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CERTIFICATE

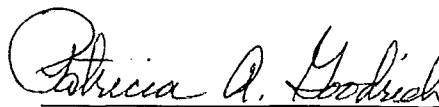
STATE OF WISCONSIN)
) SS
DEPARTMENT OF HEALTH AND SOCIAL SERVICES)

I, Patricia A. Goodrich, Secretary of the Department of Health and Social Services and custodian of the official records of the Department, do hereby certify that the annexed rules relating to nursing homes were duly approved and adopted by this Department on January 10, 1989.

I further certify that this copy has been compared by me with the original on file in the Department and that this copy is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the State Office Building, 1 W. Wilson Street, in the city of Madison, this 10th day of January, 1989.

SEAL:



Patricia A. Goodrich, Secretary
Department of Health and Social Services

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JAN 10 1989

ORDER OF
THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES
REPEALING, RENUMBERING, AMENDING, REPEALING
AND RECREATING AND CREATING RULES

Revisor of Statutes
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To repeal HSS 132.51(2)(d)3 and (3) and 132.63(4)(a)2 (Note); to renumber HSS 132.14(4) to (6), 132.51(2)(e) and (f) and (4), 132.53(2)(c) and 132.695(2)(c); to amend HSS 132.13(4), 132.14(3)(c) and (5) and (6), as renumbered, 132.31(1)(d)1 and (k) and (4)(b), 132.45(3)(c)(title), 132.51(2)(b)2 and 3 and (d)(2), 132.53(2)(c)1, as renumbered, 132.60(6)(a)1, 132.62(3)(a), 132.65(3)(b)2 and (6)(b)8 and (c)1 and 3, 132.695(2)(a), (b) and (d)(intro.) and 3, as renumbered, (3) and (4)(a), (b), (c)1 and 2(title) and (intro.) and a and (d), 132.70(1) and (2)(a)(intro.) and (b)(intro.) and 132.84(1)(b)2, (2)(e)1 c and (5)(a); to repeal and recreate HSS 132.63(5)(c); and to create HSS 132.14(4), 132.51(2)(e), 132.53(2)(c)2 and 132.695(2)(c), relating to nursing homes.

Analysis Prepared by the Department of Health and Social Services

The Department's rules for nursing homes, ch. HSS 132, are revised by this order to make technical corrections in the rules, clarify certain requirements, make procedural changes based on experience with the rules since the last time they were revised, implement changes to ch. 50, Stats., made by 1987 Wisconsin Acts 27 and 127, and make the rules consistent with Federal Medicaid requirements and, in regard to the care of developmentally disabled residents, with ch. HSS 134, new rules for facilities for developmentally disabled persons.

Specifically, the order modifies ch. HSS 132 to define what the Department means by someone who is "fit and qualified" to be licensed to operate a nursing home (Act 27); to add in references to the resident's designated representative that this person must be designated in writing by the resident; to bar the admission of persons under the age of 65 who are mentally ill, except in an emergency or on recommendation of a county mental disabilities agency (Act 27); to bar the involuntary removal of a resident for nonpayment when certain conditions are present (Act 27); to change the basis for computing nursing staff requirements from a 7-day week to a daily basis (Act 127); to replace the term "total plan of care" for a resident receiving active treatment with "individual program plan"; and to make clear that facilities admitting persons for short-term care are not obliged to use the special procedures in s. HSS 132.70 for admitting those residents and planning for their care.

The Department's authority to repeal, renumber, amend and create these rules is found in ss. 50.02 and 50.09(2), Stats., and s. 50.03(4)(a)1, Stats., as amended by 1987 Wisconsin Acts 27 and 127. The rules interpret ss. 50.02 to 50.11, Stats.

SECTION 1. HSS 132.13(4) is amended to read:

HSS 132.13(4) "Developmental disability" means mental retardation or a related condition such as cerebral palsy, epilepsy or autism, but excluding mental illness and infirmities of aging, which is:

- (a) Manifested before the individual reaches age 22;
- (b) Likely to continue indefinitely; and
- (c) Results in substantial functional limitations in 3 or more of the following areas of major life activity:
 1. Self-care;
 2. Understanding and use of language;
 3. Learning;
 4. Mobility;
 5. Self-direction; and
 6. Capacity for independent living ; and .
 - ~~7. Economic self-sufficiency.~~

SECTION 2. HSS 132.14(3)(c) is amended to read:

HSS 132.14(3)(c) The ~~new licensee~~ applicant shall submit evidence to establish that he or she has sufficient resources to permit operation of the facility for a period of 6 months.

SECTION 3. HSS 132.14(4) to (6) are renumbered HSS 132.14(5) to (7).

SECTION 4. HSS 132.14(4) is created to read:

HSS 132.14(4) REVIEW OF THE APPLICATION (a) Investigation. After receiving a complete application, the department shall investigate the applicant to determine if the applicant is fit and qualified to be a licensee and to determine if the applicant is able to comply with this chapter.

(b) Fit and qualified. In making its determination of the applicant's fitness, the department shall review the information contained in the application and shall review any other documents that appear to be relevant in making that determination, including survey and complaint investigation findings for each facility with which the applicant is affiliated or was affiliated during the past 5 years. The department shall consider at least the following:

1. Any class A or class B violation, as defined under s. 50.04, Stats., issued by the department relating to the applicant's operation of a residential or health care facility in Wisconsin;

2. Any adverse action against the applicant by the licensing agency of this state or any other state relating to the applicant's operation of a residential or health care facility. In this subdivision, "adverse action" means an action initiated by a state licensing agency which resulted in the denial, suspension or revocation of the license of a residential or health care facility operated by the applicant;

3. Any adverse action against the applicant based upon noncompliance with federal statutes or regulations in the applicant's operation of a residential or health care facility in this or any other state. In this subdivision "adverse action" means an action by a state or federal agency which resulted in the denial, non-renewal, cancellation or termination of certification of a residential or health care facility operated by the applicant;

4. The frequency of noncompliance with state licensure and federal certification laws in the applicant's operation of a residential or health care facility in this or any other state;

5. Any denial, suspension, enjoining or revocation of a license the applicant had as a health care provider as defined in s. 146.81(1), Stats., or any conviction of the applicant for providing health care without a license;

6. Any conviction of the applicant for a crime involving neglect or abuse of patients or of the elderly or involving assaultive behavior or wanton disregard for the health or safety of others;

7. Any conviction of the applicant for a crime related to the delivery of health care services or items;

8. Any conviction of the applicant for a crime involving controlled substances;

9. Any knowing or intentional failure or refusal by the applicant to disclose required ownership information; and

10. Any prior financial failures of the applicant that resulted in bankruptcy or in the closing of an inpatient health care facility or the moving of its residents.

SECTION 5. HSS 132.14(5) and (6), as renumbered, are amended to read:

HSS 132.14(5) ACTION BY THE DEPARTMENT.

(a) After receiving a complete application, the department shall investigate the applicant to determine the applicant's ability to comply with this chapter.

(b) Within 60 days after receiving a complete application for a license, the department shall either approve the application and issue a license or deny the application. The department shall deny a license to any applicant who has a history, determined under sub. (4)(b)1 to 4, of substantial noncompliance with federal or this state's or any state's nursing home requirements, or who fails under sub. (4)(b)5 to 10, to qualify for a license. If the application for a license is denied, the department shall give the applicant reasons, in writing, for the denial and shall identify the process for appealing the denial.

(6)(a) Probationary license. If the applicant has not been previously licensed under this chapter or if the facility is not in operation at the time application is made, the department ~~may~~ shall issue a probationary license. A probationary license shall be valid for ~~120 days~~ 12 months from the date of issuance unless sooner suspended or revoked under s. 50.03(5), Stats. If the applicant is found to be fit and qualified under sub. (4) and in substantial compliance with this chapter, the department shall issue a regular license ~~shall be issued for a period of one year from the date of issuance upon expiration of the probationary license.~~ The regular license shall be valid for a period of one year from the date of issuance unless sooner suspended or revoked.

SECTION 6. HSS 132.31(1)(d)1 and (k) and (4)(b) are amended to read:

HSS 132.31(1)(d)1. No person may be admitted to a facility without that person or that person's guardian or designated representative any other responsible person designated in writing by the resident signing an acknowledgement of having received a statement of information before or on the day of admission which contains at least the following information or, in the case of a person to be admitted for short-term care, the information required under s. HSS 132.70(3):

(k) Abuse and restraints. Be free from mental and physical abuse, and be free from chemical and physical restraints except as authorized in writing by a physician for a specified and limited period of time and documented in the resident's medical record. Physical restraints may be used in an emergency when necessary to protect the resident ~~from injury to himself or herself or others or to another person from injury or to prevent physical harm to the resident or another person resulting from the destruction of property~~ from injury to himself or herself or others or to another person from injury or to prevent physical harm to the resident or another person resulting from the destruction of property ~~However~~, provided that written authorization for continuing continued use of the physical restraints shall be secured is obtained from a the physician within 12 hours. Any use of physical restraints shall be noted in the resident's medical ~~records~~ record. "Physical restraint" ~~includes means, but is not limited to,~~ any article, device, or garment which ~~interferes with the free movement of the resident~~

used primarily to modify resident behavior by interfering with the free movement of the resident or normal functioning of a portion of the body, and which the resident is unable to remove easily, and or confinement in a locked room, but does not include a mechanical support as defined under s. HSS 132.60(6)(a)2.

(4)(b) Amendments. All amendments to the rights provided under this section and all amendments to the facility regulations and policies governing resident conduct and responsibilities require notification of each resident ~~and~~ or guardian, if any, or any other responsible person designated in writing by the resident, at the time the amendment is put into effect. The facility shall provide the resident ~~;~~ or guardian, if any, or any other responsible person designated in writing by the resident and each member of the facility's staff with a copy of all amendments.

SECTION 7. HSS 132.45(3)(c)(title) is amended to read:

HSS 132.45(3)(c)(title) Intermediate care facilities.

SECTION 8. HSS 132.51(2)(b)2 and 3 and (d)2 are amended to read:

HSS 132.51(2)(b)2. Isolation techniques. Persons suspected of having a disease in a communicable state shall be managed substantially according to ~~Isolation Techniques for Use in Hospitals~~ Guidelines for Isolation Precautions in Hospitals, Guidelines for Infection Control in Hospital Personnel and Universal Precautions for Prevention of Bloodborne Pathogens in HealthCare Settings, published by the U.S. department of health and human services, public health services, ~~center~~ centers for disease control ~~;~~ or with comparable methods .

3. Reportable diseases. Suspected diseases reportable by law shall be reported to the local public health agency ~~and~~ or the division of health, bureau of community health and prevention, as provided by ch. HSS 145.

Note: For a copy of ch. HSS 145 which includes a list of the communicable diseases which must be reported, write the Bureau of Community Health and Prevention, P.O. Box 309, Madison, WI 53701 (phone 608-267-9003). There is no charge for a copy of ch. HSS 145. The referenced publication, "Guidelines for Isolation Precautions in Hospitals and Guidelines for Infection Control in Hospital Personnel (HSS Publication No. (CDC) 83-8314) and "Universal Precautions for Prevention of Bloodborne Pathogens in Health Care Settings", may be purchased from the Superintendent of Documents, Washington D.C. 20402, and is available for review in the office of the Department's Bureau of Quality Compliance, the Office of the Secretary of State, and the Office of the Revisor of Statutes.

(d)2. Except in an emergency, ~~No~~ no person who has a developmental disability may be admitted to a facility unless ~~the department has approved~~

the facility's program statement required under sub. (3), and the county department under s. 46.23, 51.42, or 51.437 or 46.23, Stats., of the individual's county of residence has recommended the admission.

SECTION 9. HSS 132.51(2)(d)3 is repealed.

SECTION 10. HSS 132.51(2)(e) and (f) are renumbered HSS 132.51(2)(f) and (g).

SECTION 11. HSS 132.51(2)(e) is created to read:

HSS 132.51(2)(e) Mental illness. Except in an emergency, no person who is under age 65 and has a mental illness as defined in s. 51.01(13) may be admitted to a facility unless the county department under s. 46.23, 51.42 or 51.437, Stats., of the individual's county of residence has recommended the admission.

SECTION 12. HSS 132.51(3) is repealed.

SECTION 13. HSS 132.51(4) is renumbered HSS 132.51(3).

SECTION 14. HSS 132.53(2)(c) is renumbered HSS 132.53(2)(c)1, and HSS 132.53(2)(c)1, as renumbered, is amended to read:

HSS 132.53(2)(c) Alternate placement. 1. Except for removals under par. (b) 1 and 5, no resident may be involuntarily removed unless an alternative placement is arranged for the resident pursuant to s. HSS 132.31(1)(j).

SECTION 15. HSS 132.53(2)(c)2 is created to read:

HSS 132.53(2)(c)2. No resident may be involuntarily removed under par. (b)1 for nonpayment of charges if the resident meets both of the following conditions:

a. He or she is in need of ongoing care and treatment and has not been accepted for ongoing care and treatment by another facility or through community support services; and

b. The funding of the resident's care in the nursing home under s. 49.45(6m), Stats., is reduced or terminated because either the resident requires a level or type of care which is not provided by the nursing home or the nursing home is found to be an institution for mental diseases as defined under 42 CFR 435.1009.

SECTION 16. HSS 132.60(6)(a)1 is amended to read:

HSS 132.60(6)(a)1. "Physical restraint" means any article, device, or garment ~~which is~~ used primarily to modify resident behavior by interfering with the free movement of the resident or normal functioning of a portion of the body, and which the resident is unable to remove easily, or

confinement in a locked room ~~and Mechanical supports shall not be considered restraints~~, but does not include a mechanical support.

SECTION 17. HSS 132.62(3)(a) is amended to read:

HSS 132.62(3)(a) Total staffing. Every facility shall provide at least the following hours of service by nursing personnel, computed on a seven-day week daily basis ~~and~~ :

SECTION 18. HSS 132.63(4)(a)2 Note is repealed.

SECTION 19. HSS 132.63(5)(c) is repealed and recreated to read:

HSS 132.63(5)(c) Table service. The facility shall provide table service in dining rooms for all residents who can and want to eat at a table, including residents in wheelchairs.

SECTION 20. HSS 132.65(3)(b)2 and (6)(b)8 and (c)1 and 3 are amended to read:

HSS 132.65(3)(b)2. Each intermediate care facility shall retain a registered pharmacist who shall visit the facility at least monthly to review medication practices and ~~at least quarterly to review~~ the drug regimen of each resident and who shall notify the attending physician if changes are appropriate. The pharmacist shall submit a written report of findings at least quarterly to the facility's pharmaceutical services committee. ~~A registered nurse or a registered pharmacist shall review the drug regimens of each resident at least monthly.~~

(6)(b)8. Labeling medications. Prescription medications shall be labeled with the expiration date and as required by ~~s. 450.07(4)~~ s. 450.11(4), Stats. Nonprescription medications shall be labeled with the name of the medication, directions for use, the expiration date ~~and~~ the name of the resident taking the medication.

(c)1. Time limit. Unless otherwise ordered by a physician, a resident's medication not returned to the pharmacy for credit shall be destroyed within 72 hours of a physician's order discontinuing its use, the resident's discharge, ~~or~~ the resident's death or passage of its expiration date. No resident's medication may be held in the facility for more than 30 days ~~and~~ unless an order is written every 30 days to hold the medication.

3. Remaining controlled substances. Any controlled substance not returned for credit and remaining after the discontinuance of a physician's orders or the discharge or death of the resident shall be inventoried on the appropriate U.S. drug enforcement agency form. One copy shall be sent to the U.S. drug enforcement agency and one copy shall be kept on file in the facility.

SECTION 21. HSS 132.695(2)(a) and (b) are amended to read:

HSS 132.695(2)(a) "Active treatment" means an ongoing, organized effort to help each resident attain or maintain his or her developmental capacity through the resident's regular participation, in accordance with an individualized plan, in a program of activities designed to enable the resident to attain or maintain the optimal physical, intellectual, social and vocational levels of functioning of which he or she is capable.

(b) "Interdisciplinary team" means the ~~group of~~ persons employed by a facility or under contract to a facility who are responsible for planning the program and delivering the services relevant to a developmentally disabled resident's care needs.

SECTION 22. HSS 132.695(2)(c) is renumbered HSS 132.695(2)(d).

SECTION 23. HSS 132.695(2)(c) is created to read:

HSS 132.695(2)(c) "IPP" or "individual program plan" means a written statement of the services which are to be provided to a resident based on an interdisciplinary assessment of the individual's developmental needs, expressed in behavioral terms, the primary purpose of which is to provide a framework for the integration of all the programs, services and activities received by the resident and to serve as a comprehensive written record of the resident's developmental progress.

SECTION 24. HSS 132.695(2)(d)(intro.) and 3, as renumbered, are amended to read:

HSS 132.695(2)(d)(intro.) "QMRP" or "Qualified "qualified mental retardation professional" or "QMRP" means a person who has specialized training in mental retardation or at least one year of experience in treating or working with mentally retarded persons and is one of the following:

3. A social worker with a bachelor's graduate degree in social work from a program school of social work accredited or approved by the council on social work education or with a bachelor's degree in a field other than social work, and at least 3 years social work experience under the supervision of a qualified social worker from a college or university accredited or approved by the council on social work education.

SECTION 25: HSS 132.695(3) and (4)(a),(b), (c)1 and 2 (title) and (intro.) and a and (d) are amended to read:

HSS 132.695(3) ACTIVE TREATMENT PROGRAMMING. (a) All residents who are developmentally disabled shall receive active treatment. Active treatment shall include ~~the following~~ :

1. The resident's regular participation, in accordance with the ~~total plan of care~~ IPP, in professionally developed and supervised activities,

experiences and therapies which are. The resident's participation shall be directed toward:

a. The acquisition of developmental, behavioral, and social skills necessary for the ~~client's~~ resident's maximum possible individual independence; or

b. For dependent ~~clients~~ residents where no further positive growth is demonstrable, the prevention of regression or loss of current optimal functional status; and

2. An individual post-institutionalization plan, as part of the ~~total plan of care~~ IPP, developed before discharge by a qualified mental retardation professional and other appropriate professionals. This shall include provision for appropriate services, protective supervision and other follow-up services in the resident's new environment.

(b) Active treatment does not include the maintenance of generally independent residents who are able to function with little supervision or who require few if any of the significant active treatment services described in ~~these standards~~ this subsection.

(4) RESIDENT CARE PLANNING. (a) Interdisciplinary team. 1. The interdisciplinary team shall develop the ~~individual~~ resident's total individual program plan of care .

2. Membership on the interdisciplinary team for resident care planning may vary based on the professions, disciplines and service areas that are relevant to the resident's needs as determined by the preadmission evaluation, but shall include a qualified mental retardation professional, a nurse, a social worker, a psychologist, one or more staff members directly involved in the ~~individual's~~ care and, when appropriate, a physician and dentist .

3. The resident and the resident's family or guardian shall be encouraged to participate as members of the team, unless the resident objects to the participation by of family members.

(b) Development and content of the individual program plan. 1. Except in the case of a person admitted for short-term care, Within within 30 days following the date of admission, the interdisciplinary team, with the participation of the ~~personnel~~ staff providing resident care, shall review the preadmission evaluation and physician's plan of care and shall develop a ~~total plan of care~~ an IPP based on the new resident's history and the evaluation and an assessment of resident the resident's needs by all relevant disciplines, including any physician's evaluation or orders.

2. ~~Resident and family or guardian participation shall be encouraged unless the family's participation is objected to by the resident.~~

3- 2. The ~~total plan of care~~ IPP shall include:

a. A list of realistic and measurable goals with ~~specific~~ in order of priority listing and , with time limits for attainment;

b. Behavioral objectives for each goal which must be attained before the goal is considered attained;

c. A written statement of the methods or strategies for delivering care, for use by the staff providing resident care and by the professional and special services staff and other individuals involved in the resident's care, and of the methods and strategies for assisting the resident to attain new skills, with documentation of which professional disciplines or which personnel providing resident care are responsible for the needed care or services;

d. Evaluation procedures for ~~determining~~ determining whether the methods or strategies are accomplishing the care objectives; and

e. A written interpretation of the preadmission evaluation in terms of any specific supportive actions, if appropriate, to be undertaken by the resident's family or legal guardian and by appropriate community resources.

(c) Reassessment of individual program plan. 1. Special and professional services review. a. The care provided by the staff from each of the disciplines involved in the resident's treatment shall be reviewed by the professional responsible for monitoring delivery of the specific service.

b. Individual care plans shall be ~~evaluated~~ reassessed and updated at least quarterly by the interdisciplinary team, with more frequent updates if an individual's needs warrant it, and at least every 30 days by the QMRP to review goals.

c. ~~Evaluation~~ Reassessment results and other necessary information obtained through the specialists' assessments shall be disseminated to other resident care staff as part of the ~~total plan of care~~ IPP process.

d. Documentation of the ~~evaluation~~ reassessment results, treatment ~~objectives~~ objectives, plans and procedures and continuing treatment progress reports shall be recorded in the resident's record.

2. (title) Interdisciplinary review. (intro.) The interdisciplinary team, ~~personnel~~ staff providing resident care and other relevant personnel shall review the ~~total care plan~~ IPP and status of the resident at least annually and make program recommendations as indicated by the resident's developmental progress. The review shall consider at least the following:

a. The appropriateness of the ~~individualized plan of care~~ IPP and the individual's progress toward meeting the plan objectives ;

(d) Implementation. Progress notes shall reflect the treatment and services provided to meet the goals stated in the ~~plan of care~~ IPP.

Note: See ch. HSS 134 for rules governing residential care facilities that primarily serve developmentally disabled persons who require active treatment.

SECTION 26: HSS 132.70(1) and (2)(a) (intro.) and (b) (intro.) are amended to read:

HSS 132.70(1) SCOPE. A facility may admit persons for short-term care. A facility that admits persons for short-term care may use the procedures included in this section rather than the procedures included in ss. HSS 132.52 and 132.60(8). Short-term care is for either respite or recuperative purposes. The requirements in this section apply to a facilities that admit persons for short-term care when they admit, evaluate or provide care for these persons. Except as specified in this section, all requirements of this chapter, including s. HSS 132.51, apply to all facilities that admit persons for short-term care.

(2) (a) Respite care. (intro.) For a person admitted to a facility for respite care, the following admission and resident care planning procedures ~~shall~~ may be carried out in place of the requirements under ss. HSS 132.52 and 132.60(8):

(b) Recuperative care. (intro.) For a person admitted to a facility for recuperative care, the following admission and resident care planning procedures ~~shall~~ may be carried out in place of the requirements under ss. HSS 132.52 and 132.60(8):

SECTION 27: HSS 132.84(1)(b)2, (2)(e)1c, and (5)(a) are amended to read:

HSS 132.84(1)(b)2. Be located so that a person must pass through a another resident's bedroom, a toilet room ; or a bathroom to gain access to any other part of the facility; or


(2)(e)1c. In period A facilities, one tub or shower for every 20 residents; and

(5)(a) Multipurpose space. The facility shall provide one or more appropriately furnished multipurpose areas of adequate size for dining ; and for diversional ; and social activities of residents.

The repeals and rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2), Stats.

Wisconsin Department of Health and
Social Services

Dated: January 10, 1989

By: 

Patricia A. Goodrich
Secretary

SEAL:

MI/jh 1540



State of Wisconsin \

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
1 West Wilson Street, Madison, Wisconsin 53702

Tommy G. Thompson
Governor

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JAN 10 1989

Revisor of Statutes
Bureau

Patricia A. Goodrich
Secretary

Mailing Address:
Post Office Box 7850
Madison, WI 53707

January 10, 1989

Mr. Orlan Prestegard
Revisor of Statutes
7th Floor - 30 on the Square
Madison, Wisconsin 53702

Dear Mr. Prestegard:

As provided in s. 227.20, Stats., there is hereby submitted a certified copy of HSS 132, administrative rules relating to nursing homes.

These rules are also being submitted to the Secretary of State as required by s. 227.20, Stats.

The rules will not have a significant economic impact on a substantial number of small businesses as defined in s. 227.114(1)(a), Stats.

Sincerely,

Patricia A. Goodrich
SECRETARY

Enclosure