10), Stats., and this section.

(2) If a voluntary inpatient requests a discharge and he or she has no other living quarters or is in need of other services to make the transition to the community, the following actions shall be taken by the facility director or designee prior to discharge:

(a) Counsel the patient and, when possible, assist the patient in locating living quarters;

(b) Inform the applicable program director, if any, of the patient's need for residential and other necessary transitional services; and

(c) If no living arrangements have been made by the time of discharge, refer the patient to an appropriate service agency for emergency living arrangements.

History: Cr. Register, January, 1987, No. 373, eff. 2–1–87.

DHS 94.24 Humane psychological and physical environment. (1) CLEAN, SAFE AND HUMANE ENVIRONMENT. Treatment facilities shall provide patients with a clean, safe and humane environment as required under s. 51.61 (1) (m), Stats., and this section.

(2) COMFORT, SAFETY AND RESPECT. (a) Staff shall take reasonable steps to ensure the physical safety of all patients.

(b) Each patient shall be treated with respect and with recognition of the patient's dignity by all employees of the service provider and by all licensed, certified, registered or permitted providers of health care with whom the patient comes in contact.

(c) A treatment facility may fingerprint a patient only if the patient is unknown, has no means of identification, cannot otherwise be identified and fingerprinting is required for identification. This restriction does not apply to patients transferred to the facility under s. 51.35 (3) or 51.37, Stats., or committed under ch. 971 or 975, Stats.

(d) Only inpatients may be subjected to a body search. All body searches shall be conducted as follows:

1. A personal search of an inpatient may be conducted by any facility staff member:

a. Before a patient leaves or enters the security enclosure of maximum security units;

b. Before a patient is placed in seclusion;

c. When there is documented reason to believe the patient has, on his or her person, objects or materials which threaten the safety or security of patients or other persons; or

d. If, for security reasons, the facility routinely conducts personal searches of patients committed under ch. 971 or 975, Stats., patients residing in the maximum security facility at the Mendota mental health institute or a secure mental health unit or facility under s. 980.065, Stats., and persons transferred under s. 51.35 (3) or 51.37, Stats.;

2. A strip search of an inpatient may be conducted:

a. Only in a clean and private place;

b. Except in an emergency, only by a person of the same sex;

c. Only when all less intrusive search procedures are deemed inadequate; and

d. Only under circumstances specified under subd. 1. a. to c.;

3. A body cavity search of an inpatient may be conducted:

a. Only in a clean and private place;

b. Only by a physician and, whenever possible, by a physician of the same sex;

c. Only when all less intrusive search procedures are deemed inadequate; and

d. Only under circumstances specified under subd. 1. a. to c.

(e) The room and personal belongings of an inpatient may be searched only when there is documented reason to believe that security rules have been violated, except that searches may be conducted in forensic units, the maximum security facility at the Mendota mental health institute or a secure mental health unit or facility under s. 980.065, Stats., in accordance with written facility policies.

(f) Each inpatient shall be assisted to achieve maximum capability in personal hygiene and self–grooming and shall have reasonable access to:

1. Toilet articles;

2. Toothbrush and dentifrice;

3. A shower or tub bath at least once every 2 days, unless medically contraindicated;

4. Services of a barber or beautician on a regular basis; and

5. Shaving equipment and facilities.

(g) Each patient shall be given an opportunity to refute any accusations prior to initiation of disciplinary action.

(h) No patient may be disciplined for a violation of a treatment facility rule unless the patient has had prior notice of the rule.

(i) 1. Each inpatient shall have unscheduled access to a working flush toilet and sink, except when the patient is in seclusion or for security reasons or when medically contraindicated.

2. Upon request of the patient, the legal guardian of an incompetent patient or the parent of a minor, staff of the same sex shall be available to assist the patient in toileting or bathing.

3. Every patient in isolation or seclusion shall be provided an opportunity for access to a toilet at least every 30 minutes.

(j) Inpatients shall be allowed to provide their own room decorations except that a facility may restrict this right for documented security or safety reasons. Facilities may adopt policies restricting the areas where patients may display sexually explicit or patently offensive room decorations and may prohibit gang–related room decorations.

(3) SOCIAL, RECREATIONAL AND LEISURE TIME ACTIVITIES. (a) Inpatients shall be provided access to current newspapers and magazines, and shall have reasonable access to radio and television upon request, except for documented security or safety reasons.

(b) An inpatient shall be allowed individual expression through music, art, reading materials and media except for any limitation that may be necessary for documented security or safety reasons.

(c) Inpatients may not be prevented from acquiring, at their own expense, printed material, a television, a radio, recordings or movies, except for documented security or safety reasons.

(d) Each inpatient shall have reasonable access to his or her own musical instruments and to art and writing supplies, along with reasonable access to appropriate space and supervision for the use of the instruments and supplies, except for documented security or safety reasons.

Note: Any denial or restriction of a patient's right to use his or her personal articles is governed by s. DHS 94.05 and s. 51.61 (2), Stats.

(e) Each inpatient shall be provided suitable opportunities for social interaction with members of both sexes, except for documented treatment, security or safety reasons.

(f) Each inpatient shall have an opportunity for reasonable and regular access to facilities for physical exercise and shall have an opportunity for access to a variety of appropriate recreational facilities away from the living unit to the extent possible, except for any limitation that may be necessary for documented individual security or safety reasons.

(g) Each inpatient shall be provided an opportunity to be out of doors at regular and frequent intervals, with supervision as necessary, except when health reasons or documented individual security reasons indicate otherwise.

(h) Patients have a right to be free from having arbitrary decisions made about them. To be non–arbitrary, a decision about a client shall be rationally based upon a legitimate treatment, management or security interest.

(i) Inpatients shall be permitted to conduct personal and business affairs in any lawful manner not otherwise limited by statute so long as these do not interfere with the patient's treatment plan, the orderly operation of the facility, security or the rights of other patients.

(4) FOOD SERVICE. (a) Each inpatient shall be provided a nutritional diet which permits a reasonable choice of appealing food served in a pleasant manner.

(b) Snacks between meals shall be accessible to inpatients on all living units, except when contraindicated for individual patients.

(c) All inpatients shall be allowed a minimum of 30 minutes per meal and additional time as feasible.

(d) Menu preparation shall take into account customary religious, cultural or strongly–held personal convictions of inpatients.

History: Cr. Register, January, 1987, No. 373, eff. 2–1–87; am. (2) (b), (j), (3) (b), (f), (g), cr. (3) (h), renum. (3) (i) from HSS 94.07 (5), Register, June, 1996, No. 486, eff. 7–1–96; emerg. am. (2) (e), eff. 8–15–98; am. (2) (d) 1. d. and (e), Register, April, 1999, No. 520, eff. 5–1–99.

DHS 94.25 Patient funds. Except as otherwise provided under s. 51.61 (1) (v), Stats., a patient shall be permitted to use the patient's own money as the patient wishes. A service provider

holding funds for a patient shall give the patient an accounting of those funds in accordance with s. 51.61 (1) (v), Stats.

History: Cr. Register, June, 1996, No. 486, eff. 7–1–96.

DHS 94.26 Clothing and laundry. (1) Inpatients shall be permitted to wear their own clothing as authorized under s. 51.61 (1) (q), Stats., and this section.

(2) If inpatients do not have enough of their own clothing, they shall be furnished with appropriate noninstitutional clothing of proper size as follows:

(a) There shall be sufficient clothing to allow each patient at least one change of underwear a day and 3 changes of clothing a week; and

(b) There shall be clothing which is appropriate for patients to wear out of doors and on trips or visits in all weather conditions.

(3) All inpatients shall be provided with laundry service or, if the patient can use a washer and dryer, with access to washers and dryers. Facilities shall take reasonable measures to prevent the loss of inpatients' clothing during use of laundry services.

History: Cr. Register, January, 1987, No. 373, eff. 2–1–87; renum. from HSS 94.25, Register, June, 1996, No. 486, eff. 7–1–96.

DHS 94.27 Storage space. (1) Each inpatient shall be provided sufficient and convenient space for clothing, toilet articles and other personal belongings, as required under s. 51.61 (1) (r), Stats., and this section.

(2) Individual storage space shall be conveniently accessible to the patient, shall accommodate hanging of clothes and shall be lockable or otherwise made secure if requested by the patient.

(3) Personal storage space may be searched only if there is documented reason to believe a violation of the facility's security regulations has occurred and the patient is given the opportunity to be present during the search, except in forensic units where routine searches may be conducted in accordance with written facility policies.

History: Cr. Register, January, 1987, No. 373, eff. 2–1–87; renum. from HSS 94.26, Register, June, 1996, No. 486, eff. 7–1–96.

DHS 94.28 Right to file grievances. (1) A patient or a person acting on behalf of a patient may file a grievance under s. DHS 94.29 procedures with the administrator of a facility or other service provider or with a staff member of the facility or other service provider without fear of reprisal and may communicate, subject to s. 51.61 (1) (p), Stats., with any public official or any other person without fear of reprisal.

(2) No person may intentionally retaliate or discriminate against any patient, person acting on behalf of a patient or employee for contacting or providing information to any official or to an employee of any state protection and advocacy agency, or for initiating, participating in or testifying in a grievance procedure or in any action for any remedy authorized by law.

(3) No person may deprive a patient of the ability to seek redress for alleged violations of his or her rights by unreasonably precluding the patient from using the grievance procedure established under s. DHS 94.29 or from communicating, subject to any valid telephone or visitor restriction under s. DHS 94.05, with a court, government official, grievance investigator or staff member of a protection and advocacy agency or with legal counsel.

History: Cr. Register, June, 1996, No. 486, eff. 7–1–96.

DHS 94.29 Grievance resolution procedures. Failure of a treatment facility to comply with any provision of rights under s. 51.61, Stats., or this chapter may be processed as a grievance under s. 51.61 (5), Stats., and subch. III of this chapter.

History: Renum. from HSS 94.27 (1) and am., Register, June, 1996, No. 486, eff. 7–1–96.

DHS 94.30 Compliance assurance. (1) Each treatment facility director and program director shall ensure that all of his or her employees who have any patient contact are aware of the requirements of this chapter and of the criminal and civil liabilities for violation of ss. 51.30 (10), 51.61, 146.84, 813.123, 940.22 (2), 940.225, 940.285, 940.295 and 943.20 (3) (d) 6., Stats., and of the protection for reporting violations of rights to licensing agencies under s. 51.61 (10), Stats.

(2) In the event that a contracted treatment facility does not comply with an applicable requirement of this chapter, the county department shall notify the department of the specific noncompliance within 7 calendar days of its discovery.

History: Cr. Register, January, 1987, No. 373, eff. 2–1–87; renum. from HSS 94.28, Register, June, 1996, No. 486, eff. 7–1–96.

DHS 94.31 Application of other rules and regulations. In applying the requirements of this chapter, when a different state rule or federal regulation also applies to the protection of a particular right of patients, the different state rule or federal regulation shall be controlling if it does more to promote patient rights than the counterpart requirement in this chapter.

History: Cr. Register, January, 1987, No. 373, eff. 2–1–87; renum. from HSS 94.29, Register, June, 1996, No. 486, eff. 7–1–96.

Subchapter III — Standards for Grievance Resolution Procedures

DHS 94.40 System requirements. (1) GRIEVANCE RESOLUTION SYSTEM REQUIRED. All programs providing services or residential care to persons who need the services or residential care because of mental illness, a developmental disability, alcoholism or drug dependency, as those terms are defined in s. 51.01, Stats., shall have a grievance resolution system which complies with the requirements of this subchapter.

(2) WRITTEN POLICIES. A program shall have written policies which provide that:

(a) Staff of the program know and understand the rights of the clients they serve;

(b) Fair, responsive and respectful procedures are available which permit clients to obtain resolution of their grievances within the time frames provided in this subchapter;

(c) Staff and clients are instructed in both the formal procedures by which clients may seek resolution of grievances, and informal methods for resolving client concerns; and

(d) Staff who act as client rights specialists, or private individuals with whom the program contracts for this service, are trained in the procedures required by this subchapter, techniques for resolution of concerns and grievances and the applicable provisions of ch. 51, Stats., ch. DHS 92 and this chapter.

(3) CLIENT RIGHTS SPECIALIST. (a) Each program or coalition of programs shall designate one or more persons to act as client rights specialists.

(b) The client rights specialist may be an employee of the program or of one of the programs in a coalition or may be a person under contract to a program or to a coalition of programs.

(c) The client rights specialist assigned to conduct a program level review under s. DHS 94.41 shall not have any involvement in the conditions or activities forming the basis of the client's grievance, or have any other substantial interest in those matters arising from his or her relationship to the program or the client, other than employment.

(d) If at any time during the formal resolution process a grievant wishes to switch to the informal resolution process, and the other parties agree to the switch, the client rights specialist may suspend the formal resolution process and attempt to facilitate a resolution of the matter between the parties without prejudice to positions of the grievant or the program.

(e) If the client chooses to use the informal resolution process and the matter is resolved, the client rights specialist shall prepare a brief report indicating the nature of the resolution and file it with the program manager, with copies to the client, any person acting on behalf of the client pursuant to s. DHS 94.49, and the parent or

guardian of a client if that person's consent is required for treatment.

(4) INFORMAL RESOLUTION PROCESS. (a) Each program shall have available a process which offers clients and persons acting on behalf of clients the option of seeking informal resolution of their concerns.

(b) Use of the informal resolution process shall not be a prerequisite for seeking formal relief.

(c) The informal resolution process may be used pending initiation of the formal resolution process or as an adjunct during the formal resolution process.

(d) The informal resolution process shall be adapted to the particular needs and strengths of the clients being served by the program in order to assist them and any persons acting on their behalf to participate in and understand the process as much as possible.

(e) Any applicable time limits of the formal resolution process shall be suspended during the use of the informal resolution process until a grievant indicates that he or she wishes the formal resolution process to begin or until any party requests that the formal resolution process resume.

(5) FORMAL RESOLUTION PROCESS. Each program shall have a formal resolution process for program level review of grievances under s. DHS 94.41 which includes:

(a) A process for training client rights specialists and for protecting their neutrality while conducting grievance reviews by establishing conditions which allow them to be objective in their actions, such as not allowing retribution against them for unpopular decisions;

(b) Procedures for:

1. Conducting program level inquiries;

2. Preparing reports that include factual findings, determinations of merit and recommendations for resolving grievances;

3. Completing the review process within the time limits of this subchapter;

4. Maintaining impartiality in the conduct of the inquiry; and

5. Permitting both clients and staff an equal opportunity to be heard during the process;

(c) A method for informing clients and their guardians, parents and advocates about the way grievances are presented and the process by which reviews of grievances are conducted which takes into account any special limitations clients of the program may have and adapts the system to allow clients to participate in the process to the fullest extent possible;

(d) A process for responding to decisions on grievance reviews at any level that provides for rapid and accurate compliance with final determinations as well as orders for interim relief under s. DHS 94.50;

(e) A provision that, at any time, if all parties agree, the formal resolution process and any applicable time limits may be suspended to allow the parties to attempt an informal resolution of the matter under sub. (4), facilitated by the individual conducting the review at that level of the process. If time limits are suspended, they shall begin running again upon request of any party that the formal process be resumed.

(6) PROTECTIONS FOR CLIENTS AND ADVOCATES. A program shall have policies and procedures in place which provide that no sanctions will be threatened or imposed against any client who files a grievance, or any person, including an employee of the department, a county department or a service provider, who assists a client in filing a grievance.

Note: See s.51.61(5) (d) and (7m), Stats., for the civil and criminal penalties that are available to deal with anyone who threatens action or takes action against a client who files a grievance or against a person who assists a client in filing a grievance.

(7) CLIENT INSTRUCTION. As part of the notification of rights required under s. DHS 94.04, each program shall establish specific methods of instruction to help clients and their parents or guardians, if consent by a parent or guardian is required for treatment, understand and use the grievance system.

History: Cr. Register, June, 1996, No. 486, eff. 7–1–96; correction in (2) (d) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532; correction in (2) (d) made under s. 13.92 (4) (b) 7., Stats., Register November 2008 No. 635.

DHS 94.41 Program level review. (1) PRESENTATION OF GRIEVANCE. (a) A program shall establish a flexible and open process through which clients and those acting on behalf of clients can present grievances.

Note: See DHS 94.49 for grievances presented on behalf of clients, including clients under guardianship.

(b) A grievance may be presented to the program manager or any staff person in writing, orally or by any alternative method through which the client or other person ordinarily communicates.

(c) Whenever possible, a program shall attempt to resolve a grievance at the time it is presented by listening to the nature of the complaint and by making adjustments in operations or conditions that respond to the individual needs of the client.

(d) If a grievance cannot be immediately resolved, the person presenting the issue shall be given the option of using the program's formal or informal resolution process.

(e) If the informal resolution process under s. DHS 94.40 (4) is chosen, any time limits in sub. (5) shall be suspended while the parties work out their differences.

(f) If the formal resolution process under s. DHS 94.40 (5) is chosen, the program shall refer the grievance to a client rights specialist who shall conduct an inquiry and file a report as provided in subs. (2) and (3).

(2) INQUIRY BY CLIENT RIGHTS SPECIALIST. (a) Upon receiving a referral, the client rights specialist shall meet with the grievant and the client, if different, and any staff member who may be named in the complaint, identify the matters at issue and explain the process for seeking formal resolution of grievances.

(b) If the grievance was presented orally or through an alternative form of communication, the client rights specialist shall assist the grievant in putting the grievance into writing for use in the ongoing process. A copy of the written grievance shall be given to the grievant and the client, and included in the report.

(c) 1. If there are facts in dispute, the client rights specialist shall conduct an inquiry into the incidents or conditions which are the focus of the grievance.

2. The program manager shall provide the client rights specialist with full access to all information needed to investigate the grievance, all relevant areas of the program facility named in the grievance and all records pertaining to the matters raised in the grievance.

3. The inquiry of the client rights specialist may include questioning staff, the client or clients on whose behalf the grievance was presented, other clients, reviewing applicable records and charts, examining equipment and materials and any other activity necessary in order to form an accurate factual basis for the resolution of the grievance.

(d) When an inquiry requires access to confidential information protected under s. 51.30, Stats., and the client rights specialist conducting the inquiry does not otherwise have access to the information under an exception found in s. 51.30 (4) (b), Stats., the client, or the guardian or parent of the client, if the guardian or parent's consent is required, may be asked to consent in writing to the release of that information to the client rights specialist and other persons involved in the grievance resolution process. The client rights specialist may proceed with the inquiry only if written consent is obtained. If consent for access is not granted, the program shall attempt to resolve the matter through the informal resolution process. The program may include in forms used for presenting written grievances a corresponding provision relating to consent for release of confidential information.

(e) The client rights specialist shall maintain the confidentiality of any information about any program client gained during the inquiry, unless specific releases for that information are granted.

(f) With the consent of the grievant, the client rights specialist may suspend the formal resolution process and attempt an informal resolution of the grievance as provided in s. DHS 94.40 (4).

(3) REPORT OF CLIENT RIGHTS SPECIALIST. (a) In this subsection:

1. "Founded" means that there has been a violation of a specific right guaranteed to the client under ch. DHS 92 or this chapter or ch. 51, Stats.

2. "Unfounded" means that the grievance is without merit or not a matter within the jurisdiction of ch. DHS 92 or this chapter or s. 51.61, Stats.

(b) When the inquiry under sub. (2) (c) is complete, the client rights specialist shall prepare a written report with a description of the relevant facts agreed upon by the parties or gathered during the inquiry, the application of the appropriate laws and rules to those facts, a determination as to whether the grievance was founded or unfounded, and the basis for the determination.

(c) If the grievance is determined to be founded, the report shall describe the specific actions or adjustments recommended by the client rights specialist for resolving the issues presented. Where appropriate, the recommendation may include a timeline for carrying out the proposed acts and adjustments.

(d) If the grievance is determined to be unfounded, but through the process of the inquiry the client rights specialist has identified issues which appear to affect the quality of services in the program or to result in significant interpersonal conflicts, the report may include informal suggestions for improving the situation.

(e) Copies of the report shall be given to the program manager, the client and the grievant, if other than the client, the parent or guardian of a client if that person's consent is required for treatment, and all relevant staff.

(f) The client rights specialist shall purge the names or other client identifying information of any client involved in the grievance, other than the client directly involved, when providing copies of the report to persons other than the staff directly involved, the program manager or other staff who have a need to know the information.

(4) PROGRAM MANAGER'S DECISION. (a) If the program manager, the client, the grievant, if other than the client, and the guardian or parent, if that person's consent is required for treatment, agree with the report of the client rights specialist, and if the report contains recommendations for resolution, those recommendations shall be put into effect within an agreed upon timeframe.

(b) If there is disagreement over the report, the client rights specialist may confer with the client, the grievant, if other than the client, the parent or guardian of the client, if that person's consent is required for treatment, and the program manager or his or her designee to establish a mutually acceptable plan for resolving the grievance.

(c) If the disagreement cannot be resolved through the discussions under par. (b), the program manager or designee shall prepare a written decision describing the matters which remain in dispute and stating the findings and determinations or recommendations which form the official position of the program.

(d) The decision may affirm, modify or reverse the findings and recommendations proposed by the client rights specialist. However, the program manager shall state the basis for any modifications which are made.

(e) The program manager's decision shall be given personally or sent by first class mail to the client and the grievant, if other than the client, the parent or guardian of a client, if that person's consent is required for treatment, and all staff who received a copy of the report of the client rights specialist. The decision shall include a notice which explains how, where and by whom a request for administrative review of the decision under s. DHS 94.42 (2) may be filed and states the time limit for filing a request for administrative review.

(5) TIME LIMITS. (a) *Filing a grievance.* 1. A client or a person acting on the client's behalf shall present a grievance to the client rights specialist, a staff person or the program manager within 45 days of the occurrence of the event or circumstance in the grievance or of the time when the event or circumstance was actually discovered or should reasonably have been discovered, or of the client's gaining or regaining the ability to report the matter, whichever comes last.

2. The program manager may grant an extension of the 45 day time limit for filing a grievance for good cause. In this subdivision, "good cause" may include but is not limited to circumstances in which there is a reasonable likelihood that despite the delay:

a. Investigating the grievance will result in an improvement in care for or prevention of harm to the client in question or other clients in the program; or

b. Failing to investigate the grievance would result in a substantial injustice.

(b) *Processing grievances in non–emergency situations.* In situations in which there is not an emergency, the following time limits apply:

1. A staff person receiving a request for formal resolution of a grievance shall present the request to the program manager or his or her designee as soon as possible but not later than the end of the staff person's shift;

2. The program manager or his or her designee shall assign a client rights specialist to the grievance within 3 business days after the request for formal process has been made;

3. The client rights specialist shall complete his or her inquiries and submit the report under sub. (4) within 30 days from the date the grievance was presented to a program staff person; and

4. A written decision under sub. (4) (e) shall be issued within 10 days of the receipt of the report, unless the client, the grievant, if other than the client, and the parent or guardian of the client, if that person's consent is necessary for treatment, agree to extend this period of time while further attempts are made to resolve the matters still in dispute.

(c) *Processing grievances in emergency situations.* 1. In emergency situations, the following time limits apply:

a. A staff person receiving the request shall immediately present the matter to the program manager or his or her designee;

b. The program manager or designee shall assign a client rights specialist as soon as possible but no later than 24 hours after the request is received;

c. The client rights specialist shall complete the inquiry and submit the report identified in sub. (4) within 5 days from the date the grievance was presented; and

d. A written decision under sub. (4) (e) shall be issued within 5 days of the receipt of the report, unless the client, the grievant, if other than the client, and the guardian or parent of the client, if that person's consent is necessary for treatment, agree to extend this period of time while further attempts are made to resolve the matters still in dispute.

2. If after a preliminary investigation it appears that there is no emergency, the client rights specialist may treat the situation as a non–emergency for the remainder of the process.

(6) PROTECTION OF CLIENTS. If the client rights specialist determines that a client or a group of clients is at risk of harm, and the program has not yet acted to eliminate this risk, he or she shall immediately inform the program manager, the county department operating or contracting for the operation of the program, if any, and the office of the department with designated responsibility for investigating client grievances under s. DHS 94.42 (1) (b) 2. of the situation. If the situation continues to place the client or the group of clients at risk, the office designated under s. DHS 94.42 (1) (b)

2. shall take immediate action to protect the client or clients, pending further investigation.

History: Cr. Register, June, 1996, No. 486, eff. 7–1–96; corrections in (3) (a) 1. and 2. made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532; corrections in (3) (a) 1. and 2. made under s. 13.92 (4) (b) 7., Stats., Register November 2008 No. 635.

DHS 94.42 Administrative review by county or state. (1) RESPONSIBILITY FOR ADMINISTRATIVE REVIEW. (a) 1. For a program operated by a county department or under contract with a county department, a requested administrative review of the program manager's decision under s. DHS 94.41 (4) (e) shall be conducted by the director of the county department.

2. The director of a county department may conduct administrative reviews or may designate a specific person or persons from the county department's staff to conduct administrative reviews at the county level. If a staff person is designated to carry out a review, he or she shall prepare a final report for the approval of the director.

(b) 1. For a program operating independently of a county department, including a program operated by a state agency, a requested administrative review shall be carried out by the office of the department with responsibility for investigating client grievances as provided in subd. 2.

2. The secretary shall designate a unit or office of the department to be responsible for conducting state level administrative reviews. The supervisor of the unit or office shall assign a specific staff person to act as grievance examiner for a review brought directly to the state from a program under subd. 1. or for a review brought to the state following a county level review under s. DHS 94.43. This office shall also be responsible for investigating complaints under s. DHS 94.51 relating to the existence or adequacy of grievance resolution systems.

(2) REQUEST FOR ADMINISTRATIVE REVIEW. (a) A request for administrative review of a program manager's decision shall state the basis for the grievant's objection and may include a proposed alternative resolution.

(b) 1. A request for administrative review may be made in writing, orally or through a person's alternative means of communication to the program manager by the grievant, the client, if other than the grievant, or the client's parent or guardian, if that person's consent is necessary for treatment.

2. If the request is made orally or through an alternative mode of communication, the program manager shall prepare a written summary of the request.

(c) When an administrative review is requested, the program manager shall transmit a copy of the original grievance, the report of the client rights specialist, the written decision and the request for review to the director of the county department or the state grievance examiner, as appropriate.

(3) SWITCH TO INFORMAL RESOLUTION PROCESS. At any time, if all parties agree, the formal resolution process and any applicable time limits may be suspended to allow the parties to attempt an informal resolution of the matter under s. DHS 94.40 (4), facilitated by the individual conducting the review at that level of the process. If time limits are suspended, they shall begin running again upon request of any party that the formal resolution process be resumed.

(4) GATHERING OF INFORMATION AND PREPARATION OF REPORT. (a) *Consideration of report and decision.* The individual conducting the administrative review shall consider the report of the client rights specialist and the decision of the program manager, but shall independently render an opinion by applying the appropriate provisions of ch. 51, Stats., ch. DHS 92 and this chapter to the facts and circumstances of the grievance.

(b) *Gathering of additional information.* 1. If the state grievance examiner or county director, or his or her designee, determines that additional information is necessary to complete the review, or if the client or person acting on behalf of the client has made a reasonable allegation that the findings of fact by the client rights specialist or the program manager are inaccurate, further inquiry into the circumstances underlying the grievance may be made, including but not limited to personal interviews, telephone calls and inspection of equipment, facilities, records, documents and other physical or written materials which may be relevant.

2. Individuals gathering information in support of an administrative review shall have access to all relevant areas of the facility or other program named in the grievance during ordinary business hours or any other times specifically referenced in the original grievance, and shall have access to all records pertaining to the grievance.

3. If requested by the client or other grievant, the individual conducting the administrative review shall contact the client or other grievant.

4. If the circumstances underlying the grievance require an examination of clinical services, including but not limited to psychotherapeutic treatment, behavioral interventions and the administration of medication, the individual conducting the review may request that consultation on the matters in question be provided by an independent clinician with the experience and training appropriate for the inquiry.

(c) *Report.* 1. The individual conducting the review shall prepare a written report with findings of fact, conclusions based on upon the findings of fact and a determination of whether the grievance was founded or unfounded as defined in s. DHS 94.41 (3) (a).

2. If the review has been carried out by a staff person designated by the county director, the staff person shall submit a draft report to the county director who shall issue a written decision in the matter.

3. If the review has been conducted by a grievance examiner appointed under sub. (1) (b) 2., the report by the grievance examiner shall constitute the administrative decision at the state level.

4. If the grievance is determined to be founded, the decision shall identify the specific actions or adjustments to be carried out to resolve the grievance.

5. If the grievance is determined to be unfounded, the decision shall dismiss the grievance, pending any further request for review.

(5) DISTRIBUTION OF COUNTY DIRECTOR DECISION. (a) Copies of the decision by the county director shall be given personally or sent by first class mail to the program manager, the client, the grievant if other than the client, the client rights specialist, the parent or guardian of the client, if that person's consent is required for treatment, all staff who received a copy of the program manager's decision, and the office of the department designated under sub. (1) (b) 2.

(b) If the parties agree with the decision, any recommendations shall be put into effect as soon as possible.

(c) If there is a disagreement over the decision, the parties may confer in a meeting facilitated by the individual conducting the review in an attempt to establish a mutually acceptable plan for resolving the grievance. Any applicable time limits shall be suspended while the parties confer, but shall begin running again if either party indicates a desire to resume the formal resolution process.

(d) The county director's decision shall include a notice to the client and the program director which explains how and where a state level review of the decision can be requested under s. DHS 94.43 and the time limits within which a request for further review must be filed.

(e) Any party shall have 14 days from the date the party receives a county director's decision under par. (a) to request a state level review under s. DHS 94.43 of the county director's decision.

(6) DISTRIBUTION OF STATE GRIEVANCE EXAMINER DECISION. (a) Copies of the decision by the state grievance examiner shall be given personally or sent by first class mail to the program manager, the client, the grievant, if other than the client, the client rights specialist, the parent or guardian of a client, if that person's consent is required for treatment, and all staff who received a copy of the program manager's decision.

(b) If the program manager, the client and the person acting on behalf of the client, if any, agree with the decision, any recommendations shall be put into effect as soon as possible.

(c) If there is disagreement over the decision, the parties may confer in a meeting facilitated by the state grievance examiner in an attempt to establish a mutually acceptable plan for resolving the grievance. Any applicable time limits shall be suspended while the parties confer, but shall begin running again if either party indicates a desire to resume the formal resolution process.

(d) The decision shall include a notice to the parties which tells how and where to request final state review under s. DHS 94.44 and states the time limits within which any request for final state review must be made.

(7) TIME LIMITS. (a) *Request for review.* A grievant shall have 14 days from the date he or she received the written decision of the program manager under s. DHS 94.41 (4) (e) to request an administrative review.

(b) *Review in non–emergency situations.* 1. In situations in which there is not an emergency, the following time limits apply:

a. The program manager or his or her designee shall, upon receipt of a request for review, transmit by first class mail the materials identified in sub. (2) (c) to the county director or the office of the department designated under sub. (1) (b) 2., as appropriate, within 7 days of receiving the request; and

b. The written decision on the review shall be issued within 30 days after the request for review was presented to the program manager.

2. The county director or the state grievance examiner in non–emergency situations may extend the time limit for completing the administrative review for up to 30 additional days with the consent of the program director, the client and the grievant, if other than the client, or upon a showing that additional time is necessary to complete the inquiry or evaluation of the matters presented for review.

(c) *Review in emergency situations.* 1. In emergency situations, the following time limits apply:

a. The program manager or his or her designee shall, upon receipt of a request for review, transmit by overnight mail the materials identified in sub. (2) (c) to the county director or the office of the department designated under sub. (1) (b) 2., as appropriate, within 3 business days of receiving the request; and

b. The written decision on the review shall be issued within 10 days after the request for review was presented to the program manager.

2. If after a preliminary investigation it appears that there is no emergency, the state grievance examiner or county director may treat the situation as a non–emergency for the remainder of the process.

(8) PROTECTION OF CLIENTS. If the state grievance examiner or county director determines that a client or group of clients is at risk of harm, and the program has not yet acted to eliminate this risk, he or she shall take immediate action to protect the client or clients, pending further investigation.

(9) PROTECTION OF CLIENT CONFIDENTIALITY. The county director or state grievance examiner shall purge the names or other client identifying information of any client involved in the grievance, including the client directly involved, when providing copies of the decision to persons other than the client or a person acting on the client's behalf, the parent or guardian of the client, the staff directly involved, or the program manager or other staff who have a need to know the information.

History: Cr. Register, June, 1996, No. 486, eff. 7–1–96; correction in (4) (a) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532; correction in (4) (a) made under s. 13.92 (4) (b) 7., Stats., Register November 2008 No. 635.

DHS 94.43 State level review of county administrative decision. (1) REQUEST FOR REVIEW. (a) For a program operated by or under contract with a county department, if the program manager, the client or the grievant, if other than the client, disagrees with the decision of the county director under s. DHS 94.42 (5), that person may seek a review of the decision by the office or unit designated by the secretary under s. DHS 94.42 (1) (b) 2.

(b) If a grievant wishes to seek a state review of the county director's decision, he or she shall make the request to the program manager. The program manager shall forward the request and supporting materials to the office or unit designated under s. DHS 94.42 (1) (b) 2. in the same manner as provided in s. DHS 94.42 (2) (c), with a copy sent by first class mail to the county director. All other parties shall make their request to the office or unit designated under s. DHS 94.42 (1) (b) 2., with copies of the request given personally or sent by first class mail to the other parties.

(2) PROCEDURES AND TIME LIMITS. State review of a decision of a county director shall be conducted in the same manner and under the same time limits as an administrative review of a program operating independently of a county department under s. DHS 94.42.

(3) DISTRIBUTION OF DECISION. Copies of the decision by the state grievance examiner shall be given personally or sent by first class mail to the program manager, the client, the grievant, if other than the client, the county director, the client rights specialist and the client's parent or guardian if that person's consent is required for treatment.

(4) NOTICE OF RIGHT TO FINAL STATE REVIEW. The decision shall include a notice which explains how and where and under what time limits a party who disagrees with the decision of the state grievance examiner may seek final state review of the grievance under s. DHS 94.44.

(5) PROTECTION OF CLIENT CONFIDENTIALITY. The state grievance examiner shall purge the names or other client identifying information of any client involved in the grievance, including the client directly involved, when providing copies of the decision to persons other than the client, or a person acting on behalf of the client, the parent or guardian of the client, the staff directly involved, or the program manager or other staff who have a need to know the information.

History: Cr. Register, June, 1996, No. 486, eff. 7–1–96.

DHS 94.44 Final state review. (1) DESIGNATION OF ADMINISTRATOR. The secretary of the department shall designate a specific division administrator or administrators to conduct final reviews of client grievances.

(2) REQUEST FOR REVIEW. (a) A grievant seeking final state review shall present his or her request to the program manager who shall transmit the request to an administrator designated under sub. (1) along with copies of the original grievance and all prior decisions and reports.

(b) A request by a program manager or county director for final state review shall be presented to the designated administrator or administrators on forms provided by the department and include with the request copies of the original grievance and all subsequent decisions and reports. A copy of the request for review shall be sent by first class mail to all other parties, including the client and the grievant, if other than the client.

(c) A request shall describe the portion or portions of the prior decision with which the party disagrees, the basis for the disagree-

ment and any arguments or additional information the party wishes the department to consider.

(d) If the grievant is unable to prepare a written request for final state review, the program manager or his or her designee shall assist in completing the necessary forms.

(3) INFORMATION FOR REVIEW. The administrator conducting the final state review may request that additional information be submitted by any party or may conduct the final review based solely on the information already received.

(4) FINAL ADMINISTRATIVE DETERMINATION. (a) The administrator shall prepare a final administrative determination for resolution of the grievance.

(b) The administrator shall affirm the prior decision unless it is contrary to state statutes or administrative rules.

(c) If the administrator determines that the prior decision should be modified or reversed, he or she shall state the basis for the modification or reversal and shall include in the final administrative determination specific instructions for carrying out any acts or adjustments being ordered to resolve the grievance and the timelines for carrying them out.

(5) DISTRIBUTION OF DECISION. (a) Copies of the decision shall be sent by first class mail to the grievance examiner, the county director, if the program was operated by or under contract with a county department, the program manager, the client, the grievant, if other than the client, the client rights specialist, the parent or guardian of a client, if that person's consent is required for treatment, and all staff who received a copy of the state grievance examiner's decision..

(b) The decision shall contain a notice to the parties that there is no further administrative appeal beyond this stage. The grievant shall be advised of the client's right to pursue additional consideration of the matter by bringing action in a court under s. 51.61 (7), Stats.

(6) TIME LIMITS. (a) *Request for review.* A party shall have 14 days from the date he or she receives the written decision by the state grievance examiner under s. DHS 94.42 (6) or 94.43 to request a final state review.

(b) *Non–emergency situations.* 1. In situations in which there is not an emergency, the following time limits apply:

a. The program manager or his or her designee shall, upon receipt of the request for review by a grievant, transmit by first class mail the materials identified in sub. (2) (a) to the administrator designated under sub. (1) within 7 days of receiving the request;

b. Other parties shall transmit by first class mail their request for review along with all of the materials directly to the department administrator within 14 days of receiving the decision of the state grievance examiner; and

c. The designated department administrator shall issue a final decision on the review within 30 days after the request for review was presented to the program manager by the grievant or a request for review by any other party was received by the designated department administrator.

2. The department administrator in non–emergency situations may extend the time limit for completing the administrative review for up to 30 additional days with the approval of the program director, the client and the grievant, if other than the client, or upon a showing that additional time is necessary to complete the inquiry or evaluation of the matters presented for review.

(c) *Emergency situations.* 1. In emergency situations, the following time limits apply:

a. The program manager or his or her designee shall, upon receipt of the request for review by a grievant, transmit by overnight mail the materials identified in sub. (2) (a) to the administrator designated under sub. (1) within 3 business days of receiving the request.

b. Other parties shall transmit by overnight mail their request for review along with all of the materials directly to the department administrator within 7 days of receiving the decision of the state grievance examiner; and

c. The final decision on the review shall be issued within 10 days after the request for review was presented to the program manager by the grievant or a request for review by any other party was received by the department administrator.

2. If after a preliminary investigation it appears that there is no emergency, the department administrator may treat the situation as a non–emergency for the remainder of the process.

(7) PROTECTION OF CLIENTS. If the department administrator determines that a client or group of clients continues at risk of harm and the program has not yet acted to eliminate this risk, he or she shall take immediate action to protect the client or clients, pending further investigation.

(8) PROTECTION OF CLIENT CONFIDENTIALITY. The department administrator shall purge the names or other client identifying information of any client involved in the grievance, including the client directly involved, when providing copies of the decision to persons other than the client or a person acting on behalf of the client, the parent or guardian of the client, the staff directly involved, or the program manager or other staff who have a need to know the information.

History: Cr. Register, June, 1996, No. 486, eff. 7–1–96.

DHS 94.45 Program coalitions. (1) A group of programs may form a coalition to operate a combined grievance resolution system in order to share the costs of operating the system and to increase the independence and expertise of the individuals acting as client rights specialists.

(2) The coalition may establish a common process for conducting program level reviews and for offering informal resolution services, or may identify specific variations of the process as it applies to each coalition member, so long as each variation complies with this subchapter.

(3) The programs in the coalition may agree to share the costs of training existing staff to act as client rights specialists or may jointly contract with one or more private individuals to provide this service upon request for any member of the coalition.

(4) A coalition shall operate in accordance with a written agreement signed by the member programs. The terms of the agreement shall provide for meeting the requirements of this subchapter in the operation of the grievance resolution system and for maintaining the impartiality of the client rights specialist.

History: Cr. Register, June, 1996, No. 486, eff. 7–1–96.

DHS 94.46 Multiple grievances by one client. (1) When a client or a person acting on behalf of a client has presented multiple grievances involving a variety of circumstances, the client rights specialist may establish an expanded timetable with specific priorities for investigating the allegations in a manner which appears most likely to deal with the issues in an efficient manner while addressing the most serious allegations first. This timetable may exceed the time limits in this subchapter, but shall include reasonable time limits for completing the investigation of each grievance. The client rights specialist shall notify the client or person acting on behalf of the client and the program manager of the timetable and priorities for resolution of multiple grievances within 10 days after beginning the inquiry.

(2) If there is an objection to the proposed timetable or priorities, the client rights specialist shall attempt to reach an informal resolution of the objection. If the client, person acting on behalf of the client or the program manager continues to object, that person may request a review of the issue by the county department or the state grievance examiner, whichever would normally hear an appeal of the program level review. In the absence of a request,

the timetable and priorities established by the client rights specialist shall be controlling.

History: Cr. Register, June, 1996, No. 486, eff. 7–1–96.

DHS 94.47 Related grievances by several clients. **(1)** When 2 or more clients have presented individual grievances involving the same circumstances or a related group of circumstances relating to a single program, the client rights specialist may conduct the investigation as if it were one grievance.

(2) If the client rights specialist believes the investigation of the grievance will require more time to complete than is allowed under the time limits established in this subchapter, the client rights specialist shall establish a reasonable time limit for completing the investigation. The client rights specialist shall notify the clients, any person or persons acting on their behalf and the program manager of the time limit within 10 days after beginning the inquiry.

(3) If there is an objection to the proposed time limit for completing the investigation, the client rights specialist shall attempt to reach an informal resolution of the objection. If a client, any person acting on behalf of any of the clients or the program manager continues to object, that person may request a review of the issue by the county department or the state grievance examiner, whichever would normally hear an appeal of the program level review. In the absence of a request, the timetable established by the client rights specialist for completing the investigation shall be controlling.

History: Cr. Register, June, 1996, No. 486, eff. 7–1–96.

DHS 94.48 Grievances involving several programs. **(1)** If a client has presented the same grievance against several programs, each of which would ordinarily use a different client rights specialist, the client rights specialists from all the programs named in the grievance may:

(a) Jointly conduct the investigation;

(b) Delegate the task to one or more of the client rights specialists involved; or

(c) Refer the matter to the county department or the office of the department with jurisdiction over the services offered by the program for an immediate county or first state review.

(2) If the client rights specialist or specialists believe the investigation of the grievance will require more time to complete than is allowed under the time limits established in this subchapter, the client rights specialist or specialists shall establish a reasonable time limit for completing the investigation. The client rights specialist or specialists shall notify the client, any person acting on the client's behalf and the program manager of the time limit within 10 days after beginning the inquiry.

(3) If there is an objection to the proposed time limit for completing the investigation, the client rights specialist shall attempt to reach an informal resolution of the objection. If the client, person acting on behalf of the client or the program manager continues to object, that person may request a review of the issue by the county department or the state grievance examiner, whichever would normally hear an appeal of the program level review. In the absence of a request, the time limit established by the client rights specialist or specialists for completing the investigation shall be controlling.

History: Cr. Register, June, 1996, No. 486, eff. 7–1–96.

DHS 94.49 Grievances presented on behalf of clients. **(1)** Any person who is aware of a possible violation of a client's rights under ch. 51, Stats., ch. DHS 92 or this chapter may present a grievance on behalf of the client.

(2) When a grievance is presented on behalf of a client by someone other than the client's parent or guardian, and the parent or guardian's consent is required for treatment, the client rights specialist shall meet with the client and the client's parent or guardian, to determine if the client or the client's parent or guardian, as appropriate, wishes the grievance investigated and resolved through the formal resolution process.

(3) If the client or, when the parent's or guardian's consent is required for treatment, the parent or guardian is opposed to using the formal resolution process, the client rights specialist may proceed with the investigation only if there are reasonable grounds to believe that failure to proceed may place the client or other clients at risk of physical or emotional harm. If there is no parent or guardian, or that person is not available, and the client is unable to express an opinion, the client rights specialist shall proceed.

(4) Where a grievance is filed on behalf of a client by a person who does not have a right to information about the client because of confidentiality statutes, the person may only receive confidential information as part of the investigation or resolution of the grievance with the informed consent of the client or his or her guardian, if there is one, the parent of a client who is under the age of 18, if the parent's consent is required for a release of information, or pursuant to an order of a court with jurisdiction over matters relating to the client under ch. 48, 51 or 55, Stats.

(5) In the absence of this consent, a person presenting a grievance on behalf of a client shall be informed of the determination of the client rights specialist and decision of the program manager, if any, regarding the merit of the grievance, but if the text of the determination contains confidential information to which the person is not privileged or for which a release has not been obtained, the text may not be disclosed to the person.

(6) (a) A person presenting a grievance on behalf of a client may request additional review of an adverse decision, up to and including final state review under s. DHS 94.44.

(b) If the client is opposed to requesting additional review, or when the parent or guardian's consent is required for treatment and the parent or guardian is opposed to requesting additional review, the reviewing officer may only proceed if the person presenting the grievance provides sufficient information to demonstrate that there are reasonable grounds for believing that failure to proceed may place the client or other clients at risk of physical or emotional harm.

History: Cr. Register, June, 1996, No. 486, eff. 7–1–96; correction in (1) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532; correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register November 2008 No. 635.

DHS 94.50 Interim relief. **(1)** If the client rights specialist or a person conducting an administrative review of a grievance finds that interim relief is necessary to protect a client's well–being pending resolution of a grievance, a directive may be given to the program manager to modify the services being provided to the client to the extent necessary to protect the client.

(2) A directive for interim relief shall be designed to provide the necessary protection at the minimum expense to the program while protecting the rights of the client.

(3) A program manager may appeal a directive for interim relief to the department administrator designated under s. DHS 94.44 (1).

History: Cr. Register, June, 1996, No. 486, eff. 7–1–96.

DHS 94.51 Complaints related to the existence or operation of grievance resolution systems. **(1)** Clients or persons acting on behalf of clients under s. DHS 94.49 may register complaints relating to failure of a program to have a grievance resolution system as required by s. 51.61 (5) (b), Stats., and this subchapter, or relating to the operation of an existing grievance resolution system directly to the unit or office of the department designated to conduct administrative reviews under s. DHS 94.42 (1) (b) 2.

(2) If a complaint regarding the existence or operation of a grievance resolution system is filed with the department, a state grievance examiner shall conduct an investigation to determine whether a grievance resolution system meeting the requirements of s. 51.61 (5) (b), Stats., and this subchapter is in place in the program.

(3) If the program lacks a grievance resolution system, or if the operation of an existing grievance resolution system is not in substantial compliance with the requirements of this subchapter, the state grievance examiner shall issue a report identifying the steps necessary for the program to implement a grievance resolution system that complies with this subchapter, with a timeline for implementation.

(4) The client or a person acting on behalf of the client or the program manager may seek a review of the state grievance examiner's report under sub. (3) by the administrator designated under s. DHS 94.44 (1).

(5) If the program fails to implement the required steps in the expected time period, the matter shall be referred by the grievance examiner to the appropriate unit or office of the department or the county department with responsibility for oversight of the program for action related to certification, licensure or reimbursement or for censure of the program.

(6) Nothing in this section shall be read as prohibiting or limiting in any way the beginning of an action under s. 51.61 (7) or (7m), Stats., or any other civil or criminal prosecution by or on behalf of a client.

History: Cr. Register, June, 1996, No. 486, eff. 7–1–96; correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register November 2008 No. 635.

DHS 94.52 Investigation by the department. The department may investigate any alleged violation of this chapter and shall, in accordance with ch. DHS 92, have access to treatment records and other materials and to individuals having information relating to the alleged violation.

History: Cr. Register, June, 1996, No. 486, eff. 7–1–96; correction made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532; correction made under s. 13.92 (4) (b) 7., Stats., Register November 2008 No. 635.

DHS 94.53 Support for development of grievance resolution systems. (1) The department shall prepare materials, including but not limited to model policies and program guidelines, which describe methods for implementing the elements necessary for a grievance resolution system which is in compliance with this subchapter.

(2) The secretary of the department shall designate an office or unit of the department which shall be responsible for providing or contracting for the provision of technical assistance to programs with questions about the development, operation and maintenance of consistency of grievance resolution systems, and for providing or arranging for the provision of training for persons who have been designated to act as client rights specialists and county directors or staff designated to carry out administrative reviews under s. DHS 94.42.

History: Cr. Register, June, 1996, No. 486, eff. 7–1–96.

DHS 94.54 Units of time. All time limits in this subchapter are expressed in calendar days unless otherwise noted.

History: Cr. Register, June, 1996, No. 486, eff. 7–1–96.

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. Gerhardstein, 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 a 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 purpose 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. Altenberg*, 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.

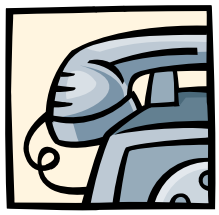
(1) TRANSFER OF PATIENTS AND RESIDENTS. (a) Subject to pars. (b), (d), and (dm), the department or the county department under s. 51.42 or 51.437 may transfer any patient or resident who is committed to it, or who is admitted to a treatment facility under its supervision or operating under an agreement 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

NOTE: There are additional rights within sec. 51.61(1) and HFS 94, Wisconsin Administrative Code. They are not mentioned here because they are more applicable to inpatient and residential treatment facilities. A copy of sec. 51.61, Wis. Stats. And/or HFS 94, Wisconsin Administrative Code is available upon request.

WRAPAROUND MILWAUKEE



CLIENT RIGHTS and the COMPLAINT/GRIEVANCE PROCEDURE

CLIENT RIGHTS

When you receive any type of service for mental illness, alcoholism, drug abuse, or a developmental disability, you have the following rights under Wisconsin Statute sec. 51.61(1) and HFS 94, Wisconsin Administrative Code:

PERSONAL RIGHTS

- You must be treated with dignity and respect, free from any verbal, physical, emotional or sexual abuse.
- You have the right to have staff make fair and reasonable decisions about your care.
- You may not be treated unfairly because of your race, color, national origin, sex, age, religion, disability or sexual orientation, arrest or conviction record, marital status or military participation.
- You may not be made to work if that work is of financial benefit to a treatment facility/agency (except for personal hskping chores that you would normally perform in your own home). If you agree to do other work, you must be paid.
- You may not be filmed, taped or photographed unless you agree to it.
- You have the right to ask for an Interpreter and have one provided to you as a covered service.

TREATMENT AND RELATED RIGHTS

- You must be provided prompt and adequate treatment, rehabilitation and educational services right for you within the limits of the available funding.
- You must be allowed to participate in the planning of your treatment and care.
- You must be informed of your treatment and care, including alternatives to and possible side effects of treatment, including medication.
- No treatment or medication may be given to you without your written, informed consent, unless it is needed in an emergency to prevent serious physical harm to your or others, or a court orders it. [If you have a guardian, however, your guardian may consent to treatment and medications on your behalf.]
- You may not be given unnecessary or excessive medication.
- You may not be subject to any drastic treatment measures such as psychosurgery/electroconvulsive therapy or experimental research without your written informed consent.
- You must be informed in writing of any costs of your care and treatment for which you or your relatives may have to pay.
- You must be treated in the least restrictive manner and setting.
- You have the right to be free from any form of restraint or seclusion used as a means of force, control, ease or reprisal.
- You have the right to receive information about treatment options, including the right to request a second opinion.

RECORD PRIVACY AND ACCESS

Under Wisconsin Statute sec. 51.30 and HFS 92, Wisconsin Administrative Code:

- Your treatment information must be kept private (confidential), unless the law permits disclosure.
- Your records may not be released without your consent, unless the law specifically allows for it.
- Your may ask to see your records. You must be shown any records about your physical health or medications. Staff may limit how much you may see of the rest of your treatment records while you are receiving services. You must be informed of the reasons for any such limits. You may challenge those reasons through the grievance process.
- After disenrollment, you may see your entire treatment record if you ask to do so.
- If you believe something in your record is wrong, you may challenge its accuracy. If staff will not change the part of your record you have challenged, you may file a grievance and/or put your own version in your record.
- A copy of sec. 51.30, Wis. Stats., and/or HSS 92, Wisconsin Administrative Code, is available upon request.

COMPLAINT/GRIEVANCE PROCEDURE AND RIGHT OF ACCESS TO A STATE FAIR HEARING

- Before treatment starts, you must be informed of your rights and how to use the complaint/grievance process. A copy of Wraparound's Complaint/Grievance Policy and Procedure is available upon request. If you feel your rights have been violated, you may file a complaint/grievance. You may not be threatened/penalized in any way for presenting your concerns informally, by formally filing a complaint/grievance or by requesting a State Fair Hearing.
- You/ your representatives may present (orally or in writing) info. about your grievance before or at the grievance meeting.
- You may enter into or move to at any level of the "Compliant/Grievance Stages" process listed on page 2, at any time, for any reason. For example: If you choose to file a complaint immediately with the County or the State and bypass the Wraparound Quality Assurance or Program Directors Review stage you have the right to do so.

COMPLAINT/GRIEVANCE STAGES

1). Informal Discussion

- You are encouraged to first talk with staff about any concerns you have. However, you do not have to do this before filing a formal complaint with your service provider/Wraparound.

See # 5 if you would like to file a complaint/grievance directly with the State of WI. Division of Hearing and Appeals

2. Complaint/Grievance Investigation – Formal Inquiry

- If you want to file a complaint, you should do so within 45 days of the time you became aware of the problem. Wraparound and its designees, for good cause, may grant an extension beyond the 45-day time limit. You also have the right to file an Urgent Care/Expedited Grievance for those situations where the denial of services or referral for services could result in illness or injury or where delay in care would jeopardize the member's mental health as determined by a medical provider.
- The assigned Client Rights Specialist (CRS – person who will deal with your complaint/ Urgent Care/Expedited Grievance) will address/investigate your concern and attempt to resolve it within the identified time guidelines.
- The CRS will write a report within 30 days from the date you filed the complaint. You will get a copy of the report.
- If you agree with the CRS's report and recommendations, the recommendations will be put into effect within an agreed upon time frame.
- You may file as many complaints as you want. However, the CRS will usually only work on one at a time. The CRS may ask you to rank them in order of importance.

Your Wraparound Milwaukee Client Rights Specialist is:
Wraparound Milwaukee
Quality Assurance Department
9201 Watertown Plank Road
Milwaukee, WI 53226
(414) 257-6024

If the complaint/grievance is not resolved by the CRS's report you can file a grievance/appeal with:

↓

3. Program Director Review

- The program director or designee shall review your grievance/appeal and prepare a written decision within 30 days of receipt of the CRS's report. You will be given a copy of the decision.

If you do not agree with the program directors decision you can file a grievance/appeal to the:

↓

4. County Level Review

- You may appeal to the County - Behavioral Health Division Administrator. You must make this appeal within 14 days of the day you receive the program director's decision. You may ask the program director to forward your complaint/grievance or you may send it yourself to:

Milwaukee County - Behavioral Health Division
9455 Watertown Plank Rd.
Milwaukee, WI. 53226
Attn: BHD Administrator

The County-Behavioral Health Division Administrator must issue his or her written decision within 30 days after you request this appeal.

If you do not agree with the County's decision you can file a grievance/appeal to the State of Wisconsin:

↓

5. State Level Review

- If your complaint/grievance went through the county level of review and you are dissatisfied with the decision, you may wish to have the State of Wisconsin Department of Health Services (DHS) review your appeal.

⇩

☎ **Call the:** Medicaid/BadgerCare Plus Ombuds at 1-800-760-0001. They will help you will file an appeal with DHS

OR

- If you wish to file a complaint/grievance/appeal directly with the State Division of Hearings and Appeals (DHA) for a fair hearing, you may do so by writing to:

✎ **Write to**: Department of Administration-Division of Hearings and Appeals P.O. Box 7875 Madison, WI. 53707

The hearing will be held in the county where you live. You will have the right to bring a friend/be represented at the hearing. If you need a special arrangement for a disability or for English translation, call (608) 266-3096 (voice) or (608) 264-9853 (hearing impaired).

WRAPAROUND MILWAUKEE

CONSENT/ACKNOWLEDGEMENT FORM

The following items are essential to the care of your family while participating in the Wraparound Milwaukee program. Please review each area and indicate which areas you approve by initialing the appropriate line after each heading.

Initial to Approve

1. **ACKNOWLEDGEMENT OF RECEIPT OF CLIENTS RIGHTS & COMPLAINT/GRIEVANCE PROCEDURE** _____
   I have read and understand my legal client rights as a participant of the Wraparound Milwaukee program and recipient of services provided through the Wraparound Provider Network. By signing below I acknowledge that I have received a copy of the "Client Rights and Grievance Procedure" handout.

2. **ACKNOWLEDGEMENT OF RECEIPT OF PRIVACY STATEMENT** _____
   I have received, read and understand the Privacy Statement of Wraparound Milwaukee, and understand the program's commitment to protecting any identifiable client information as mandated by law.

3. **CONSENT FOR TRANSPORTATION** _____
   I hereby give my consent for my child/children to be transported by Wraparound Milwaukee and its agents as needed.

Unless otherwise specified below, this consent will expire 12 months from the date it was signed. This consent or any part of this consent may be canceled at any time with written notification as outlined on the back of this form.

_____ _____ _____
Youth/Enrollee Name (please print) Date of Birth (Date, event or condition upon which consent will expire)

_____ _____
Parent or Legal Guardian's Signature Date

_____ _____
Youth/Enrollees Signature (*age 14 and older should sign*) Date

_____ _____
Witness Signature Date

YOUR RIGHTS WITH RESPECT TO THIS CONSENT:

Right to Refuse to Sign This Consent/Acknowledgement Form - I understand that I am under no obligation to sign this form and that Wraparound Milwaukee may not condition treatment, payment, or enrollment on my decision to sign this authorization.

Right to Withdraw This Consent - I understand that I have the right to withdraw consent for any of the items identified on the previous page at any time by providing a written statement of withdrawal to Pamela Erdman, Wraparound Quality Assurance. (The statement must identify what Consent that is being withdrawn, be dated and signed). I am aware that my withdrawal will not be effective until received by Wraparound Milwaukee.

Submit your written request for withdrawal to: Ms. Pamela Erdman, Quality Assurance Director
Wraparound Milwaukee
9201 Watertown Plank Road
Milwaukee, WI 53226
(414) 257-7608

WRAPAROUND MILWAUKEE

PROJECT O'YEAH

CONSENT FOR TREATMENT

Enrollee Name: _____ DOB: _____

(Please print)

I, _____, authorize the Mobile Urgent Treatment Team, Wraparound Milwaukee Project O'YEAH staff and/or contracted Crisis Service providers to:

_____ a. Provide services to me and/or arrange for services to be provided as needed.

_____ b. Provide me with voluntary transportation.

_____ c. Secure necessary emergency medical (physical/mental health) care for me and transport to such services.

Unless otherwise specified, this Consent will expire 12 months from the date it was signed. This consent or any part of this consent may be canceled at any time with written notification.

RELEASE OF INFORMATION

I authorize the Mobile Urgent Treatment Team and Wraparound Milwaukee Project O'YEAH to release / exchange health related and billing data with any and all private or public health care insurers, reimbursement agencies, third party payers of the above named enrollee for all treatment services provided during the next three years. By law, this information can also be shared with the State of Wisconsin Department of Health and Family Services.

CONSENT FOR INFORMATION TO BE USED IN RESEARCH

I give my consent for non-identifying evaluation data obtained during my enrollment in Wraparound Project O'YEAH to be used for research to evaluate the effectiveness of the program. I understand that this research may be presented at conferences, universities and in publications. I understand that information collected for this research is part of the usual program evaluation procedures. I understand that my confidentiality will be protected. No information that is presented to the public will contain any identifying information such as name, address or telephone number.

ASSIGNMENT OF BENEFITS

I hereby assign payment directly to Wraparound Milwaukee for the benefits otherwise payable to me by any third party, including transitional benefits, but not to exceed the regular charges for mobile emergency mental health treatment.

YOUR RIGHTS WITH RESPECT TO THIS CONSENT:

Right to Withdraw This Consent - I understand that I have the right to withdraw consent for any of the items identified on the previous page at any time by providing a written statement of withdrawal to Pamela Erdman, Wraparound Quality Assurance. (The statement must identify what Consent that is being withdrawn, be dated and signed). I am aware that my withdrawal will not be effective until received by Wraparound Milwaukee.

Submit your written request for withdrawal to:

Ms. Pamela Erdman, Quality Assurance Director
Wraparound Milwaukee
9201 Watertown Plank Road
Milwaukee, WI 53226
(414) 257-7608

Signature of Enrollee _____ Date Signed _____

Signature of Parent/Guardian _____ Date Signed _____
(required if enrollee under age 18)

Signature of Witness _____ Date Signed _____