

ORDER OF THE
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
ADOPTING RULES

...relating to the right of the community organizations to visit nursing home residents within certain limitations.

ANALYSIS PREPARED BY THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES

On January 31, 1978, Nursing Home Consumers Who Care, Inc., Madison, Wisconsin, petitioned the Administrator of the Division of Health (Ralph Andreano) to consider adding rules to the nursing home code (H-32) regarding community organization access (formerly public access). Dr. Andreano acknowledged the proposal and instructed staff to begin the rules development process.

The responses before, during and after the public hearings on the resultant proposal were reasonably clear cut. Nursing home association representatives and most long-term care providers who testified were against the proposed rule. Advocacy groups and most nursing home residents who testified favored the rule.

The final version of the proposed rule takes into account testimony at an initial public hearing on June 15, 1978 and written summaries or oral testimony presented at a Senate Human Services Committee hearing on December 19, 1979.

Subsection 32.055(5)

Pursuant to authority vested in the Department of Health and Social Services by section 227.014(2), Wis. Stats., the Department of Health and Social Services proposes to adopt rules interpreting section 50.02(2)(a), Wis. Stats., as follows:

Subsection 32.055(5), Wisconsin administrative code, is adopted to read:

COMMUNITY ORGANIZATION ACCESS REQUIREMENTS

H 32.055(5) Community Organization Access Requirements. (a) In this subsection, "access" means the right to:

1. Enter any facility.
2. Seek a resident's agreement to communicate privately and without restriction with the resident.
3. Communicate privately and without restriction with any resident who does not object to communication.
4. Inspect the health care and other records of a resident with the informed consent of the resident.

NOTE: "Access" does not include the right to examine the business records of the facility without the consent of the administrator or designee.

(b) In this subsection, "informed consent," as defined in section 146.81(3) Wisconsin Stats. means written consent to the disclosure of information from patient health care records to an individual, agency or organization containing the name of the patient whose record is being disclosed, the purpose of the disclosure, the type of information to be disclosed, the individual, agency or organization to which disclosure may be made, the types of health care providers making the disclosure, the signature of the patient or the person authorized by the patient, the date on which the consent is signed and the time period during which the consent is effective.

(c) In this subsection, "person authorized by the patient," as defined in section 146.81(5), Wisconsin Stats., means the parent, guardian or legal custodian of a minor patient, as defined in s. 48.02(9) and (11), the guardian of a patient adjudged incompetent, as defined in s. 880.01(3) and (4), the personal representative or spouse of a deceased patient or any person authorized in writing by the patient. If no spouse survives a deceased patient, "person authorized by the patient" also means an adult member of the deceased patient's immediate family, as defined in s. 632.78(3)(d). A court may appoint a temporary guardian for a patient believed incompetent to consent to the release of records under section 146.81 as the person authorized by the patient to decide upon the release of records, if no guardian has been appointed for the patient.

Subsection 32.055(5)

(d) Any employe, agent or designated representative of a community legal services program or community service organization shall be permitted access to any facility between 8:00 a.m. and 9:00 p.m., provided the employe, agent or designated representative can, upon request, present valid identification signed by the principal officer of the agency, program or organization represented, and provided an express purpose of the agency, program or organization and the purpose of the visit is to do any of the following:

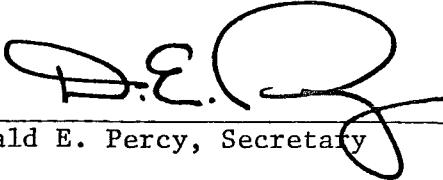
1. Visit, talk with, offer personal, social and legal services to any resident, or obtain information from the resident on the facility and its operation.
2. Inform residents of their rights and entitlements and their corresponding obligations under federal and state law, by means of educational materials and discussions in groups or with individual residents.
3. Assist any resident in asserting legal rights regarding claims for public assistance, medical assistance and social security benefits, and in all other matters in which a resident may be aggrieved. NOTE: Assistance may be provided on an individual or group basis, and may include organizational activity, counseling and litigative assistance.
4. Engage in any other method of advising and representing residents so as to assure them full enjoyment of their rights.

NOTE: "Express purpose" of the agency, program or organization shall be in written form and shall be made available to the nursing home administrator or designee upon request.

The rule contained in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in sec. 227.026(1), Wis. Stats.

DATED: July 17, 1980

DEPARTMENT OF HEALTH AND SOCIAL SERVICES



Donald E. Percy, Secretary

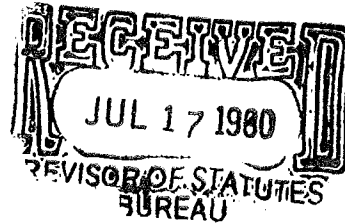
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State of Wisconsin \ DEPARTMENT OF HEALTH & SOCIAL SERVICES

OFFICE OF THE SECRETARY
1 WEST WILSON STREET
MADISON, WISCONSIN 53702

July 17, 1980



Mr. Orlan Prestegard
Revisor of Statutes
411 West, State Capitol
Madison, Wisconsin 53702

Dear Mr. Prestegard:

As provided in section 227.023, Wis. Stats., there is hereby submitted a certified copy of H32.055(5), the Community Organization Access Rule.

This rule is being submitted to the Secretary of State as required by section 227.023, Wis. Stats.

Sincerely,

Donald E. Percy
SECRETARY

Enclosure