Electronic reproduction of 2009−10 Wis. Stats. database, current through 2011 Wis. Act 286.

CHAPTER 51

STATE ALCOHOL, DRUG ABUSE, DEVELOPMENTAL DISABILITIES AND MENTAL HEALTH ACT

51.001 Legislative policy.
51.01 Definitions.
51.02 Council on mental health.
51.03 Department; powers and duties.
51.032 Denial and revocations of certification or approval based on tax delinquency.
51.038 Outpatient mental health clinic certification.
51.04 Treatment facility certification.
51.05 Mental health institutes.
51.06 Centers for the developmentally disabled.
51.07 Outpatient services.
51.08 Milwaukee County Mental Health Complex.
51.09 County hospitals.
51.10 Voluntary admission of adults.
51.13 Admission of minors.
51.14 Review of outpatient mental health treatment of minors aged 14 or older.
51.15 Emergency detention.
51.20 Involuntary commitment for treatment.
51.22 Care and custody of persons.
51.30 Records.
51.35 Transfers and discharges.
51.37 Criminal commitments; mental health institutes.
51.375 Honesty testing of sex offenders.
51.38 Nonresident patients on unauthorized absence.
51.39 Resident patients on unauthorized absence.
51.40 Determination of residence for certain adults; county of responsibility.
51.42 Community mental health, developmental disabilities, alcoholism and drug abuse services.
51.421 Community support programs.
51.423 Grants−in−aid.
51.437 Developmental disabilities services.
51.44 Early intervention services.
51.45 Prevention and control of alcoholism.
51.46 Priority for pregnant women for private treatment for alcohol or other drug abuse.
51.47 Alcohol and other drug abuse treatment for minors without parental consent.
51.48 Alcohol and other drug testing, assessment, and treatment of minor without minor's consent.
51.59 Incompetency not implied.
51.60 Appointment of counsel.
51.605 Reimbursement for counsel provided by the state.
51.61 Patients rights.
51.62 Protection and advocacy system.
51.63 Private pay for patients.
51.64 Reports of death required; penalty; assessment.
51.65 Segregation of tuberculosis patients.
51.67 Alternate procedure; protective services.
51.75 Interstate compact on mental health.
51.76 Compact administrator.
51.77 Transfer of patients.
51.78 Supplementary agreements.
51.79 Transmittal of copies.
51.80 Patients' rights.
51.81 Uniform extradition of persons of unsound mind act; definitions.
51.82 Delivery of certain nonresidents.
51.83 Authentication of demand; discharge; costs.
51.84 Limitation of time to commence proceeding.
51.85 Interpretation.
51.87 Interstate contracts for services under this chapter.
51.90 Antidiscrimination.
51.91 Supplemental aid.
51.95 Short title.

Cross−reference: See s. 46.011 for definitions applicable to chs. 46, 50, 51, 54, 55, and 58.

51.001 Legislative policy. (1) It is the policy of the state to assure the provision of a full range of treatment and rehabilitation services in the state for all mental disorders and developmental disabilities and for mental illness, alcoholism and other drug abuse. There shall be a unified system of prevention of such conditions and provision of services which will assure all people in need of care access to the least restrictive treatment alternative appropriate to their needs, and movement through all treatment components to assure continuity of care, within the limits of available state and federal funds and of county funds required to be appropriated to match state funds.

(2) To protect personal liberties, no person who can be treated adequately outside of a hospital, institution or other inpatient facility may be involuntarily treated in such a facility.

History: 1975 c. 430; 1995 a. 92.

51.01 Definitions. As used in this chapter, except where otherwise expressly provided:

(1) "Alcoholic" means a person who is suffering from alcoholism.

(1m) "Alcoholism" is a disease which is characterized by the dependency of a person on the drug alcohol, to the extent that the person's health is substantially impaired or endangered or his or her social or economic functioning is substantially disrupted.

(2) "Approved treatment facility" means any publicly or privately operated treatment facility or unit thereof approved by the department for treatment of alcoholic, drug dependent, mentally ill or developmentally disabled persons.

(2g) (a) "Brain injury" means any injury to the brain, regardless of age at onset, whether mechanical or infectious in origin, including brain trauma, brain damage and traumatic head injury, the results of which are expected to continue indefinitely, which constitutes a substantial handicap to the individual, and which directly results in any 2 or more of the following:

1. Attention impairment.
2. Cognition impairment.
3. Language impairment.
4. Memory impairment.
5. Conduct disorder.
6. Motor disorder.
7. Any other neurological dysfunction.

(am) "Brain injury" includes any injury to the brain under par. (a) that is vascular in origin if received by a person prior to his or her attaining the age of 22 years.

(b) "Brain injury" does not include alcoholism, Alzheimer's disease as specified under s. 46.87 (1) (a), or degenerative brain disorder, as defined in s. 55.01 (1v).

(3) "Center for the developmentally disabled" means any facility which is operated by the department and which provides services including, but not limited to, 24−hour treatment, consultation, training and education for developmentally disabled persons.

(3n) "Community mental health program" means a program to provide community−based outpatient mental health services that is operated by or under contract with a county department of community programs or that requests payment for the services under the medical assistance program or under benefits required under s. 632.89 (2).

(3s) "Community support program" means a coordinated care and treatment system that provides a network of services through an identified treatment program and staff to ensure ongoing therapeutic involvement and individualized treatment in the

Electronic reproduction of 2009−10 Wis. Stats. database, current through 2011 Wis. Act 286.

community for individuals with serious and persistent mental illness.

(4) "Conditional transfer" means a transfer of a patient or resident to a less restrictive environment for treatment which is made subject to conditions imposed for the benefit of the patient or resident.

(4g) "County of residence" means the county that is determined under s. 51.40 to be the county of residence.

(4r) "Degenerative brain disorder" means the loss or dysfunction of brain cells to the extent that the individual is substantially impaired in his or her ability to provide adequately for his or her own care or custody or to manage adequately his or her property or financial affairs.

(5) (a) "Developmental disability" means a disability attributable to brain injury, cerebral palsy, epilepsy, autism, Prader−Willi syndrome, intellectual disability, or another neurological condition closely related to an intellectual disability or requiring treatment similar to that required for individuals with an intellectual disability, which has continued or can be expected to continue indefinitely and constitutes a substantial handicap to the afflicted individual. "Developmental disability" does not include dementia that is primarily caused by degenerative brain disorder.

(b) "Developmental disability", for purposes of involuntary commitment, does not include cerebral palsy or epilepsy.

(6) "Director" means the person in charge of a state treatment facility, state or local treatment center, or approved private facility.

(7) "Discharge" of a patient who is under involuntary commitment orders means a termination of custody and treatment obligations of the patient to the authority to which the patient was committed by court action. The "discharge" of a patient who is voluntarily admitted to a treatment program or facility means a termination of treatment obligations between the patient and the treatment program or facility.

(8) "Drug dependent" means a person who uses one or more drugs to the extent that the person's health is substantially impaired or his or her social or economic functioning is substantially disrupted.

(9) "Hospital" has the meaning given under s. 50.33.

(10) "Inpatient facility" means a public or private hospital or unit of a hospital which has as its primary purpose the diagnosis, treatment and rehabilitation of mental illness, developmental disability, alcoholism or drug abuse and which provides 24−hour care.

(10m) "Juvenile correctional facility" has the meaning given in s. 938.02 (10p).

(11) "Law enforcement officer" means any person who by virtue of the person's office or public employment is vested by law with the duty to maintain public order or to make arrests for crimes while acting within the scope of the person's authority.

(11m) "Licensed mental health professional" has the meaning given in s. 632.89 (1) (dm).

(12) "Mental health institute" means any institution operated by the department for specialized psychiatric services, research, education, and which is responsible for consultation with community programs for education and quality of care.

(13) (a) "Mental illness" means mental disease to such extent that a person so afflicted requires care and treatment for his or her own welfare, or the welfare of others, or of the community.

(b) "Mental illness", for purposes of involuntary commitment, means a substantial disorder of thought, mood, perception, orientation, or memory which grossly impairs judgment, behavior, capacity to recognize reality, or ability to meet the ordinary demands of life, but does not include alcoholism.

(14) "Residence" has the meaning given under s. 49.001 (6).

(14k) "Secured residential care center for children and youth" has the meaning given in s. 938.02 (15g).

(14t) "Serious and persistent mental illness" means a mental illness that is severe in degree and persistent in duration, that causes a substantially diminished level of functioning in the primary aspects of daily living and an inability to cope with the ordinary demands of life, that may lead to an inability to maintain stable adjustment and independent functioning without long−term treatment and support, and that may be of lifelong duration. "Serious and persistent mental illness" includes schizophrenia as well as a wide spectrum of psychotic and other severely disabling psychiatric diagnostic categories, but does not include degenerative brain disorder or a primary diagnosis of a developmental disability or of alcohol or drug dependence.

(15) "State treatment facility" means any of the institutions operated by the department for the purpose of providing diagnosis, care or treatment for mental or emotional disturbance, developmental disability, alcoholism or drug dependency and includes but is not limited to mental health institutes.

(16) "Transfer" means the movement of a patient or resident between approved treatment facilities or to or from an approved treatment facility and the community.

(17) "Treatment" means those psychological, educational, social, chemical, medical or somatic techniques designed to bring about rehabilitation of a mentally ill, alcoholic, drug dependent or developmentally disabled person.

(18) "Treatment director" means the person who has primary responsibility for the treatment provided by a treatment facility. The term includes the medical director of a facility.

(19) "Treatment facility" means any publicly or privately operated facility or unit thereof providing treatment of alcoholic, drug dependent, mentally ill or developmentally disabled persons, including but not limited to inpatient and outpatient treatment programs, community support programs and rehabilitation programs.

History: 1975 c. 430 ss. 11, 81; 1977 c. 26; 1977 c. 203 s. 106; 1977 c. 428; 1981 c. 79 s. 17; 1983 a. 189 s. 329 (19); 1983 a. 441; 1985 a. 29 s. 3202 (23); 1985 a. 265, 307; 1993 a. 445; 1995 a. 27; 1997 a. 47; 1999 a. 9; 2005 a. 264, 344, 387, 388; 2007 a. 45; 2009 a. 28; 2011 a. 126.

Cross−reference: See s. 46.011 for definitions applicable to chs. 46, 48, 50, 51, 54, 55 and 58.

"Treatment" does not include habilitation. In Matter of Athans, 107 Wis. 2d 331, 320 N.W.2d 30 (Ct. App. 1982).

Alzheimer's disease is one type of a degenerative brain disorder. Chapter 51 includes the definition of degenerative brain disorder only to specifically exclude it from the chapter's authority, whereas the ch. 55 definition is used to include it in the scope of authority granted under ch. 55. Rehabilitation is a necessary element of treatment under ch. 51. Because there are no techniques that can be employed to bring about rehabilitation from Alzheimer's disease, an individual with the disease cannot be rehabilitated. Accordingly, an Alzheimer's patient is not a proper subject for ch. 51 treatment. Fond du Lac County v. Helen E. F. 2011 WI App 72, 333 Wis. 2d 740, 798 N.W.2d 707, 10−2061. Affirmed. 2012 WI 50, 340 Wis. 2d 500, 814 N.W.2d 179, 10−2061.

51.02 Council on mental health. (1) The council on mental health shall have the following duties:

(a) Advise the department, the legislature and the governor on the use of state and federal resources and on the provision and administration of programs for persons who are mentally ill or who have other mental health problems, for groups who are not adequately served by the mental health system, for the prevention of mental health problems and for other mental health related purposes.

(b) Provide recommendations to the department on the expenditure of federal funds received under the community mental health block grant under 42 USC 300x to 300x−9 and participate in the development of and monitor and evaluate the implementation of, the community mental health block grant plan.

(c) Review all departmental plans for services affecting persons with mental illness and monitor the implementation of the plans.

(d) Serve as an advocate for persons with mental illness.

(f) Consult with the department in the development of a model community mental health plan under s. 51.42 (7) (a) 9., and review

Electronic reproduction of 2009−10 Wis. Stats. database, current through 2011 Wis. Act 286.

and advise the department on community mental health plans submitted by counties under s. 51.42 (3) (ar) 5.

(g) Promote the development and administration of a delivery system for community mental health services that is sensitive to the needs of consumers of the services.

(h) Review and comment on the human services and community programs board member training curriculum developed by the department under s. 51.42 (7) (a) 3m.

(2) The secretary shall submit all departmental plans affecting persons with mental illness to the council for its review. The council shall provide its recommendations to the secretary within such time as the secretary may require.

History: 1983 a. 439; 1987 a. 186; 1993 a. 445; 1995 a. 27; 2001 a. 16.

51.03 Department; powers and duties. (1g) In this section:

(a) "Early intervention" means action to hinder or alter a person's mental disorder or abuse of alcohol or other drugs in order to reduce the duration of early symptoms or to reduce the duration or severity of mental illness or alcohol or other drug abuse that may result.

(b) "Individualized service planning" means a process under which a person with mental illness or who abuses alcohol or other drugs and, if a child, his or her family, receives information, education and skills to enable the person to participate mutually and creatively with his or her mental health or alcohol or other drug abuse service provider in identifying his or her personal goals and developing his or her assessment, crisis protocol, treatment and treatment plan. "Individualized service planning" is tailored to the person and is based on his or her strengths, abilities and needs.

(c) "Prevention" means action to reduce the instance, delay the onset or lessen the severity of mental disorder, before the disorders may progress to mental illness, by reducing risk factors for, enhancing protections against and promptly treating early warning signs of mental disorder.

(d) "Recovery" means the process of a person's growth and improvement, despite a history of mental illness or alcohol or other drug abuse, in attitudes, feelings, values, goals, skills and behavior and is measured by a decrease in dysfunctional symptoms and an increase in maintaining the person's highest level of health, wellness, stability, self−determination and self−sufficiency.

(e) "Stigma" means disqualification from social acceptance, derogation, marginalization and ostracism encountered by persons with mental illness or persons who abuse alcohol or other drugs as the result of societal negative attitudes, feelings, perceptions, representations and acts of discrimination.

(1r) The department through its authorized agents may visit or investigate any treatment facility to which persons are admitted or committed under this chapter.

(2) No later than 14 days after the date of a death reported under s. 51.64 (2) (a), the department shall investigate the death.

(3) (a) Beginning on September 1, 1996, the department shall collect and analyze information in this state on each of the following:

1. The number of commitments initiated under s. 51.15 or 51.20 (1).

2. The number of commitments ordered under s. 51.20 (13).

3. The number of, cost of and paying sources for days of inpatient mental health treatment that result from the commitments initiated under subd. 1. or ordered under subd. 2.

5. The number of persons who are receiving care and treatment under community support programs voluntarily or under commitments ordered under s. 51.20 (13).

6. The number of individuals authorized to consent to involuntary administration of psychotropic medication under s. 55.14 (8) or for whom guardians were appointed under s. 880.33 (4m), 2003 stats.

(b) By April 1, 1997, and annually by that date for 3 years thereafter, the department shall submit a report to the legislature under s. 13.172 (2) on the information collected under par. (a).

(4) Within the limits of available state and federal funds, the department may do all of the following:

(a) Promote the creation of coalitions among the state, counties, providers of mental health and alcohol and other drug abuse services, consumers of the services and their families and advocates for persons with mental illness and for alcoholic and drug dependent persons to develop, coordinate and provide a full range of resources to advance prevention; early intervention; treatment; recovery; safe and affordable housing; opportunities for education, employment and recreation; family and peer support; self−help; and the safety and well−being of communities.

(b) In cooperation with counties, providers of mental health and alcohol and other drug abuse services, consumers of the services, interested community members and advocates for persons with mental illness and for alcoholic and drug dependent persons, develop and implement a comprehensive strategy to reduce stigma of and discrimination against persons with mental illness, alcoholics and drug dependent persons.

(c) Develop and implement a comprehensive strategy to involve counties, providers of mental health and alcohol and other drug abuse services, consumers of the services and their families, interested community members and advocates for persons with mental illness and for alcoholic and drug dependent persons as equal participants in service system planning and delivery.

(d) Promote responsible stewardship of human and fiscal resources in the provision of mental health and alcohol and other drug abuse services.

(e) Develop and implement methods to identify and measure outcomes for consumers of mental health and alcohol and other drug abuse services.

(f) Promote access to appropriate mental health and alcohol and other drug abuse services regardless of a person's geographic location, age, degree of mental illness, alcoholism or drug dependency or availability of personal financial resources.

(g) Promote consumer decision making to enable persons with mental illness and alcohol or drug dependency to be more self−sufficient.

(h) Promote use by providers of mental health and alcohol and other drug abuse services of individualized service planning, under which the providers develop written individualized service plans that promote treatment and recovery, together with service consumers, families of service consumers who are children and advocates chosen by consumers.

(5) The department shall ensure that providers of mental health and alcohol and other drug abuse services who use individualized service plans, as specified in sub. (4) (h), do all of the following in using a plan:

(a) Establish meaningful and measurable goals for the consumer.

(b) Base the plan on a comprehensive assessment of the consumer's strengths, abilities, needs and preferences.

(c) Keep the plan current.

(d) Modify the plan as necessary.

History: 1975 c. 430; 1989 a. 336; 1995 a. 292; 1999 a. 9; 2005 a. 264, 387; 2007 a. 20, 45; 2011 a. 32.

51.032 Denial and revocations of certification or approval based on tax delinquency. (1) Except as provided in sub. (1m), the department shall require each applicant to provide the department with his or her social security number, if the applicant is an individual, or the applicant's federal employer identification number, if the applicant is not an individual, as a condition of issuing any of the following:

Electronic reproduction of 2009−10 Wis. Stats. database, current through 2011 Wis. Act 286.

(a) A certification issued under s. 51.038.

(b) A certification issued under s. 51.04.

(c) A certification issued under rules required under s. 51.42 (7) (b) 11.

(d) A certification issued under rules required under s. 51.421 (3) (a).

(e) An approval issued under s. 51.45 (8).

(1m) If an individual who applies for a certification or approval under sub. (1) does not have a social security number, the individual, as a condition of obtaining the certification or approval, shall submit a statement made or subscribed under oath or affirmation to the department that the applicant does not have a social security number. The form of the statement shall be prescribed by the department of children and families. A certification or approval issued in reliance upon a false statement submitted under this subsection is invalid.

(2) The department may not disclose any information received under sub. (1) to any person except to the department of revenue for the sole purpose of requesting certifications under s. 73.0301.

(3) Except as provided in sub. (1m), the department shall deny an application for the issuance of a certification or approval specified in sub. (1) if the applicant does not provide the information specified in sub. (1).

(4) The department shall deny an application for the issuance of a certification or approval specified in sub. (1) or shall revoke a certification or approval specified in sub. (1) if the department of revenue certifies under s. 73.0301 that the applicant for or holder of a certification or approval is liable for delinquent taxes.

(5) An action taken under sub. (3) or (4) is subject to review only as provided under s. 73.0301 (2) (b) and (5).

History: 1997 a. 237; 1999 a. 9; 2007 a. 20.

51.038 Outpatient mental health clinic certification. Except as provided in s. 51.032, if a facility that provides mental health services on an outpatient basis holds current accreditation from the council on accreditation of services for families and children, the department may accept evidence of this accreditation as equivalent to the standards established by the department, for the purpose of certifying the facility for the receipt of funds for services provided as a benefit to a medical assistance recipient under s. 49.46 (2) (b) 6. f. or 49.471 (11) (k), a community aids funding recipient under s. 51.423 (2) or as mandated coverage under s. 632.89.

History: 1987 a. 27; 1997 a. 237; 2007 a. 20.

51.04 Treatment facility certification. Except as provided in s. 51.032, any treatment facility may apply to the department for certification of the facility for the receipt of funds for services provided as a benefit to a medical assistance recipient under s. 49.46 (2) (b) 6. f. or 49.471 (11) (k) or to a community aids funding recipient under s. 51.423 (2) or provided as mandated coverage under s. 632.89. The department shall annually charge a fee for each certification.

History: 1975 c. 224; Stats. 1975 s. 51.44; 1975 c. 430 s. 53m; Stats. 1975 s. 51.04; 1983 a. 27; 1985 a. 29, 176; 1995 a. 27; 1997 a. 237; 2007 a. 20.

Cross−reference: See also ch. DHS 35, Wis. adm. code.

51.05 Mental health institutes. (1) DESIGNATION. The mental health institute located at Mendota is known as the "Mendota Mental Health Institute" and the mental health institute located at Winnebago is known as the "Winnebago Mental Health Institute". Goodland Hall West, a facility located at Mendota Mental Health Institute, is designated as the "Maximum Security Facility at Mendota Mental Health Institute". The department shall divide the state by counties into 2 districts, and may change the boundaries of these districts, arranging them with reference to the number of patients residing in them at a given time, the capacity of the institutes and the convenience of access to them.

(2) ADMISSIONS AUTHORIZED BY COUNTIES. The department may not accept for admission to a mental health institute any resident person, except in an emergency, unless the county department under s. 51.42 in the county where the person has residence authorizes the care under s. 51.42 (3) (as). Patients who are committed to the department under s. 975.01, 1977 stats., or s. 975.02, 1977 stats., or s. 971.14, 971.17, 975.06, or 980.06, admitted by the department under s. 975.17, 1977 stats., or are transferred from a juvenile correctional facility or a secured residential care center for children and youth to a state treatment facility under s. 51.35 (3) or from a jail or prison to a state treatment facility under s. 51.37 (5) are not subject to this section.

(3) ADMISSIONS AUTHORIZED BY DEPARTMENT. Any person who is without a county responsible for his or her care and any person entering this state through the compact established under s. 51.75 may be accepted by the department and temporarily admitted to an institute. Such person shall be transferred to the county department under s. 51.42 for the community where the best interests of the person can best be served, as soon as practicable.

(4) TRANSFERS AND DISCHARGES. The transfer or discharge of any person who is placed in a mental health institute shall be made subject to s. 51.35.

(5) SCHOOL ACTIVITIES. If an individual over the age of 2 and under the age of 22 and eligible for special education and related services under subch. V of ch. 115 is committed, admitted or transferred to or is a resident of the Mendota Mental Health Institute or Winnebago Mental Health Institute, the individual shall attend a school program operated by the applicable mental health institute or a school outside the applicable mental health institute which is approved by the department of public instruction. A school program operated by the Mendota Mental Health Institute or Winnebago Mental Health Institute shall be under the supervision of the department of public instruction and shall meet standards prescribed by that agency.

(6) HEARING−IMPAIRED INDIVIDUALS. The department shall provide mental health services appropriate for hearing−impaired individuals who are residents of or are committed, admitted or transferred to a mental health institute.

History: 1975 c. 430; 1977 c. 428; 1979 c. 117; 1983 a. 293; 1985 a. 29 s. 3200 (56); 1985 a. 176; 1987 a. 27; 1989 a. 31, 359; 1991 a. 315; 1993 a. 437 ss. 103 and 266; 1993 a. 479; 1995 a. 27 ss. 9126 (19), 9145 (1); 1995 a. 77, 216; 1997 a. 27, 164; 1999 a. 9, 83; 2005 a. 25, 344, 387; 2007 a. 97.

51.06 Centers for the developmentally disabled. (1) PURPOSE. The purpose of the northern center for developmentally disabled, central center for developmentally disabled and southern center for developmentally disabled is to provide services needed by developmentally disabled citizens of this state that are otherwise unavailable to them, and to return those persons to the community when their needs can be met at the local level.

(1m) SERVICES. Services to be provided by the department at centers for the developmentally disabled shall include:

(a) Education within the requirements of sub. (2), training, habilitative and rehabilitative services to those persons placed in its custody.

(b) Development−evaluation services to citizens through county departments under ss. 51.42 and 51.437.

(c) Assistance to such community boards in meeting the needs of developmentally disabled citizens.

(d) Services for individuals with developmental disability who are also diagnosed as mentally ill or who exhibit extremely aggressive and challenging behaviors.

(1r) ALTERNATIVE SERVICES. (a) In addition to services provided under sub. (1m), the department may, when the department determines that community services need to be supplemented, authorize a center for the developmentally disabled to offer short−term residential services, dental and mental health services, ther-

Electronic reproduction of 2009−10 Wis. Stats. database, current through 2011 Wis. Act 286.

apy services, psychiatric and psychological services, general medical services, pharmacy services, and orthotics.

(b) Services under this subsection may be provided only under contract between the department and a county department under s. 46.215, 46.22, 46.23, 51.42, or 51.437, a school district, or another public or private entity within the state to persons referred from those entities, at the discretion of the department. The department shall charge the referring entity all costs associated with providing the services. Unless a referral is made, the department may not offer services under this subsection to the person who is to receive the services or to his or her family. The department may not impose a charge for services under this subsection upon the person receiving the services or upon his or her family. Any revenues received under this subsection shall be credited to the appropriation account under s. 20.435 (2) (g).

(c) 1. Services under this subsection are governed by subchapter XVI of ch. 48 and ss. 50.03, 50.032, 50.033, 50.034 (1) to (3), 50.035, 50.04, 50.09, 51.04, 51.42 (7) (b), and 51.61, for the application of which the services shall be considered to be provided by a private entity, by rules promulgated under those statutes, and by the terms of the contract between the department, except that, in the event of a conflict between the contractual terms and the statutes or rules, the services shall comply with the contractual, statutory, or rules provision that is most protective of the service recipient's health, safety, welfare, or rights.

2. Sections 46.03 (18), 46.10, 51.15 (2), 51.20 (13) (c) 1., and 51.42 (3) (as) and zoning or other ordinances or regulations of the county, city, town, or village in which the services are provided or the facility is located do not apply to the services under this subsection.

3. The department may not be required, by court order or otherwise, to offer services under this subsection.

(d) A residential facility operated by a center for the developmentally disabled that is authorized by the department under this subsection may not be considered to be a hospital, as defined in s. 50.33 (2), an inpatient facility, a state treatment facility, or a treatment facility.

(2) SCHOOL ACTIVITIES. If an individual over the age of 2 years and under the age of 22 years and eligible for special education and related services under subch. V of ch. 115 is admitted to, is placed in or is a resident of a center, the individual shall attend a school program operated by the center or a school outside the center which is approved by the department of public instruction. A school program operated by the center shall be under the supervision of the department of public instruction and shall meet standards prescribed by that agency.

(3) ADMISSION. (a) Subject to par. (b), individuals under the age of 22 years shall be placed only at the central center for the developmentally disabled unless the department authorizes the placement of the individual at the northern or southern center for the developmentally disabled.

(b) An individual may be placed at or transferred to a center for the developmentally disabled for services under sub. (1m) (d) only after all of the following conditions are met:

1. The department determines that a licensed bed and other necessary resources are available to provide services to the individual.

2. The department and the county of residence of the individual agree on a maximum discharge date for the individual.

(4) TRANSFER OR DISCHARGE. The transfer or discharge of any person who is placed in a center for the developmentally disabled shall be made subject to s. 51.35.

(5) SURCHARGE FOR EXTENDED INTENSIVE TREATMENT. The department may impose on a county a progressive surcharge for services under sub. (1m) (d) that an individual receives after the maximum discharge date for the individual that was agreed upon under sub. (3) (b) 2. The surcharge is 10% of the amount paid for the individual's services under s. 49.45 during any part of the first 6−month period following the maximum discharge date, and increases by 10% of the amount paid for the individual's services under s. 49.45 during any part of each 6−month period thereafter. Any revenues received under this subsection shall be credited to the appropriation account under s. 20.435 (2) (gL).

(6) SALE OF ASSETS OR REAL PROPERTY AT NORTHERN CENTER FOR THE DEVELOPMENTALLY DISABLED. The department may maintain the Northern Center for the Developmentally Disabled for the purpose specified in sub. (1), but may sell assets or real property of the Northern Center for the Developmentally Disabled. If there is any outstanding public debt used to finance the acquisition, construction, or improvement of any property that is sold under this subsection, the department shall deposit a sufficient amount of the net proceeds from the sale of the property in the bond security and redemption fund under s. 18.09 to repay the principal and pay the interest on the debt, and any premium due upon refunding any of the debt. If the property was purchased with federal financial assistance, the department shall pay to the federal government any of the net proceeds required by federal law. If there is no such debt outstanding and there are no moneys payable to the federal government, or if the net proceeds exceed the amount required to be deposited or paid under this subsection, the department shall credit the net proceeds or remaining net proceeds to the appropriation account under s. 20.435 (2) (gk).

(8) RELOCATIONS; REPORT. (a) In this subsection:

1. "Intermediate care facility for persons with an intellectual disability" has the meaning given for "intermediate care facility for the mentally retarded" under 42 USC 1396d (d).

2. "Medical Assistance" has the meaning given in s. 49.43 (8).

3. "Nursing home" has the meaning given in s. 50.01 (3).

(b) Annually by October 1, the department shall submit to the joint committee on finance and to the appropriate standing committees of the legislature under s. 13.172 (3) a report that includes information collected from the previous fiscal year on the relocation or diversion of individuals who are Medical Assistance eligibles or recipients from nursing homes, intermediate care facilities for persons with an intellectual disability, and centers for the developmentally disabled. The report shall include all of the following information:

1. The impact of the relocations and diversions on the health and safety of the individuals relocated or diverted.

2. The extent of involvement of guardians or family members of the individuals in efforts to relocate or divert the individuals.

3. The nature and duration of relocations or diversions that specifies the locations of relocated or diverted individuals every year after home or community placement occurs, so as to keep track of the individuals on an ongoing basis.

4. An accounting of the costs and savings under the Medical Assistance program of relocations and diversions and the resulting reduction in capacity for services of nursing homes, intermediate care facilities for persons with an intellectual disability, and centers for the developmentally disabled. The accounting shall include the per individual savings as well as the collective savings of relocations and diversions.

5. The costs under the Medical Assistance program of administration, housing, and other services, including nursing, personal care, and physical therapy services, that are associated with the relocations and diversions.

6. The extent of Medical Assistance provided to relocated or diverted individuals that is in addition to Medical Assistance provided to the individuals under s. 46.27 (11), 46.275, 46.277, or 46.278, as a family care benefit under ss. 46.2805 to 46.2895, or under any other home−based or community−based program for which the department has received a waiver under 42 USC 1396n (c).

7. Staff turnover rates for nursing homes, intermediate care facilities for persons with an intellectual disability, and centers for the developmentally disabled in communities in which an individual relocated or diverted from a nursing home, intermediate care

Electronic reproduction of 2009−10 Wis. Stats. database, current through 2011 Wis. Act 286.

facility for persons with an intellectual disability, or center for the developmentally disabled currently resides.

(10) RELOCATIONS FROM SOUTHERN CENTER. (a) The department shall create a form on which a resident of the southern center for the developmentally disabled, or the resident's guardian, may indicate a preference for where the resident would like to live. The department shall make the form available to all residents of the southern center for the developmentally disabled and to their guardians. The department shall maintain the completed form with the resident's treatment records.

(b) The department shall ensure that, if a resident is to be relocated from the southern center for the developmentally disabled, members of the center staff who provide direct care for the resident are consulted in developing a residential placement plan for the resident.

(c) If a resident of the southern center for the developmentally disabled is relocated from the center after July 1, 2009, the department shall provide the resident's guardian or, if the resident is a minor and does not have a guardian, the resident's parent information regarding the process for appealing the decision to relocate the resident and the process for filing a grievance regarding the decision.

History: 1975 c. 430; 1981 c. 20; 1985 a. 29 ss. 1061 to 1064, 3200 (56); 1985 a. 176; 1991 a. 39; 1993 a. 16; 1995 a. 27 s. 9145 (1); 1997 a. 27, 164; 1999 a. 9; 2001 a. 16; 2003 a. 33; 2005 a. 386; 2007 a. 153; 2009 a. 28; 2011 a. 126, 260.

51.07 Outpatient services. (1) The department may establish a system of outpatient clinic services in any institution operated by the department.

(2) It is the purpose of this section to:

(a) Provide outpatient diagnostic and treatment services for patients and their families.

(b) Offer precommitment and preadmission evaluations and studies.

(3) The department may provide outpatient services only to patients contracted for with county departments under ss. 51.42 and 51.437 in accordance with s. 46.03 (18), except for those patients whom the department finds to be nonresidents of this state and persons receiving services under contracts under s. 46.043. The full and actual cost less applicable collections of services contracted for with county departments under s. 51.42 or 51.437 shall be charged to the respective county department under s. 51.42 or 51.437. The state shall provide the services required for patient care only if no outpatient services are funded by the department in the county or group of counties served by the respective county department under s. 51.42 or 51.437.

History: 1973 c. 90, 333; 1975 c. 430 s. 19; 1985 a. 176; 1997 a. 27; 1999 a. 9.

51.08 Milwaukee County Mental Health Complex. Any county having a population of 500,000 or more may, pursuant to s. 46.17, establish and maintain a county mental health complex. The county mental health complex shall be a hospital devoted to the detention and care of drug addicts, alcoholics, chronic patients and mentally ill persons whose mental illness is acute. Such hospital shall be governed pursuant to s. 46.21. Treatment of alcoholics at the county mental health complex is subject to approval by the department under s. 51.45 (8). The county mental health complex established pursuant to this section is subject to rules promulgated by the department concerning hospital standards.

History: 1971 c. 108 ss. 5, 6; 1971 c. 125 ss. 350 to 352, 523; 1971 c. 211; 1973 c. 90, 198; 1975 c. 41; 1975 c. 430 s. 15; Stats. 1975 s. 51.08; 1985 a. 332 s. 251 (1); 1987 a. 307.

51.09 County hospitals. Any county having a population of less than 500,000 may establish a hospital or facilities for the detention and care of mentally ill persons, alcoholics and drug addicts; and in connection therewith a hospital or facility for the care of cases afflicted with pulmonary tuberculosis. County hospitals established pursuant to this section are subject to rules promulgated by the department concerning hospital standards, including standards for alcoholic treatment facilities under s. 51.45 (8).

History: 1971 c. 211; 1973 c. 198; 1975 c. 430 s. 16; Stats. 1975 s. 51.09; 1985 a. 332 s. 251 (1).

51.10 Voluntary admission of adults. (1) With the approval of the treatment director of the treatment facility or the director's designee, or in the case of a center for the developmentally disabled, the director of the center or the director's designee, and the approval of the director of the appropriate county department under s. 51.42 or 51.437, an adult desiring admission to an approved inpatient treatment facility may be admitted upon application. This subsection applies only to admissions made through a county department under s. 51.42 or 51.437 or through the department.

(2) With the approval of the director of the treatment facility or the director's designee and the director of the appropriate county department under s. 51.42 or 51.437, an adult may be voluntarily admitted to a state inpatient treatment facility.

(3) Voluntary admission of adult alcoholics shall be in accordance with s. 51.45 (10).

(4) The criteria for voluntary admission to an inpatient treatment facility shall be based on an evaluation that the applicant is mentally ill or developmentally disabled, or is an alcoholic or drug dependent and that the person has the potential to benefit from inpatient care, treatment or therapy. An applicant is not required to meet a standard of dangerousness under s. 51.20 (1) (a) 2. to be eligible for the benefits of voluntary treatment programs. An applicant may be admitted for the purpose of making a diagnostic evaluation.

(4m) (a) An adult who has an identified funding source that is not obtained through the county department and who meets the criteria for voluntary admission under sub. (4) or an adult whose admission is approved under sub. (1) or (2) and who meets the criteria for voluntary admission under sub. (4) may be admitted to an inpatient treatment facility if all of the following requirements are met:

1. A physician of the facility submits a signed request and certifies in writing, before not less than 2 witnesses, that the physician has advised the patient in the presence of the witnesses both orally and in writing of the person's rights under sub. (5) and of the benefits and risks of treatment, the patient's right to the least restrictive form of treatment appropriate to the patient's needs and the responsibility of the facility to provide the patient with this treatment; or

2. The person applies for admission in writing.

(b) Any person admitted under par. (a) 1. who fails to indicate a desire to leave the facility but who refuses or is unable to sign an application for admission is presumed to consent to admission and may be held for up to 7 days as a voluntary patient.

(c) On the first court day following admission under par. (a) 1., the facility shall notify the court assigned to exercise probate jurisdiction for the county in which the facility is located of the admission. Within 24 hours after receiving this notice, excluding Saturdays, Sundays and holidays, the court shall appoint a guardian ad litem to visit the facility and to determine if there has been compliance with this subsection. The guardian ad litem shall visit the patient within 48 hours, excluding Saturdays, Sundays and holidays, to ascertain whether the patient wishes a less restrictive form of treatment and, if so, shall assist the patient in obtaining the proper assistance from the facility. The guardian ad litem shall inform the patient of all rights to which the patient is entitled under this chapter.

(d) If a patient admitted under par. (a) 1. has not signed a voluntary admission application within 7 days after admission, the patient, the guardian ad litem and the physician who signed the admission request shall appear before the judge or a circuit court commissioner assigned to exercise probate jurisdiction for the county in which the facility is located to determine whether the

Electronic reproduction of 2009−10 Wis. Stats. database, current through 2011 Wis. Act 286.

patient shall remain in the facility as a voluntary patient. If the judge or circuit court commissioner determines that the patient desires to leave the facility, the facility shall discharge the patient. If the facility has reason to believe the patient is eligible for commitment under s. 51.20, the facility may initiate procedures for involuntary commitment.

(5) (a) At the time of admission to an inpatient facility the individual being admitted shall be informed orally and in writing of his or her right to leave upon submission of a written request to the staff of the facility except when the director or such person's designee files a statement of emergency detention under s. 51.15 with the court by the end of the next day in which the court transacts business.

(b) Writing materials for use in requesting discharge shall be available at all times to any voluntarily admitted individual, and shall be given to the individual upon request. A copy of the patient's and resident's rights shall be given to the individual at the time of admission.

(c) Any patient or resident voluntarily admitted to an inpatient treatment facility shall be discharged on request, unless the treatment director or the treatment director's designee has reason to believe that the patient or resident is dangerous in accordance with a standard under s. 51.20 (1) (a) 2. or (am) and files a statement of emergency detention under s. 51.15 with the court by the end of the next day in which the court transacts business. The patient or resident shall be notified immediately when such a statement is to be filed. Prior to the filing of a statement, the patient or resident may be detained only long enough for the staff of the facility to evaluate the individual's condition and to file the statement of emergency detention. This time period may not exceed the end of the next day in which the court transacts business. Once a statement is filed, a patient or resident may be detained as provided in s. 51.15 (1). The probable cause hearing required under s. 51.20 (7) shall be held within 72 hours after the request for discharge, excluding Saturdays, Sundays and legal holidays.

(6) A person against whom a petition for involuntary commitment has been filed under s. 51.15 or 51.20 may agree to be admitted to an inpatient treatment facility under this section. The court may permit the person to become a voluntary patient or resident pursuant to this section upon signing an application for voluntary admission, if the director of the appropriate county department under s. 51.42 or 51.437 and the director of the facility to which the person will be admitted approve of the voluntary admission within 30 days of the admission. Except as provided in s. 51.20 (8) (bg) or (bm), the court shall dismiss the proceedings under s. 51.20 30 days after the person's admission if the person is still a voluntary patient or resident or upon the discharge of the person by the treatment director of the facility or his or her designee, if that occurs first. For any person who is a voluntary patient or resident under this subsection, actions required under s. 51.35 (5) shall be initiated within 14 days of admission.

(7) The treatment director of a facility may temporarily admit an individual to an inpatient facility when there is reason to question the competency of such individual. The treatment director shall then apply to the court for appointment of a guardian within 48 hours of the time of admission, exclusive of Saturdays, Sundays and legal holidays. The individual may remain at the facility pending appointment of a guardian.

(8) An adult for whom, because of incompetency, a guardian of the person has been appointed in this state may be voluntarily admitted to an inpatient treatment facility if the guardian consents after the requirements of sub. (4m) (a) 1. are satisfied or if the guardian and the ward consent to the admission under this section.

(9) Upon admission to an inpatient facility, the facility shall offer the patient orally and in writing the opportunity to execute an informed consent form under s. 51.30 (2), requiring the facility to notify the patient's parent, child or spouse or any other adult of the patient's release. If the patient signs the consent form, the facility shall notify the person specified in the form as soon as possible after the patient requests release.

History: 1975 c. 430; 1977 c. 354, 428, 447; 1979 c. 336; 1985 a. 29 s. 3200 (56); 1985 a. 139, 176, 332; 1987 a. 366; 1995 a. 292; 2001 a. 61; 2005 a. 264, 387; 2007 a. 45.

Sub. (5) (c) plainly and unambiguously sets out the procedure for detaining voluntarily admitted patients who seek release and who the treatment director deems dangerous. Dane County v. Stevenson L. J. 2009 WI App 84, 320 Wis. 2d 194, 768 N.W.2d 223, 08−1281.

51.13 Admission of minors. (1) ADMISSION. (a) Except as provided in par. (c) and ss. 51.45 (2m) and 51.47, the application for admission of a minor who is 14 years of age or older to an approved inpatient treatment facility for the primary purpose of treatment for alcoholism or drug abuse and the application for admission of a minor who is under 14 years of age to an approved inpatient treatment facility for the primary purpose of treatment for mental illness, developmental disability, alcoholism, or drug abuse shall be executed by a parent who has legal custody of the minor or the minor's guardian. Any statement or conduct by a minor who is the subject of an application for admission under this paragraph indicating that the minor does not agree to admission to the facility shall be noted on the face of the application and shall be noted in the petition required by sub. (4).

(b) The application for admission of a minor who is 14 years of age or older to an approved inpatient treatment facility for the primary purpose of treatment for mental illness or developmental disability shall be executed by the minor and a parent who has legal custody of the minor or the minor's guardian, except as provided in par. (c) 1., except that, if the minor refuses to execute the application, a parent who has legal custody of the minor or the minor's guardian may execute the application on the minor's behalf.

(c) 1. If a minor 14 years of age or older wishes to be admitted to an approved inpatient treatment facility but a parent with legal custody or the guardian refuses to execute the application for admission or cannot be found, or if there is no parent with legal custody, the minor or a person acting on the minor's behalf may petition the court assigned to exercise jurisdiction under chs. 48 and 938 in the county of residence of the parent or guardian for approval of the admission. A copy of the petition and a notice of hearing shall be served upon the parent or guardian at his or her last−known address. If, after a hearing, the court determines that the consent of the parent or guardian is being unreasonably withheld, that the parent or guardian cannot be found, or that there is no parent with legal custody, and that the admission is proper under the standards prescribed in sub. (4) (d), the court shall approve the minor's admission without the consent of the parent or guardian.

2. If a minor under 14 years of age wishes to be admitted to an approved inpatient treatment facility but a parent with legal custody or the guardian cannot be found, or if there is no parent with legal custody, the minor or a person acting on the minor's behalf may petition the court assigned to exercise jurisdiction under chs. 48 and 938 in the county of residence of the parent or guardian for approval of the admission. A copy of the petition and a notice of hearing shall be served upon the parent or guardian at his or her last−known address. If, after a hearing, the court determines that the parent or guardian cannot be found or that there is no parent with legal custody, and that the admission is proper under the standards prescribed in sub. (4) (d), the court shall approve the minor's admission without the consent of the parent or guardian.

3. The court may, at the minor's request, temporarily approve the admission under subd. 1. or 2. pending hearing on the petition. If a hearing is held under subd. 1. or 2., no review or hearing under sub. (4) is required.

(d) A minor against whom a petition or statement has been filed under s. 51.15, 51.20, or 51.45 (12) or (13) may be admitted under this section. The court may permit the minor to become a

Electronic reproduction of 2009−10 Wis. Stats. database, current through 2011 Wis. Act 286.

patient under this section upon approval by the court of an application executed under par. (a), (b), or (c). The court shall then dismiss the proceedings under s. 51.15, 51.20, or 51.45 (12) or (13). If a hearing is held under this subsection, no hearing under sub. (4) is required.

(e) A minor may be admitted immediately upon the approval of the application executed under par. (a) or (b) by the treatment director of the facility or his or her designee or, in the case of a center for the developmentally disabled, the director of the center or his or her designee, and, if the county department is to be responsible for the cost of the minor's therapy and treatment, the director of the appropriate county department under s. 51.42 or 51.437. Admission under par. (c) or (d) shall also be approved, within 14 days of the minor's admission, by the treatment director of the facility or his or her designee, or in the case of a center for the developmentally disabled, the director of the center or his or her designee and, if the county department is to be responsible for the cost of the minor's therapy and treatment, the director of the appropriate county department under s. 51.42 or 51.437.

(em) Approval under par. (e) shall be based upon an informed professional opinion that the minor is in need of psychiatric services or services for developmental disability, alcoholism, or drug abuse, that the treatment facility offers inpatient therapy or treatment that is appropriate for the minor's needs, and that inpatient care in the facility is the least restrictive therapy or treatment consistent with the minor's needs. In the case of a minor who is being admitted for the primary purpose of treatment for alcoholism or drug abuse, approval shall also be based on the results of an alcohol or other drug abuse assessment that conforms to the criteria specified in s. 938.547 (4).

(3) NOTICE OF RIGHTS. (am) Prior to admission if possible, or as soon thereafter as possible, the minor who is admitted under sub. (1) (a) or (b) and the minor's parent or guardian shall be informed by the director of the facility or his or her designee, both orally and in writing, in easily understandable language, of the review procedure in sub. (4), including the standards to be applied by the court and the possible dispositions; the minor's right to an independent evaluation, if ordered by the court; the minor's right to be informed about how to contact the state protection and advocacy agency designated under s. 51.62 (2) (a); the right under sub. (4) (d) to a hearing upon request under sub. (4); the minor's right to appointed counsel as provided in sub. (4) (d) if a hearing is held; for a minor other than a minor specified under par. (b), the right of the minor or parent or guardian to request the minor's discharge as provided in or limited by sub. (7) (b); and the minor's right to a hearing to determine continued appropriateness of the admission as provided in sub. (7) (c).

(b) Prior to or at admission, a minor who is voluntarily admitted under sub. (1) (c) 1. or 2., and the minor's parent or guardian, if available, shall be informed by the director or his or her designee, both orally and in writing, in easily understandable language, of the minor's right to request discharge and to be discharged within 48 hours of the request, as provided under sub. (7) (b), if no statement is filed for emergency detention or if no petition is filed for emergency commitment, involuntary commitment, or protective placement, and the minor's right to consent to or refuse treatment as provided in s. 51.61 (6).

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

(e) Writing materials for use in requesting a hearing or discharge under this section shall be made available to minors at all times by every inpatient treatment facility. The staff of each such facility shall assist minors in preparing and submitting requests for discharge or hearing.

(4) REVIEW PROCEDURE. (a) Within 3 days after the admission of a minor under sub. (1), or within 3 days after an application is executed for admission of the minor, whichever occurs first, the treatment director of the facility to which the minor is admitted or his or her designee or, in the case of a center for the developmentally disabled, the director of the center or his or her designee, shall file a verified petition for review of the admission in the court assigned to exercise jurisdiction under chs. 48 and 938 in the county in which the facility is located. A copy of the application for admission and of any relevant professional evaluations shall be attached to the petition. The petition shall contain all of the following:

1. The name, address and date of birth of the minor.

2. The names and addresses of the minor's parents or guardian.

3. The facts substantiating the petitioner's belief in the minor's need for psychiatric services, or services for developmental disability, alcoholism or drug abuse.

4. The facts substantiating the appropriateness of inpatient treatment in the inpatient treatment facility.

5. The basis for the petitioner's opinion that inpatient care in the facility is the least restrictive treatment consistent with the needs of the minor.

6. Notation of any statement made or conduct demonstrated by the minor in the presence of the director or staff of the facility indicating that inpatient treatment is against the wishes of the minor.

(b) If hardship would otherwise occur and if the best interests of the minor would be served thereby, the court may, on its own motion or on the motion of any interested party, remove the petition to the court assigned to exercise jurisdiction under chs. 48 and 938 of the county of residence of the parent or guardian.

(c) A copy of the petition shall be provided by the petitioner to the minor and, if available, his or her parents or guardian within 5 days after admission.

(d) Within 5 days after the filing of the petition, the court assigned to exercise jurisdiction under chs. 48 and 938 shall determine, based on the allegations of the petition and accompanying documents, whether there is a prima facie showing that the minor is in need of psychiatric services, or services for developmental disability, alcoholism, or drug abuse, whether the treatment facility offers inpatient therapy or treatment that is appropriate to the minor's needs; whether inpatient care in the treatment facility is the least restrictive therapy or treatment consistent with the needs of the minor; and, if the minor is 14 years of age or older and has been admitted to the treatment facility for the primary purpose of treatment for mental illness or developmental disability, whether the admission was made under an application executed by the minor and the minor's parent or guardian. If such a showing is made, the court shall permit admission. If the court is unable to make those determinations based on the petition and accompanying documents, the court may dismiss the petition as provided in par. (h); order additional information, including an independent evaluation, to be produced as necessary for the court to make those determinations within 7 days, exclusive of weekends and legal holidays, after admission or application for admission, whichever is sooner; or hold a hearing within 7 days, exclusive of weekends and legal holidays, after admission or application for admission, whichever is sooner. If a notation of the minor's unwillingness appears on the face of the petition, if the admission was made under an application executed by the minor's parent or guardian despite the minor's refusal, or if a hearing has been requested by the minor or by the minor's counsel, parent, or guardian, the court shall order an independent evaluation of the minor and hold a hearing to review the admission, within 7 days, exclusive of weekends and legal holidays, after admission or application for admission, whichever is sooner, and shall appoint counsel to represent the minor if the minor is unrepresented. If the court considers it necessary, the court shall also appoint a guardian ad litem to represent the minor. The minor shall be informed about how to contact the state protection and advocacy agency designated under s. 51.62 (2) (a).

2009−10 Wis. Stats. database current through 2011 Wis. Act 286. Includes all Legislative Acts and all Supreme Court Orders enacted before Oct. 1, 2012. Statutory changes effective on or prior to Oct. 1, 2012 are printed as currently in effect. Changes effective after Oct. 1, 2012 are designated by NOTES. See Are the Statutes on this Website Official? (10−3−12)

Electronic reproduction of 2009−10 Wis. Stats. database, current through 2011 Wis. Act 286.

(e) Notice of the hearing under this subsection shall be provided by the court by certified mail to the minor, the minor's parents or guardian, the minor's counsel and guardian ad litem if any, the petitioner and any other interested party at least 96 hours prior to the time of hearing.

(f) The rules of evidence in civil actions shall apply to any hearing under this section. A record shall be maintained of the entire proceedings. The record shall include findings of fact and conclusions of law. Findings shall be based on a clear and convincing standard of proof.

(g) If the court finds, under a hearing under par. (d), that the minor is in need of psychiatric services or services for developmental disability, alcoholism, or drug abuse in an inpatient facility, that the inpatient facility to which the minor is admitted offers therapy or treatment that is appropriate for the minor's needs and that is the least restrictive therapy or treatment consistent with the minor's needs, the court shall permit admission. If the court finds that the therapy or treatment in the inpatient facility to which the minor is admitted is not appropriate or is not the least restrictive therapy or treatment consistent with the minor's needs, the court may order placement in or transfer to another more appropriate or less restrictive inpatient facility, if the placement or transfer is first approved by all of the following, except that placement in or transfer to a center for the developmentally disabled shall first be approved by all of the following and the department:

1. For the primary purpose of treatment for mental illness or developmental disability, any of the following, as applicable:

a. For a minor who is under 14 years of age, a parent who has legal custody of the minor or the minor's guardian.

b. For a minor who is 14 years of age or older, the minor and a parent who has legal custody of the minor or the minor's guardian, except that, if the minor refuses approval, a parent who has legal custody of the minor or the minor's guardian may provide approval on the minor's behalf.

c. For a minor admitted under sub. (1) (c) 1. or 2., the minor.

2. The treatment director of the facility or his or her designee.

3. The director of the appropriate county department under s. 51.42 or 51.437 if the county department is to be responsible for the cost of the minor's therapy or treatment.

(h) If the court does not permit admission under par. (g), it shall do one of the following:

1. Dismiss the petition and order the application for admission denied and the minor released.

2. Order the petition to be treated as a petition for involuntary commitment and refer it to the court where the review under this section was held, or if it was not held in the county of legal residence of the subject individual's parent or guardian and hardship would otherwise occur and if the best interests of the subject individual would be served thereby, to the court assigned to exercise jurisdiction under chs. 48 and 938 in such county for a hearing under s. 51.20 or 51.45 (13).

3. If the minor is 14 years of age or older and appears to be developmentally disabled, proceed in the manner provided in s. 51.67 to determine whether the minor should receive protective placement or protective services, except that a minor shall not have a temporary guardian appointed if he or she has a parent or guardian.

4. If there is a reason to believe the minor is in need of protection or services under s. 48.13 or 938.13 or the minor is an expectant mother of an unborn child in need of protection or services under s. 48.133, dismiss the petition and authorize the filing of a petition under s. 48.25 (3) or 938.25 (3). The court may release the minor or may order that the minor be taken and held in custody under s. 48.19 (1) (c) or (cm) or 938.19 (1) (c).

(i) Approval of an admission under this subsection does not constitute a finding of mental illness, developmental disability, alcoholism or drug dependency.

(5) APPEAL. Any person who is aggrieved by a determination or order under this section and who is directly affected thereby may appeal to the court of appeals under s. 809.30.

(6) SHORT−TERM ADMISSIONS. (a) 1. Subject to subd. 2. or 3., as applicable, a minor may be admitted to an inpatient treatment facility without review under sub. (4) of the application, for diagnosis and evaluation or for dental, medical, or psychiatric services, for a period not to exceed 12 days. The application for short−term admission of a minor shall be executed by the minor's parent with legal custody of the minor or the minor's guardian, unless sub. (1) (c) applies.

2. If the minor is 14 years of age or older and is being admitted for the primary purpose of diagnosis, evaluation, or services for mental illness or developmental disability, the application shall be executed by the minor's parent or guardian and the minor, except that, if the minor refuses to execute the application, the parent or the guardian may execute the application. Admission under this subdivision of a minor who refuses to execute the application is reviewable under sub. (4) (d). If a review is requested or required, the treatment director of the facility to which the minor is admitted or his or her designee or, in the case of a center for the developmentally disabled, the director of the center or his or her designee shall file a verified petition for review of the admission on behalf of the minor.

3. A minor may not be readmitted to an inpatient treatment facility for psychiatric services under this paragraph within 120 days of a previous admission under this paragraph.

(b) The application shall be reviewed by the treatment director of the facility or, in the case of a center for the developmentally disabled, by the director, and shall be accepted only if the director determines that the admission constitutes the least restrictive means of obtaining adequate diagnosis and evaluation of the minor or adequate provision of medical, dental or psychiatric services.

(c) At the end of the 12−day period, the minor shall be released unless an application has been filed for admission under sub. (1); a statement has been filed for emergency detention; or a petition has been filed for emergency commitment, involuntary commitment, or protective placement.

(7) DISCHARGE OR CONTINUED APPROPRIATENESS OF ADMISSION. (a) If a minor is admitted to an inpatient treatment facility while under 14 years of age, and if upon reaching age 14 is in need of further inpatient care and treatment primarily for mental illness or developmental disability, the director of the facility shall request the minor and the minor's parent or guardian to execute an application for admission. If the minor refuses, the minor's parent or guardian may execute the application on the minor's behalf. Such an application may be executed within 30 days prior to a minor's 14th birthday. If the application is executed, a petition for review shall be filed in the manner prescribed in sub. (4), unless such a review has been held within the last 120 days. If the application is not executed by the time of the minor's 14th birthday, the minor shall be discharged unless a petition or statement is filed for emergency detention, emergency commitment, involuntary commitment, or protective placement by the end of the next day in which the court transacts business.

(b) 1. Any minor who is voluntarily admitted under sub. (1) (c) 1. or 2., may request discharge in writing.

2. For a minor 14 years of age or older who is admitted under sub. (1) (a) or (b) for the primary purpose of treatment for alcoholism or drug abuse or a minor under 14 years of age who is admitted under sub. (1) (a) or (b) for the primary purpose of treatment for mental illness, developmental disability, alcoholism, or drug abuse, the parent or guardian of the minor may request discharge in writing.

3. For a minor 14 years of age or older who is admitted under sub. (1) (a) or (b) for the primary purpose of treatment for mental illness or developmental disability, the minor and the minor's par-

Electronic reproduction of 2009−10 Wis. Stats. database, current through 2011 Wis. Act 286.

ent or guardian may request discharge in writing. If the parent or guardian of the minor refuses to request discharge and if the director of the facility to which the minor is admitted or his or her designee avers, in writing, that the minor is in need of psychiatric services or services for developmental disability, that the facility's therapy or treatment is appropriate to the minor's needs, and that inpatient care in the treatment facility is the least restrictive therapy or treatment consistent with the needs of the minor, the minor may not be discharged under this paragraph.

4. Upon receipt of any form of written request for discharge from a minor specified under subd. 1. or 3., the director of the facility in which the minor is admitted shall immediately notify the minor's parent or guardian, if available.

5. A minor specified in subd. 1., a minor specified in subd. 2. whose parent or guardian requests discharge in writing, and a minor specified in subd. 3. who requests and whose parent or guardian requests discharge in writing shall be discharged within 48 hours after submission of the request, exclusive of Saturdays, Sundays, and legal holidays, unless a petition or statement is filed for emergency detention, emergency commitment, involuntary commitment, or protective placement.

(c) Any minor who is admitted under this section, other than a minor to which par. (b) 1. applies, who is not discharged under par. (b) may submit a written request to the court for a hearing to determine the continued appropriateness of the admission. If the director or staff of the inpatient treatment facility to which a minor described in this paragraph is admitted observes conduct by the minor that demonstrates an unwillingness to remain at the facility, including a written expression of opinion or unauthorized absence, the director shall file a written request with the court to determine the continued appropriateness of the admission. A request that is made personally by a minor under this paragraph shall be signed by the minor but need not be written or composed by the minor. A request for a hearing under this paragraph that is received by staff or the director of the facility in which the minor is admitted shall be filed with the court by the director. The court shall order a hearing as provided in sub. (4) (d) upon request if no hearing concerning the minor's admission has been held within 120 days before court receipt of the request. If a hearing is held, the court shall hold the hearing within 14 days after receipt of the request, unless the parties agree to a longer period. After the hearing, the court shall dispose of the matter in the manner provided in sub. (4) (h).

History: 1977 c. 428; 1979 c. 32 s. 91; 1979 c. 300, 331; 1981 c. 74; 1985 a. 29, 176; 1987 a. 366; 1995 a. 77, 225; 1997 a. 27, 35, 292; 2001 a. 16, 104; 2003 a. 326; 2005 a. 444; 2007 a. 140.

Due process rights of a minor child whose parents or guardians seek admission of the child are discussed. Parham v. J. R., 442 U.S. 584 (1979). See also Secretary of Public Welfare v. Institutionalized Juveniles, 442 U.S. 640 (1979).

51.14 Review of outpatient mental health treatment of minors aged 14 or older. (1) DEFINITIONS. In this section, "outpatient mental health treatment" means treatment and social services for mental illness, except 24−hour care, treatment, and custody that is provided by a treatment facility.

(2) MENTAL HEALTH REVIEW OFFICER. Each court assigned to exercise jurisdiction under chs. 48 and 938 shall designate a mental health review officer to review petitions filed under sub. (3).

(3) REVIEW BY MENTAL HEALTH REVIEW OFFICER. (a) A minor 14 years of age or older or a person acting on behalf of the minor may petition the mental health review officer in the county in which the minor's parent or guardian has residence for a review of a refusal or inability of the minor's parent or guardian to provide the informed consent for outpatient mental health treatment required under s. 51.61 (6). For a minor on whose behalf consent for outpatient treatment was provided by the minor's parent or guardian despite the minor's refusal, the treatment director of the outpatient facility shall file a petition for review of the informed consent on behalf of the minor.

(b) A petition filed under this subsection shall contain all of the following:

1. The name, address and birth date of the minor.

2. The name and address of the parent or guardian of the minor.

3. The facts substantiating the petitioner's belief that the minor needs, or does not need, outpatient mental health treatment.

4. Any available information which substantiates the appropriateness of the particular treatment sought for the minor and that the particular treatment sought is the least restrictive treatment consistent with the needs of the minor.

(c) Any professional evaluations relevant under par. (b) 3. or 4. shall be attached to the petition filed under this subsection.

(d) The court which appointed the mental health review officer shall ensure that necessary assistance is provided to the petitioner in the preparation of the petition under this subsection.

(e) The mental health review officer shall notify the county department under s. 51.42 or 51.437 of the contents of any petition received by the mental health review officer under this subsection. The county department under s. 51.42 or 51.437 may, following review of the petition contents, make recommendations to the mental health review officer as to the need for and appropriateness and availability of treatment.

(f) If prior to a hearing under par. (g) the minor requests and the mental health review officer determines that the best interests of the minor would be served, a petition may be filed for court review under sub. (4) without further review under this subsection.

(g) Within 21 days after the filing of a petition under this subsection, the mental health review officer shall hold a hearing on the refusal or inability of the minor's parent or guardian to provide informed consent for outpatient treatment or on the provision of informed consent by the parent or guardian despite the minor's refusal. The mental health review officer shall provide notice of the date, time and place of the hearing to the minor and, if available, the minor's parent or guardian at least 96 hours prior to the hearing.

(h) If following the hearing under par. (g) and after taking into consideration the recommendations, if any, of the county department under s. 51.42 or 51.437 made under par. (e), the mental health review officer finds all of the following, he or she shall issue a written order that, notwithstanding the written, informed consent requirement of s. 51.61 (6), the written, informed consent of the minor's parent or guardian, if the parent or guardian is refusing or unable to provide consent, is not required for outpatient mental health treatment for the minor or, if the parent or guardian provided informed consent despite the minor's refusal, the outpatient mental health treatment for the minor is appropriate:

1. The informed consent of the parent or guardian is unreasonably withheld or the refusal of the minor to provide informed consent is unreasonable.

2. The minor is in need of treatment.

3. The particular treatment sought is appropriate for the minor and is the least restrictive treatment available.

4. The proposed treatment is in the best interests of the minor.

(i) The findings under par. (h) and the reasons supporting each finding shall be in writing.

(j) The mental health review officer shall notify the minor and the minor's parent or guardian, if available, of the right to judicial review under sub. (4).

(k) No person may be a mental health review officer in a proceeding under this section if he or she has provided treatment or services to the minor who is the subject of the proceeding.

(4) JUDICIAL REVIEW. (a) Within 21 days after the issuance of the order by the mental health review officer under sub. (3) or if sub. (3) (f) applies, the minor or a person acting on behalf of the minor may petition a court assigned to exercise jurisdiction under chs. 48 and 938 in the county of residence of the minor's parent or guardian for a review of the refusal or inability of the minor's parent or guardian to provide the informed consent for outpatient

Electronic reproduction of 2009−10 Wis. Stats. database, current through 2011 Wis. Act 286.

mental health treatment required under s. 51.61 (6) or for a review of the provision of informed consent by the parent or guardian despite the minor's refusal.

(b) The petition in par. (a) shall conform to the requirements set forth in sub. (3) (b). If the minor has refused to provide informed consent, a notation of this fact shall be made on the face of the petition.

(c) If a notation of a minor's refusal to provide informed consent to outpatient mental health treatment appears on the petition, the court shall, at least 7 days prior to the time scheduled for the hearing, appoint counsel to represent the minor if the minor is unrepresented. If the minor's parent or guardian has refused to provide informed consent and the minor is unrepresented, the court shall appoint counsel to represent the minor, if requested by the minor or determined by the court to be in the best interests of the minor.

(d) The court shall hold a hearing on the petition within 21 days after filing of the petition.

(e) Notice of the hearing under this subsection shall be provided by the court by certified mail, at least 96 hours prior to the hearing, to the minor, the minor's parent or guardian, the minor's counsel and guardian ad litem, if any, and any other interested party known to the court.

(f) The rules of evidence in civil actions shall apply to any hearing under this section. A record, including written findings of fact and conclusions of law, shall be maintained of the entire proceedings. Findings shall be based on evidence that is clear, satisfactory and convincing.

(g) After the hearing under this subsection, the court shall issue a written order stating that, notwithstanding the written, informed consent requirement of s. 51.61 (6), the written, informed consent of the parent or guardian, if the parent or guardian refuses or is unable to provide consent, is not required for outpatient mental health treatment for the minor or that, if the parent or guardian provided informed consent despite the minor's refusal, the outpatient mental health treatment for the minor is appropriate, if the court finds all of the following:

1. The informed consent is unreasonably withheld.

2. The minor is in need of treatment.

3. The particular treatment sought is appropriate for the minor and is the least restrictive treatment available.

4. The treatment is in the best interests of the minor.

(5) APPEAL. Any person who is aggrieved by a determination or order under sub. (4) and who is directly affected by the determination or order may appeal to the court of appeals under s. 809.30.

(6) FINDING OR ORDER NOT A FINDING OF MENTAL ILLNESS. A finding or order under this section does not constitute a finding of mental illness.

(7) LISTING OF MENTAL HEALTH REVIEW OFFICERS. The department shall compile a list that specifies the mental health review officers in each county, post the list on the department's Web site, and update the list as necessary.

History: 1987 a. 367; 1995 a. 77; 1997 a. 27; 2003 a. 326; 2005 a. 444; 2009 a. 276.

NOTE: 1987 Wis. Act 367, that created this section, contains a prefatory note and an explanatory note following the section.

51.15 Emergency detention. (1) BASIS FOR DETENTION. (a) A law enforcement officer or other person authorized to take a child into custody under ch. 48 or to take a juvenile into custody under ch. 938 may take an individual into custody if the officer or person has cause to believe that the individual is mentally ill, is drug dependent, or is developmentally disabled, and that the individual evidences any of the following:

1. A substantial probability of physical harm to himself or herself as manifested by evidence of recent threats of or attempts at suicide or serious bodily harm.

2. A substantial probability of physical harm to other persons as manifested by evidence of recent homicidal or other violent behavior on his or her part, or by evidence that others are placed in reasonable fear of violent behavior and serious physical harm to them, as evidenced by a recent overt act, attempt or threat to do serious physical harm on his or her part.

3. A substantial probability of physical impairment or injury to himself or herself due to impaired judgment, as manifested by evidence of a recent act or omission. The probability of physical impairment or injury is not substantial under this subdivision if reasonable provision for the individual's protection is available in the community and there is a reasonable probability that the individual will avail himself or herself of these services or, in the case of a minor, if the individual is appropriate for services or placement under s. 48.13 (4) or (11) or 938.13 (4). Food, shelter or other care provided to an individual who is substantially incapable of obtaining the care for himself or herself, by any person other than a treatment facility, does not constitute reasonable provision for the individual's protection available in the community under this subdivision.

4. Behavior manifested by a recent act or omission that, due to mental illness or drug dependency, he or she is unable to satisfy basic needs for nourishment, medical care, shelter, or safety without prompt and adequate treatment so that a substantial probability exists that death, serious physical injury, serious physical debilitation, or serious physical disease will imminently ensue unless the individual receives prompt and adequate treatment for this mental illness or drug dependency. No substantial probability of harm under this subdivision exists if reasonable provision for the individual's treatment and protection is available in the community and there is a reasonable probability that the individual will avail himself or herself of these services, if the individual may be provided protective placement or protective services under ch. 55, or, in the case of a minor, if the individual is appropriate for services or placement under s. 48.13 (4) or (11) or 938.13 (4). The individual's status as a minor does not automatically establish a substantial probability of death, serious physical injury, serious physical debilitation or serious disease under this subdivision. Food, shelter or other care provided to an individual who is substantially incapable of providing the care for himself or herself, by any person other than a treatment facility, does not constitute reasonable provision for the individual's treatment or protection available in the community under this subdivision.

(b) The officer's or other person's belief shall be based on any of the following:

1. A specific recent overt act or attempt or threat to act or omission by the individual which is observed by the officer or person.

2. A specific recent overt act or attempt or threat to act or omission by the individual which is reliably reported to the officer or person by any other person, including any probation, extended supervision and parole agent authorized by the department of corrections to exercise control and supervision over a probationer, parolee or person on extended supervision.

(2) FACILITIES FOR DETENTION. The law enforcement officer or other person authorized to take a child into custody under ch. 48 or to take a juvenile into custody under ch. 938 shall transport the individual, or cause him or her to be transported, for detention, if the county department of community programs in the county in which the individual was taken into custody approves the need for detention, and for evaluation, diagnosis, and treatment if permitted under sub. (8) to any of the following facilities:

(a) A hospital which is approved by the department as a detention facility or under contract with a county department under s. 51.42 or 51.437, or an approved public treatment facility;

(b) A center for the developmentally disabled;

(c) A state treatment facility; or

Electronic reproduction of 2009−10 Wis. Stats. database, current through 2011 Wis. Act 286.

(d) An approved private treatment facility, if the facility agrees to detain the individual.

(3) CUSTODY. Upon arrival at the facility, the individual is deemed to be in the custody of the facility.

(4) DETENTION PROCEDURE; MILWAUKEE COUNTY. (a) In counties having a population of 500,000 or more, the law enforcement officer or other person authorized to take a child into custody under ch. 48 or to take a juvenile into custody under ch. 938 shall sign a statement of emergency detention which shall provide detailed specific information concerning the recent overt act, attempt, or threat to act or omission on which the belief under sub. (1) is based and the names of the persons observing or reporting the recent overt act, attempt, or threat to act or omission. The law enforcement officer or other person is not required to designate in the statement whether the subject individual is mentally ill, developmentally disabled, or drug dependent, but shall allege that he or she has cause to believe that the individual evidences one or more of these conditions. The law enforcement officer or other person shall deliver, or cause to be delivered, the statement to the detention facility upon the delivery of the individual to it.

(b) Upon delivery of the individual, the treatment director of the facility, or his or her designee, shall determine within 24 hours whether the individual shall be detained, or shall be detained, evaluated, diagnosed and treated, if evaluation, diagnosis and treatment are permitted under sub. (8), and shall either release the individual or detain him or her for a period not to exceed 72 hours after delivery of the individual, exclusive of Saturdays, Sundays and legal holidays. If the treatment director, or his or her designee, determines that the individual is not eligible for commitment under s. 51.20 (1) (a), the treatment director shall release the individual immediately, unless otherwise authorized by law. If the individual is detained, the treatment director or his or her designee may supplement in writing the statement filed by the law enforcement officer or other person, and shall designate whether the subject individual is believed to be mentally ill, developmentally disabled or drug dependent, if no designation was made by the law enforcement officer or other person. The director or designee may also include other specific information concerning his or her belief that the individual meets the standard for commitment. The treatment director or designee shall then promptly file the original statement together with any supplemental statement and notification of detention with the court having probate jurisdiction in the county in which the individual was taken into custody. The filing of the statement and notification has the same effect as a petition for commitment under s. 51.20.

(5) DETENTION PROCEDURE; OTHER COUNTIES. In counties having a population of less than 500,000, the law enforcement officer or other person authorized to take a child into custody under ch. 48 or to take a juvenile into custody under ch. 938 shall sign a statement of emergency detention that shall provide detailed specific information concerning the recent overt act, attempt, or threat to act or omission on which the belief under sub. (1) is based and the names of persons observing or reporting the recent overt act, attempt, or threat to act or omission. The law enforcement officer or other person is not required to designate in the statement whether the subject individual is mentally ill, developmentally disabled, or drug dependent, but shall allege that he or she has cause to believe that the individual evidences one or more of these conditions. The statement of emergency detention shall be filed by the officer or other person with the detention facility at the time of admission, and with the court immediately thereafter. The filing of the statement has the same effect as a petition for commitment under s. 51.20. When, upon the advice of the treatment staff, the director of a facility specified in sub. (2) determines that the grounds for detention no longer exist, he or she shall discharge the individual detained under this section. Unless a hearing is held under s. 51.20 (7) or 55.135, the subject individual may not be detained by the law enforcement officer or other person and the facility for more than a total of 72 hours, exclusive of Saturdays, Sundays, and legal holidays.

(6) RELEASE. If the individual is released, the treatment director or his or her designee, upon the individual's request, shall arrange for the individual's transportation to the locality where he or she was taken into custody.

(7) INTERCOUNTY AGREEMENTS. Counties may enter into contracts whereby one county agrees to conduct commitment hearings for individuals who are detained in that county but who are taken into custody under this section in another county. Such contracts shall include provisions for reimbursement to the county of detention for all reasonable direct and auxiliary costs of commitment proceedings conducted under this section and s. 51.20 by the county of detention concerning individuals taken into custody in the other county and shall include provisions to cover the cost of any voluntary or involuntary services provided under this chapter to the subject individual as a result of proceedings or conditional suspension of proceedings resulting from the notification of detention. Where there is such a contract binding the county where the individual is taken into custody and the county where the individual is detained, the statements of detention specified in subs. (4) and (5) and the notification specified in sub. (4) shall be filed with the court having probate jurisdiction in the county of detention, unless the subject individual requests that the proceedings be held in the county in which the individual is taken into custody.

(8) EVALUATION, DIAGNOSIS AND TREATMENT. When an individual is detained under this section, the director and staff of the treatment facility may evaluate, diagnose and treat the individual during detention, if the individual consents. The individual has a right to refuse medication and treatment as provided in s. 51.61 (1) (g) and (h). The individual shall be advised of that right by the director of the facility or his or her designee, and a report of any evaluation and diagnosis and of all treatment provided shall be filed by that person with the court.

(9) NOTICE OF RIGHTS. At the time of detention the individual shall be informed by the director of the facility or such person's designee, both orally and in writing, of his or her right to contact an attorney and a member of his or her immediate family, the right to have an attorney provided at public expense, as provided under s. 51.60, and the right to remain silent and that the individual's statements may be used as a basis for commitment. The individual shall also be provided with a copy of the statement of emergency detention.

(10) VOLUNTARY PATIENTS. If an individual has been admitted to an approved treatment facility under s. 51.10 or 51.13, or has been otherwise admitted to such facility, the treatment director or his or her designee, if conditions exist for taking the individual into custody under sub. (1), may sign a statement of emergency detention and may detain, or detain, evaluate, diagnose and treat the individual as provided in this section. In such case, the treatment director shall undertake all responsibilities that are required of a law enforcement officer under this section. The treatment director shall promptly file the statement with the court having probate jurisdiction in the county of detention as provided in this section.

(11) LIABILITY. Any individual who acts in accordance with this section, including making a determination that an individual has or does not have mental illness or evidences or does not evidence a substantial probability of harm under sub. (1) (a) 1., 2., 3. or 4., is not liable for any actions taken in good faith. The good faith of the actor shall be presumed in any civil action. Whoever asserts that the individual who acts in accordance with this section has not acted in good faith has the burden of proving that assertion by evidence that is clear, satisfactory and convincing.

(11g) OTHER LIABILITY. Subsection (11) applies to a director of a facility, as specified in sub. (2), or his or her designee, who under a court order evaluates, diagnoses or treats an individual who is confined in a jail, if the individual consents to the evaluation, diagnosis or treatment.

Electronic reproduction of 2009−10 Wis. Stats. database, current through 2011 Wis. Act 286.

(11m) TRAINING. Law enforcement agencies shall designate at least one officer authorized to take an individual into custody under this section who shall attend the in−service training on emergency detention and emergency protective placement procedures offered by a county department of community programs under s. 51.42 (3) (ar) 4. d., if the county department of community programs serving the law enforcement agency's jurisdiction offers an in−service training program.

(12) PENALTY. Whoever signs a statement under sub. (4), (5) or (10) knowing the information contained therein to be false is guilty of a Class H felony.

History: 1975 c. 430; 1977 c. 29, 428; 1979 c. 175, 300, 336, 355; 1985 a. 176; 1987 a. 366, 394; 1989 a. 56 s. 259; 1993 a. 451; 1995 a. 77, 175, 292; 1997 a. 35, 283; 2001 a. 16 ss. 1966d to 1966h, 4034zb to 4034zd, 4041d to 4041g; 2001 a 109; 2005 a. 264; 2007 a. 20; 2009 a. 28.

A mental health worker did not have immunity under sub. (11) for actions regarding a person already in custody and not taken into custody under an emergency detention. Kell v. Raemisch, 190 Wis. 2d 754, 528 N.W.2d 13 (Ct. App. 1994).

The time limits established by this section are triggered when a person taken into custody under this section is transported to any of the facilities designated by sub. (2), irrespective of whether the facility is one specifically chosen by the county for the receipt of persons taken into custody under this section. Milwaukee County v. Delores M. 217 Wis. 2d 69, 577 N.W.2d 371 (Ct. App. 1998), 96−2508.

The community caretaker exception that allows police officers to make a warrantless entry into a home when engaging in an activity that is unrelated to criminal activity and is for the public good applies to police activity undertaken pursuant to this section. State v. Horngren, 2000 WI App 177, 238 Wis. 2d 347, 617 N.W.2d 508, 99−2065.

Sub. (10) is not ambiguous and cannot reasonably be construed to authorize the continued detention of an involuntarily admitted individual based on a treatment director's statement of emergency detention when the individual had not been given the required probable cause hearing. Although sub. (10) refers to "voluntary patients" in its title, "otherwise admitted" in sub. (10) is not restricted to the admission of voluntary patients and encompasses involuntary admissions. Although "otherwise admitted" applies to involuntary patients, it does not necessarily follow that the term includes involuntary patients who have been detained beyond 72 hours without a probable cause hearing under s. 51.20 (7) (a). Dane County v. Stevenson L. J. 2009 WI App 84, 320 Wis. 2d 194, 768 N.W.2d 223, 08−1281.

By granting immunity to any individual acting in accordance with this section, the legislature plainly intended to expand immunity beyond those authorized to take individuals into physical custody. Subsection (11) presumes that a person participating in emergency detention decisions has acted in good faith. This presumption can be defeated only by clear, satisfactory, and convincing evidence to the contrary. Estate of Hammersley v. Wisconsin County Mutual Insurance Corporation, 2012 WI App 44, 340 Wis. 2d 557, 811 N.W.2d 878, 11−0359.

It is inadvisable to treat individuals transported across state lines for emergency medical care differently than other individuals when determining whether emergency detention proceedings should be initiated pursuant to this section. 78 Atty. Gen. 59.

While sub. (7) does not authorize contractual agreements with counties outside of Wisconsin, ss. 51.75 (11), 51.87 (3), and 66.30 (5) [now 66.0303] each contain legal mechanisms through which financial or other responsibility for care and treatment of individuals from such counties may be shared under certain specified circumstances. 78 Atty. Gen. 59.

A law enforcement officer who places an individual under emergency detention is obligated to transport the individual to one of the four categories of facilities listed under sub. (2) until custody of the individual is transferred to the facility. 81 Atty. Gen. 110.

51.20 Involuntary commitment for treatment. (1) PETITION FOR EXAMINATION. (a) Except as provided in pars. (ab), (am), and (ar), every written petition for examination shall allege that all of the following apply to the subject individual to be examined:

1. The individual is mentally ill or, except as provided under subd. 2. e., drug dependent or developmentally disabled and is a proper subject for treatment.

2. The individual is dangerous because he or she does any of the following:

a. Evidences a substantial probability of physical harm to himself or herself as manifested by evidence of recent threats of or attempts at suicide or serious bodily harm.

b. Evidences a substantial probability of physical harm to other individuals as manifested by evidence of recent homicidal or other violent behavior, or by evidence that others are placed in reasonable fear of violent behavior and serious physical harm to them, as evidenced by a recent overt act, attempt or threat to do serious physical harm. In this subd. 2. b., if the petition is filed under a court order under s. 938.30 (5) (c) 1. or (d) 1., a finding by the court exercising jurisdiction under chs. 48 and 938 that the juvenile committed the act or acts alleged in the petition under s. 938.12 or 938.13 (12) may be used to prove that the juvenile exhibited recent homicidal or other violent behavior or committed a recent overt act, attempt or threat to do serious physical harm.

c. Evidences such impaired judgment, manifested by evidence of a pattern of recent acts or omissions, that there is a substantial probability of physical impairment or injury to himself or herself. The probability of physical impairment or injury is not substantial under this subd. 2. c. if reasonable provision for the subject individual's protection is available in the community and there is a reasonable probability that the individual will avail himself or herself of these services, if the individual may be provided protective placement or protective services under ch. 55, or, in the case of a minor, if the individual is appropriate for services or placement under s. 48.13 (4) or (11) or 938.13 (4). The subject individual's status as a minor does not automatically establish a substantial probability of physical impairment or injury under this subd. 2. c. Food, shelter or other care provided to an individual who is substantially incapable of obtaining the care for himself or herself, by a person other than a treatment facility, does not constitute reasonable provision for the subject individual's protection available in the community under this subd. 2. c.

d. Evidences behavior manifested by recent acts or omissions that, due to mental illness, he or she is unable to satisfy basic needs for nourishment, medical care, shelter or safety without prompt and adequate treatment so that a substantial probability exists that death, serious physical injury, serious physical debilitation, or serious physical disease will imminently ensue unless the individual receives prompt and adequate treatment for this mental illness. No substantial probability of harm under this subd. 2. d. exists if reasonable provision for the individual's treatment and protection is available in the community and there is a reasonable probability that the individual will avail himself or herself of these services, if the individual may be provided protective placement or protective services under ch. 55, or, in the case of a minor, if the individual is appropriate for services or placement under s. 48.13 (4) or (11) or 938.13 (4). The individual's status as a minor does not automatically establish a substantial probability of death, serious physical injury, serious physical debilitation or serious disease under this subd. 2. d. Food, shelter or other care provided to an individual who is substantially incapable of obtaining the care for himself or herself, by any person other than a treatment facility, does not constitute reasonable provision for the individual's treatment or protection available in the community under this subd. 2. d.

e. For an individual, other than an individual who is alleged to be drug dependent or developmentally disabled, after the advantages and disadvantages of and alternatives to accepting a particular medication or treatment have been explained to him or her and because of mental illness, evidences either incapability of expressing an understanding of the advantages and disadvantages of accepting medication or treatment and the alternatives, or substantial incapability of applying an understanding of the advantages, disadvantages, and alternatives to his or her mental illness in order to make an informed choice as to whether to accept or refuse medication or treatment; and evidences a substantial probability, as demonstrated by both the individual's treatment history and his or her recent acts or omissions, that the individual needs care or treatment to prevent further disability or deterioration and a substantial probability that he or she will, if left untreated, lack services necessary for his or her health or safety and suffer severe mental, emotional, or physical harm that will result in the loss of the individual's ability to function independently in the community or the loss of cognitive or volitional control over his or her thoughts or actions. The probability of suffering severe mental, emotional, or physical harm is not substantial under this subd. 2. e. if reasonable provision for the individual's care or treatment is available in the community and there is a reasonable probability that the individual will avail himself or herself of these services or if the individual may be provided protective placement or protective services under ch. 55. Food, shelter, or other care that is

Electronic reproduction of 2009−10 Wis. Stats. database, current through 2011 Wis. Act 286.

provided to an individual who is substantially incapable of obtaining food, shelter, or other care for himself or herself by any person other than a treatment facility does not constitute reasonable provision for the individual's care or treatment in the community under this subd. 2. e. The individual's status as a minor does not automatically establish a substantial probability of suffering severe mental, emotional, or physical harm under this subd. 2. e.

(ab) If the individual is an inmate of a prison, jail or other criminal detention facility, the fact that the individual receives food, shelter and other care in that facility may not limit the applicability of par. (a) to the individual. The food, shelter and other care does not constitute reasonable provision for the individual's protection available in the community.

(ad) 1. If a petition under par. (a) is based on par. (a) 2. e., the petition shall be reviewed and approved by the attorney general or by his or her designee prior to the time that it is filed. If the attorney general or his or her designee disapproves or fails to act with respect to the petition, the petition may not be filed.

2. Subdivision 1. does not apply if the attorney general makes a finding that a court of competent jurisdiction in this state, in a case in which the constitutionality of par. (a) 2. e. has been challenged, has upheld the constitutionality of par. (a) 2. e.

(am) If the individual has been the subject of inpatient treatment for mental illness, developmental disability, or drug dependency immediately prior to commencement of the proceedings as a result of a voluntary admission, a commitment or protective placement ordered by a court under this section or s. 55.06, 2003 stats., s. 971.17, or ch. 975, or a protective placement or protective services ordered under s. 55.12, or if the individual has been the subject of outpatient treatment for mental illness, developmental disability, or drug dependency immediately prior to commencement of the proceedings as a result of a commitment ordered by a court under this section, s. 971.17, or ch. 975, the requirements of a recent overt act, attempt or threat to act under par. (a) 2. a. or b., pattern of recent acts or omissions under par. (a) 2. c. or e., or recent behavior under par. (a) 2. d. may be satisfied by a showing that there is a substantial likelihood, based on the subject individual's treatment record, that the individual would be a proper subject for commitment if treatment were withdrawn. If the individual has been admitted voluntarily to an inpatient treatment facility for not more than 30 days prior to the commencement of the proceedings and remains under voluntary admission at the time of commencement, the requirements of a specific recent overt act, attempt or threat to act, or pattern of recent acts or omissions may be satisfied by a showing of an act, attempt or threat to act, or pattern of acts or omissions which took place immediately previous to the voluntary admission. If the individual is committed under s. 971.14 (2) or (5) at the time proceedings are commenced, or has been discharged from the commitment immediately prior to the commencement of proceedings, acts, attempts, threats, omissions, or behavior of the subject individual during or subsequent to the time of the offense shall be deemed recent for purposes of par. (a) 2.

(ar) If the individual is an inmate of a state prison, the petition may allege that the inmate is mentally ill, is a proper subject for treatment and is in need of treatment. The petition shall allege that appropriate less restrictive forms of treatment have been attempted with the individual and have been unsuccessful and it shall include a description of the less restrictive forms of treatment that were attempted. The petition shall also allege that the individual has been fully informed about his or her treatment needs, the mental health services available to him or her and his or her rights under this chapter and that the individual has had an opportunity to discuss his or her needs, the services available to him or her and his or her rights with a licensed physician or a licensed psychologist. The petition shall include the inmate's sentence and his or her expected date of release as determined under s. 302.11 or 302.113, whichever is applicable. The petition shall have attached to it a signed statement by a licensed physician or a licensed psychologist of a state prison and a signed statement by a licensed physician or a licensed psychologist of a state treatment facility attesting either of the following:

1. That the inmate needs inpatient treatment at a state treatment facility because appropriate treatment is not available in the prison.

2. That the inmate's treatment needs can be met on an outpatient basis in the prison.

(b) Each petition for examination shall be signed by 3 adult persons, at least one of whom has personal knowledge of the conduct of the subject individual, except that this requirement does not apply if the petition is filed pursuant to a court order under s. 938.30 (5) (c) 1. or (d) 1.

(c) The petition shall contain the names and mailing addresses of the petitioners and their relation to the subject individual, and shall also contain the names and mailing addresses of the individual's spouse, adult children, parents or guardian, custodian, brothers, sisters, person in the place of a parent and person with whom the individual resides or lives. If this information is unknown to the petitioners or inapplicable, the petition shall so state. The petition may be filed in the court assigned to exercise probate jurisdiction for the county where the subject individual is present or the county of the individual's legal residence. If the judge of the court or a circuit court commissioner who handles probate matters is not available, the petition may be filed and the hearing under sub. (7) may be held before a judge or circuit court commissioner of any circuit court for the county. For the purposes of this chapter, duties to be performed by a court shall be carried out by the judge of the court or a circuit court commissioner of the court who is designated by the chief judge to so act, in all matters prior to a final hearing under this section. The petition shall contain a clear and concise statement of the facts which constitute probable cause to believe the allegations of the petition. The petition shall be sworn to be true. If a petitioner is not a petitioner having personal knowledge as provided in par. (b), the petition shall contain a statement providing the basis for his or her belief.

(1m) ALTERNATE GROUNDS FOR COMMITMENT. For purposes of subs. (2) to (9), the requirement of finding probable cause to believe the allegations in sub. (1) (a) or (am) may be satisfied by finding probable cause to believe that the individual satisfies sub. (1) (a) 1. and evidences such impaired judgment, manifested by evidence of a recent act or omission, that there is a substantial probability of physical impairment or injury to himself or herself. The probability of physical impairment or injury may not be deemed substantial under this subsection if reasonable provision for the individual's protection is available in the community and there is a reasonable probability that the individual will avail himself or herself of the services or if the individual may be provided protective placement or protective services under ch. 55. The individual's status as a minor does not automatically establish a substantial probability of physical impairment or injury under this subsection. Food, shelter or other care provided to an individual who is substantially incapable of obtaining the care for himself or herself, by any person other than a treatment facility, does not constitute reasonable provision for the individual's protection available in the community under this subsection.

(2) NOTICE OF HEARING AND DETENTION. (a) Upon the filing of a petition for examination, the court shall review the petition to determine whether an order of detention should be issued. The subject individual shall be detained only if there is cause to believe that the individual is mentally ill, drug dependent or developmentally disabled and the individual is eligible for commitment under sub. (1) (a) or (am) based upon specific recent overt acts, attempts or threats to act or on a pattern of recent acts or omissions made by the individual.

(b) If the subject individual is to be detained, a law enforcement officer shall present the subject individual with a notice of hearing, a copy of the petition and detention order and a written statement of the individual's right to an attorney, a jury trial if requested more than 48 hours prior to the final hearing, the stan-

Electronic reproduction of 2009−10 Wis. Stats. database, current through 2011 Wis. Act 286.

dard upon which he or she may be committed under this section and the right to a hearing to determine probable cause for commitment within 72 hours after the individual arrives at the facility, excluding Saturdays, Sundays and legal holidays. The officer shall orally inform the individual that he or she is being taken into custody as the result of a petition and detention order issued under this chapter. If the individual is not to be detained, the law enforcement officer shall serve these documents on the subject individual and shall also orally inform the individual of these rights. The individual who is the subject of the petition, his or her counsel and, if the individual is a minor, his or her parent or guardian, if known, shall receive notice of all proceedings under this section. The court may also designate other persons to receive notices of hearings and rights under this chapter. Any such notice may be given by telephone. The person giving telephone notice shall place in the case file a signed statement of the time notice was given and the person to whom he or she spoke. The notice of time and place of a hearing shall be served personally on the subject of the petition, and his or her attorney, within a reasonable time prior to the hearing to determine probable cause for commitment.

(c) If the law enforcement officer has a detention order issued by a court, or if the law enforcement officer has cause to believe that the subject individual is mentally ill, drug dependent or developmentally disabled and is eligible for commitment under sub. (1) (a) or (am), based upon specific recent overt acts, attempts or threats to act or on a pattern of omissions made by the individual, the law enforcement officer shall take the subject individual into custody. If the individual is detained by a law enforcement officer, the individual shall be orally informed of his or her rights under this section on arrival at the detention facility by the facility staff, who shall also serve all documents required by this section on the individual.

(d) Placement shall be made in a hospital that is approved by the department as a detention facility or under contract with a county department under s. 51.42 or 51.437, approved public treatment facility, mental health institute, center for the developmentally disabled under the requirements of s. 51.06 (3), state treatment facility, or in an approved private treatment facility if the facility agrees to detain the subject individual. Upon arrival at the facility, the individual is considered to be in the custody of the facility.

(3) LEGAL COUNSEL. At the time of the filing of the petition the court shall assure that the subject individual is represented by adversary counsel by referring the individual to the state public defender, who shall appoint counsel for the individual without a determination of indigency, as provided in s. 51.60.

(4) PUBLIC REPRESENTATION. Except as provided in ss. 51.42 (3) (ar) 1. and 51.437 (4m) (f), the corporation counsel shall represent the interests of the public in the conduct of all proceedings under this chapter, including the drafting of all necessary papers related to the action.

(5) HEARING REQUIREMENTS. The hearings which are required to be held under this chapter shall conform to the essentials of due process and fair treatment including the right to an open hearing, the right to request a closed hearing, the right to counsel, the right to present and cross−examine witnesses, the right to remain silent and the right to a jury trial if requested under sub. (11). The parent or guardian of a minor who is the subject of a hearing shall have the right to participate in the hearing and to be represented by counsel. All proceedings under this chapter shall be reported as provided in SCR 71.01. The court may determine to hold a hearing under this section at the institution at which the individual is detained, whether or not located in the same county as the court with which the petition was filed, unless the individual or his or her attorney objects.

(6) JUVENILES. For minors, the hearings held under this section shall be before the court assigned to exercise jurisdiction under chs. 48 and 938.

(7) PROBABLE−CAUSE HEARING. (a) After the filing of the petition under sub. (1), if the subject individual is detained under s. 51.15 or this section the court shall hold a hearing to determine whether there is probable cause to believe the allegations made under sub. (1) (a) within 72 hours after the individual arrives at the facility, excluding Saturdays, Sundays and legal holidays. At the request of the subject individual or his or her counsel the hearing may be postponed, but in no case may the postponement exceed 7 days from the date of detention.

(am) A subject individual may not be examined, evaluated or treated for a nervous or mental disorder pursuant to a court order under this subsection unless the court first attempts to determine whether the person is an enrollee of a health maintenance organization, limited service health organization or preferred provider plan, as defined in s. 609.01, and, if so, notifies the organization or plan that the subject individual is in need of examination, evaluation or treatment for a nervous or mental disorder.

(b) If the subject individual is not detained or is an inmate of a state prison, county jail or house of correction, the court shall hold a hearing within a reasonable time of the filing of the petition, to determine whether there is probable cause to believe the allegations made under sub. (1).

(c) If the court determines that there is probable cause to believe the allegations made under sub. (1), it shall schedule the matter for a hearing within 14 days from the time of detention of the subject individual, except as provided in sub. (8) (bg) or (bm) or (11) (a). If a postponement has been granted under par. (a), the matter shall be scheduled for hearing within 21 days from the time of detention of the subject individual. If the subject individual is not detained under s. 51.15 or this section or is an inmate of a state prison, county jail or house of correction, the hearing shall be scheduled within 30 days of the hearing to determine probable cause for commitment. In the event that the subject individual fails to appear for the hearing to determine probable cause for commitment, the court may issue an order for the subject individual's detention and shall hold the hearing to determine probable cause for commitment within 48 hours, exclusive of Saturdays, Sundays and legal holidays, from the time that the individual is detained.

(d) 1. If the court determines after hearing that there is probable cause to believe that the subject individual is a fit subject for guardianship and protective placement or services, the court may, without further notice, appoint a temporary guardian for the subject individual and order temporary protective placement or services under ch. 55 for a period not to exceed 30 days, and shall proceed as if petition had been made for guardianship and protective placement or services. If the court orders only temporary protective services for a subject individual under this paragraph, the individual shall be provided care only on an outpatient basis. The court may order the involuntary administration of psychotropic medication as a temporary protective service under this paragraph if it finds that there is probable cause to believe that the allegations under s. 55.14 (3) (e) apply, that the individual is not competent to refuse psychotropic medication and that the medication ordered will have therapeutic value and will not unreasonably impair the ability of the individual to prepare for and participate in subsequent legal proceedings. An individual is not competent to refuse psychotropic medication if, because of serious and persistent mental illness, and after the advantages and disadvantages of and alternatives to accepting the particular psychotropic medication 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 treatment and the alternatives.

b. The individual is substantially incapable of applying an understanding of the advantages, disadvantages and alternatives to his or her serious and persistent mental illness in order to make

Electronic reproduction of 2009−10 Wis. Stats. database, current through 2011 Wis. Act 286.

an informed choice as to whether to accept or refuse psychotropic medication.

2. A finding by the court that there is probable cause to believe that the subject individual meets the commitment standard under sub. (1) (a) 2. e. constitutes a finding that the individual is not competent to refuse medication or treatment under this paragraph.

(dm) The court shall proceed as if a petition were filed under s. 51.45 (13) if all of the following conditions are met:

1. The petitioner's counsel notifies all other parties and the court, within a reasonable time prior to the hearing, of his or her intent to request that the court proceed as if a petition were filed under s. 51.45 (13).

2. The court determines at the hearing that there is probable cause to believe that the subject individual is a fit subject for treatment under s. 51.45 (13).

(e) If the court determines that probable cause does not exist to believe the allegations, or to proceed under par. (d), the court shall dismiss the proceeding.

(8) DISPOSITION PENDING HEARING. (a) If it is shown that there is probable cause to believe the allegations under sub. (1), the court may release the subject individual pending the full hearing and the individual has the right to receive treatment services, on a voluntary basis, from the county department under s. 51.42 or 51.437, or from the department. The court may issue an order stating the conditions under which the subject individual may be released from detention pending the final hearing. If acceptance of treatment is made a condition of the release, the subject individual may elect to accept the conditions or choose detention pending the hearing. The court order may state the action to be taken upon information of breach of the conditions. A final hearing must be held within 30 days of the order, if the subject individual is released. Any detention under this paragraph invokes time limitations specified in sub. (7) (c), beginning with the time of the detention. The right to receive treatment voluntarily or accept treatment as a condition of release under this paragraph does not apply to an individual for whom a probable cause finding has been made, under s. 51.61 (1) (g), that he or she is not competent to refuse medication, to the extent that the treatment includes medication.

(b) If the court finds the services provided under par. (a) are not available, suitable, or desirable based on the condition of the individual, it may issue a detention order and the subject individual may be detained pending the hearing as provided in sub. (7) (c). Detention may be in a hospital which is approved by the department as a detention facility or under contract with a county department under s. 51.42 or 51.437, approved public treatment facility, mental health institute, center for the developmentally disabled under the requirements of s. 51.06 (3), state treatment facility, or in an approved private treatment facility if the facility agrees to detain the subject individual.

(bg) The subject individual, or the individual's legal counsel with the individual's consent, may waive the time periods under s. 51.10 or this section for the probable cause hearing or the final hearing, or both, for a period not to exceed 90 days from the date of the waiver, if the individual and the counsel designated under sub. (4) agree at any time after the commencement of the proceedings that the individual shall obtain treatment under a settlement agreement. The settlement agreement shall be in writing, shall be approved by the court and shall include a treatment plan that provides for treatment in the least restrictive manner consistent with the needs of the subject individual. Either party may request the court to modify the treatment plan at any time during the 90−day period. The court shall designate the appropriate county department under s. 51.42 or 51.437 to monitor the individual's treatment under, and compliance with, the settlement agreement. If the individual fails to comply with the treatment according to the agreement, the designated county department shall notify the counsel designated under sub. (4) and the subject's counsel of the individual's noncompliance.

(bm) If, within 90 days from the date of the waiver under par. (bg), the subject individual fails to comply with the settlement agreement approved by the court under par. (bg), the counsel designated under sub. (4) may file with the court a statement of the facts which constitute the basis for the belief that the subject individual is not in compliance. The statement shall be sworn to be true and may be based on the information and belief of the person filing the statement. Upon receipt of the statement of noncompliance, the court may issue an order to detain the subject individual pending the final disposition. If the subject individual is detained under this paragraph, the court shall hold a probable cause hearing within 72 hours from the time of detention, excluding Saturdays, Sundays and legal holidays or, if the probable cause hearing was held prior to the approval of the settlement agreement under par. (bg), the court shall hold a final hearing within 14 days from the time of detention. If a jury trial is requested later than 5 days after the time of detention under this paragraph, but not less than 48 hours before the time of the final hearing, the final hearing shall be held within 21 days from the time of detention. The facts alleged as the basis for commitment prior to the waiver of the time periods for hearings under par. (bg) may be the basis for a finding of probable cause or a final disposition at a hearing under this paragraph.

(br) Upon the motion of the subject individual, the court shall hold a hearing on the issue of noncompliance with the settlement agreement within 72 hours from the time the motion for a hearing under this paragraph is filed with the court, excluding Saturdays, Sundays and legal holidays. The hearing under this paragraph may be held as part of the probable cause or final hearing if the probable cause or final hearing is held within 72 hours from the time the motion is filed with the court, excluding Saturdays, Sundays and legal holidays. At a hearing on the issue of noncompliance with the agreement, the written statement of noncompliance submitted under par. (bm) shall be prima facie evidence that a violation of the conditions of the agreement has occurred. If the subject individual denies any of the facts as stated in the statement, he or she has the burden of proving that the facts are false by a preponderance of the evidence.

(c) During detention a physician may order the administration of such medication or treatment as is permitted under s. 51.61 (1) (g) and (h). The subject individual may consent to treatment but only after he or she has been informed of his or her right to refuse treatment and has signed a written consent to such treatment, except that an individual for whom, under s. 51.61 (1) (g), a probable cause finding has been made that he or she is not competent to refuse medication may not consent to medication under this paragraph. A report of all treatment which is provided, along with any written consent, shall be filed with the court by the director of the treatment facility in which the subject individual is detained, or his or her designee.

(9) EXAMINATION. (a) 1. If the court finds after the hearing that there is probable cause to believe the allegations under sub. (1), it shall appoint 2 licensed physicians specializing in psychiatry, or one licensed physician and one licensed psychologist, or 2 licensed physicians one of whom shall have specialized training in psychiatry, if available, or 2 physicians, to personally examine the subject individual. The examiners shall have the specialized knowledge determined by the court to be appropriate to the needs of the subject individual. The examiners may not be related to the subject individual by blood, marriage, or adoption and may not have any interest in his or her property.

2. One of the examiners appointed under subd. 1. may be selected by the subject individual if the subject individual makes his or her selection known to the court within 24 hours after completion of the hearing to determine probable cause for commitment. The court may deny the subject individual's selection if the examiner does not meet the requirements of subd. 1. or the subject individual's selection is not available.

Electronic reproduction of 2009−10 Wis. Stats. database, current through 2011 Wis. Act 286.

3. If requested by the subject individual, the individual's attorney, or any other interested party with court permission, the individual has a right at his or her own expense or, if indigent and with approval of the court hearing the petition, at the reasonable expense of the individual's county of legal residence, to secure an additional medical or psychological examination and to offer the evaluator's personal testimony as evidence at the hearing.

4. Prior to the examination, the subject individual shall be informed that his or her statements can be used as a basis for commitment, that he or she has the right to remain silent and that the examiner is required to make a report to the court even if the subject individual remains silent. The issuance of such a warning to the subject individual prior to each examination establishes a presumption that the individual understands that he or she need not speak to the examiner.

5. The examiners shall personally observe and examine the subject individual at any suitable place and satisfy themselves, if reasonably possible, as to the individual's mental condition, and shall make independent reports to the court. The subject individual's treatment records shall be available to the examiners. If the subject individual is not detained pending the hearing, the court shall designate the time and place where the examination is to be held and shall require the individual's appearance. A written report shall be made of all such examinations and filed with the court. The report and testimony, if any, by the examiners shall be based on beliefs to a reasonable degree of medical certainty, or professional certainty if an examiner is a psychologist, in regard to the existence of the conditions described in sub. (1), and the appropriateness of various treatment modalities or facilities. If the examiners are unable to make conclusions to a reasonable degree of medical or professional certainty, the examiners shall so state in their report and testimony, if any.

(b) If the examiner determines that the subject individual is a proper subject for treatment, the examiner shall make a recommendation concerning the appropriate level of treatment. Such recommendation shall include the level of inpatient facility which provides the least restrictive environment consistent with the needs of the individual, if any, and the name of the facility where the subject individual should be received into the mental health system. The court may, prior to disposition, order additional information concerning such recommended level of treatment to be provided by the staff of the appropriate county department under s. 51.42 or 51.437, or by the staff of a public treatment facility if the subject individual is detained there pending the final hearing.

(c) On motion of either party, all parties shall produce at a reasonable time and place designated by the court all physical evidence which each party intends to introduce in evidence. Thereupon, any party shall be permitted to inspect, copy, or transcribe such physical evidence in the presence of a person designated by the court. The order shall specify the time, place and manner of making the inspection, copies, photographs, or transcriptions, and may prescribe such terms and conditions as are just. The court may, if the motion is made by the subject individual, delay the hearing for such period as may be necessary for completion of discovery.

(10) HEARING. (a) Within a reasonable time prior to the final hearing, the petitioner's counsel shall notify the subject individual and his or her counsel of the time and place of final hearing. The court may designate additional persons to receive notice of the time and place of the final hearing. Within a reasonable time prior to the final hearing, each party shall notify all other parties of all witnesses he or she intends to call at the hearing and of the substance of their proposed testimony. The provision of notice of potential witnesses shall not bar either party from presenting a witness at the final hearing whose name was not in the notice unless the presentation of the witness without notice is prejudicial to the opposing party.

(b) Counsel for the person to be committed shall have access to all psychiatric and other reports 48 hours in advance of the final hearing.

(c) The court shall hold a final hearing to determine if the allegations specified in sub. (1) are true. Except as otherwise provided in this chapter, the rules of evidence in civil actions and s. 801.01 (2) apply to any judicial proceeding or hearing under this chapter. The court shall, in every stage of an action, disregard any error or defect in the pleadings or proceedings that does not affect the substantial rights of either party.

(cm) Prior to or at the final hearing, for individuals for whom a petition is filed under sub. (1) (a) 2. e., the county department under s. 51.42 or 51.437 shall furnish to the court and the subject individual an initial recommended written treatment plan that contains the goals of treatment, the type of treatment to be provided, and the expected providers. If the person has served in the U.S. armed forces or forces incorporated as part of the U.S. armed forces, the county department shall contact the U.S. department of veterans affairs to determine if the person is eligible for treatment at a U.S. department of veterans affairs facility. If the person is eligible for that treatment, the county department shall include that information in the treatment plan. The treatment plan shall address the individual's needs for inpatient care, residential services, community support services, medication and its monitoring, case management, and other services to enable the person to live in the community upon release from an inpatient facility. The treatment plan shall contain information concerning the availability of the needed services and community treatment providers' acceptance of the individual into their programs. The treatment plan is only a recommendation and is not subject to approval or disapproval by the court. Failure to furnish a treatment plan under this paragraph does not constitute grounds for dismissal of the petition unless the failure is made in bad faith.

(d) In the event that the subject individual is not detained and fails to appear for the final hearing the court may issue an order for the subject individual's detention and shall hold the final commitment hearing within 7 days from the time of detention.

(e) At the request of the subject individual or his or her counsel the final hearing under par. (c) may be postponed, but in no case may the postponement exceed 7 calendar days from the date established by the court under this subsection for the final hearing.

(11) JURY TRIAL. (a) If before involuntary commitment a jury is demanded by the individual against whom a petition has been filed under sub. (1) or by the individual's counsel if the individual does not object, the court shall direct that a jury of 6 people be selected to determine if the allegations specified in sub. (1) (a) or (ar) are true. A jury trial is deemed waived unless demanded at least 48 hours in advance of the time set for final hearing, if notice of that time has been previously provided to the subject individual or his or her counsel. If a jury trial demand is filed within 5 days of detention, the final hearing shall be held within 14 days of detention. If a jury trial demand is filed later than 5 days after detention, the final hearing shall be held within 14 days of the date of demand. If an inmate of a state prison, county jail or house of correction demands a jury trial within 5 days after the probable cause hearing, the final hearing shall be held within 28 days of the probable cause hearing. If an inmate of a state prison, county jail or house of correction demands a jury trial later than 5 days after the probable cause hearing, the final hearing shall be held within 28 days of the date of demand.

(b) No verdict shall be valid or received unless agreed to by at least 5 of the jurors.

(c) Motions after verdict may be made without further notice upon receipt of the verdict.

(12) OPEN HEARINGS; EXCEPTION. Every hearing which is held under this section shall be open, unless the subject individual or the individual's attorney, acting with the individual's consent,

Electronic reproduction of 2009−10 Wis. Stats. database, current through 2011 Wis. Act 286.

moves that it be closed. If the hearing is closed, only persons in interest, including representatives of providers of service and their attorneys and witnesses may be present. If the subject individual is a minor, every hearing shall be closed unless an open hearing is demanded by the minor through his or her counsel.

(13) DISPOSITION. (a) At the conclusion of the proceedings the court shall:

1. Dismiss the petition; or

2. If the subject individual is an adult, or is a minor aged 14 years or more who is developmentally disabled, proceed under s. 51.67 to determine whether the subject individual should receive protective placement or protective services; or

3. If the individual is not an inmate of a state prison, county jail or house of correction and the allegations specified in sub. (1) (a) are proven, order commitment to the care and custody of the appropriate county department under s. 51.42 or 51.437, or if inpatient care is not required order commitment to outpatient treatment under care of such county department; or

4. If the individual is an inmate of a state prison and the allegations under sub. (1) (a) or (ar) are proven, order commitment to the department and either authorize the transfer of the inmate to a state treatment facility or if inpatient care is not needed authorize treatment on an outpatient basis in the prison; or

4m. If the individual is an inmate of a county jail or house of correction and the allegations under sub. (1) (a) are proven, order commitment to the county department under s. 51.42 or 51.437 serving the inmate's county of residence or, if the inmate is a nonresident, order commitment to the department. The order shall either authorize the transfer of the inmate to a state or county treatment facility or, if inpatient care is not needed, authorize treatment on an outpatient basis in the jail or house of correction; or

5. If the allegations specified in sub. (1) (a) are proven and the subject individual is a nonresident, order commitment to the department.

(b) If the petition has been dismissed under par. (a), the subject individual may agree to remain in any facility in which he or she was detained pending the hearing for the period of time necessary for alternative plans to be made for his or her care.

(c) If disposition is made under par. (a) 3., all of the following apply:

1. The court shall designate the facility or service that is to receive the subject individual into the mental health system, subject to s. 51.06 (3).

2. The county department under s. 51.42 or 51.437 shall arrange for treatment in the least restrictive manner consistent with the requirements of the subject individual in accordance with a court order designating the maximum level of inpatient facility, if any, that may be used for treatment, subject to s. 51.06 (3).

3. The county department under s. 51.42 or 51.437 shall report to the court as to the initial plan of treatment for the subject individual.

(cm) If disposition is made under par. (a) 4. or 4m. and the inmate is transferred to a state or county treatment facility, the department or, in the case of a disposition under par. (a) 4m., the county department under s. 51.42 or 51.437 may, after evaluating the inmate and developing an appropriate treatment plan, transfer the inmate back to the prison, county jail or house of correction on a conditional basis. The inmate shall be informed of the terms and conditions of the transfer as provided in s. 51.35 (1) (a). If the inmate does not cooperate with the treatment or if the inmate is in need of additional inpatient treatment, the department or the county department under s. 51.42 or 51.437 may return the inmate to a state or county treatment facility.

(cr) If the subject individual is before the court on a petition filed under a court order under s. 938.30 (5) (c) 1. and is found to have committed a violation of s. 940.225 (1) or (2), 948.02 (1) or (2), 948.025, or 948.085, the court shall require the individual to provide a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis.

(ct) 1m. a. Except as provided in subd. 2m., if the subject individual is before the court on a petition filed under a court order under s. 938.30 (5) (c) 1. and is found to have committed any violation, or to have solicited, conspired, or attempted to commit any violation, of ch. 940, 944, or 948 or s. 942.08 or 942.09, or ss. 943.01 to 943.15, the court may require the subject individual to comply with the reporting requirements under s. 301.45 if the court determines that the underlying conduct was sexually motivated, as defined in s. 980.01 (5), and that it would be in the interest of public protection to have the subject individual report under s. 301.45.

b. If a court under subd. 1m. a. orders a person to comply with the reporting requirements under s. 301.45 in connection with the commission of a violation, or the solicitation, conspiracy, or attempt to commit a violation, of s. 942.09, the court may provide that the person be released from the requirement to comply with the reporting requirements under s. 301.45 upon satisfying conditions specified by the court. If the person satisfies the conditions, the court shall notify the department of corrections that the person has satisfied the conditions.

2m. If the subject individual is before the court on a petition filed under a court order under s. 938.30 (5) (c) 1. and is found to have committed a violation, or to have solicited, conspired, or attempted to commit a violation, of s. 940.22 (2), 940.225 (1), (2), or (3), 944.06, 948.02 (1) or (2), 948.025, 948.05, 948.051, 948.055, 948.06, 948.07, 948.075, 948.08, 948.085, 948.095, 948.11 (2) (a) or (am), 948.12, 948.13, or 948.30, of s. 940.302 (2) if s. 940.302 (2) (a) 1. b. applies, or of s. 940.30 or 940.31 if the victim was a minor and the subject individual was not the victim's parent, the court shall require the individual to comply with the reporting requirements under s. 301.45 unless the court determines, after a hearing on a motion made by the individual, that the individual is not required to comply under s. 301.45 (1m).

3. In determining under subd. 1m. a. whether it would be in the interest of public protection to have the subject individual report under s. 301.45, the court may consider any of the following:

a. The ages, at the time of the violation, of the subject individual and the victim of the violation.

b. The relationship between the subject individual and the victim of the violation.

c. Whether the violation resulted in bodily harm, as defined in s. 939.22 (4), to the victim.

d. Whether the victim suffered from a mental illness or mental deficiency that rendered him or her temporarily or permanently incapable of understanding or evaluating the consequences of his or her actions.

e. The probability that the subject individual will commit other violations in the future.

g. Any other factor that the court determines may be relevant to the particular case.

4. If the court orders a subject individual to comply with the reporting requirements under s. 301.45, the court may order the subject individual to continue to comply with the reporting requirements until his or her death.

5. If the court orders a subject individual to comply with the reporting requirements under s. 301.45, the clerk of the court in which the order is entered shall promptly forward a copy of the order to the department of corrections. If the finding under s. 938.30 (5) (c) (intro.) on which the order is based is reversed, set aside or vacated, the clerk of the court shall promptly forward to the department of corrections a certificate stating that the finding has been reversed, set aside or vacated.

(cv) 1. If the court makes the disposition under par. (a) 3., 4., 4m., or 5., the court shall order the individual not to possess a fire-

Electronic reproduction of 2009−10 Wis. Stats. database, current through 2011 Wis. Act 286.

arm, order the seizure of any firearm owned by the individual, and inform the individual of the requirements and penalties under s. 941.29 if the court determines that the individual is prohibited, under 18 USC 922 (g) (4), from possessing a firearm.

1m. a. If a court orders an individual under subd. 1., or ordered an individual under s. 51.20 (13) (cv) 1., 2007 stats., not to possess a firearm, the individual may petition that court or the court in the county where the individual resides to cancel the order.

b. The court considering the petition under subd. 1m. a. shall grant the petition if the court determines that the circumstances regarding the disposition under par. (a) 3., 4., 4m., or 5. and the individual's record and reputation indicate that the individual is not likely to act in a manner dangerous to public safety and that the granting of the petition would not be contrary to public interest.

c. If the court grants the petition under subd. 1m. b., the court shall cancel the order under subd. 1., or the order under s. 51.20 (13) (cv) 1., 2007 stats., whichever is appropriate, and order the return of any firearm ordered seized under subd. 1. or s. 51.20 (13) (cv) 1., 2007 stats.

3. In lieu of ordering the seizure under subd. 1., the court may designate a person to store the firearm until the order has been canceled under subd. 1m. c.

4. If the court orders a subject individual not to possess a firearm under subd. 1. or cancels under subd. 1m. c. an order issued under subd. 1. or under s. 51.20 (13) (cv) 1., 2007 stats., the court clerk shall notify the department of justice of that fact and provide any information identifying the subject individual that is necessary to permit an accurate firearms restrictions record search under s. 175.35 (2g) (c). No other information from the subject individual's court records may be disclosed to the department of justice except by order of the court. The department of justice may disclose information provided under this subdivision only as part of a firearms restrictions record search under s. 175.35 (2g) (c) or under rules the department of justice promulgates under s. 175.35 (2g) (d).

(d) A disposition under par. (a) 3., 4., 4m. or 5. may be modified as provided in s. 51.35.

(dm) If the court finds that the dangerousness of the subject individual is likely to be controlled with appropriate medication administered on an outpatient basis, the court may direct in its order of commitment that the county department under s. 51.42 or 51.437 or the department may, after a facility evaluates the subject individual and develops an appropriate treatment plan, release the individual on a conditional transfer in accordance with s. 51.35 (1), with one of the conditions being that the individual shall take medication as prescribed by a physician, subject to the individual's right to refuse medication under s. 51.61 (1) (g) and (h), and that the individual shall report to a particular treatment facility on an outpatient basis for evaluation as often as required by the director of the facility or the director's designee. A finding by the court that the allegations under sub. (1) (a) 2. e. are proven constitutes a finding that the individual is not competent to refuse medication or treatment. The court order may direct that, if the director or his or her designee determines that the individual has failed to take the medication as prescribed or has failed to report for evaluation as directed, the director or designee may request that the individual be taken into custody by a law enforcement agency in accordance with s. 51.39, and that medication, as prescribed by the physician, may be administered voluntarily or against the will of the individual under s. 51.61 (1) (g) and (h). A court order under this paragraph is effective only as long as the commitment is in effect in accordance with par. (h) and s. 51.35 (4).

(e) The petitioner has the burden of proving all required facts by clear and convincing evidence.

(f) The county department under s. 51.42 or 51.437 that receives an individual who is committed by a court under par. (a) 3. is authorized to place the individual in an approved treatment facility, subject to any limitations which are specified by the court under par. (c) 2. The county department shall place the subject individual in the treatment program and treatment facility that is least restrictive of the individual's personal liberty, consistent with the treatment requirements of the individual. The county department has ongoing responsibility to review the individual's needs, in accordance with sub. (17), and to transfer the person to the least restrictive program consistent with the individual's needs. Placement or transfer under this paragraph is subject to s. 51.06 (3).

(g) 1. Except as provided in subd. 2., the first order of commitment of a subject individual under this section may be for a period not to exceed 6 months, and all subsequent consecutive orders of commitment of the individual may be for a period not to exceed one year.

2. Any commitment ordered under par. (a) 3. to 5., following proof of the allegations under sub. (1) (a) 2. d., may not continue longer than 45 days in any 365−day period.

2d. a. Except as provided in subd. 2d. b., after the 30th day after an order of commitment under par. (a) 3. to 5. following proof of the allegations under sub. (1) (a) 2. e., the subject individual may, under the order, be treated only on an outpatient basis.

b. If a subject individual who is committed under par. (a) 3. to 5., following proof of the allegations under sub. (1) (a) 2. e., and who is being treated on an outpatient basis violates a condition of treatment that is established by the court or a county department under s. 51.42, the county department or the department may transfer the subject individual under s. 51.35 (1) (e) to an inpatient facility or to an inpatient treatment program of a treatment facility for a period not to exceed 30 days.

2m. In addition to the provisions under subds. 1. and 2., no commitment ordered under par. (a) 4. or 4m. may continue beyond the inmate's date of release on parole or extended supervision, as determined under s. 302.11 or 302.113, whichever is applicable.

2r. Twenty−one days prior to expiration of the period of commitment under subd. 1., 2., or 2m., the department, if the individual is committed to the department, or the county department to which an individual is committed shall file an evaluation of the individual and the recommendation of the department or county department regarding the individual's recommitment with the committing court and provide a copy of the evaluation and recommendation to the individual's counsel and the counsel designated under sub. (4). If the date for filing an evaluation and recommendation under this subdivision falls on a Saturday, Sunday or legal holiday, the date which is not a Saturday, Sunday or legal holiday and which most closely precedes the evaluation and recommendation filing date shall be the filing date. A failure of the department or the county department to which an individual is committed to file an evaluation and recommendation under this subdivision does not affect the jurisdiction of the court over a petition for recommitment.

3. The county department under s. 51.42 or 51.437 to whom the individual is committed under par. (a) 3. may discharge the individual at any time, and shall place a committed individual in accordance with par. (f). Upon application for extension of a commitment by the department or the county department having custody of the subject, the court shall proceed under subs. (10) to (13). If the court determines that the individual is a proper subject for commitment as prescribed in sub. (1) (a) 1. and evidences the conditions under sub. (1) (a) 2. or (am) or is a proper subject for commitment as prescribed in sub. (1) (ar), it shall order judgment to that effect and continue the commitment. The burden of proof is upon the county department or other person seeking commitment to establish evidence that the subject individual is in need of continued commitment.

(h) Any disposition of a minor under this subsection may extend beyond the age of majority of the individual, if the disposition is otherwise made in accordance with this section.

Electronic reproduction of 2009−10 Wis. Stats. database, current through 2011 Wis. Act 286.

(14) TRANSPORTATION; EXPENSES. The sheriff or any law enforcement officer shall transport an individual who is the subject of a petition and execute the commitment, or any competent relative, friend or member of the staff of a treatment facility may assume responsibility for the individual and transport him or her to the inpatient facility. The director of the county department under s. 51.42 or 51.437 may request the sheriff to provide transportation for a subject individual or may arrange any other method of transportation which is feasible. The county department may provide reimbursement for the transportation costs from its budgeted operating funds.

(15) APPEAL. An appeal may be taken to the court of appeals within the time period specified in s. 808.04 (3) in accordance with s. 809.30 by the subject of the petition or the individual's guardian, by any petitioner, or by the representative of the public.

(16) REEXAMINATION OF PATIENTS. (a) Except in the case of alcoholic commitments under s. 51.45 (13), any patient who is involuntarily committed for treatment under this chapter, may on the patient's own verified petition, except in the case of a minor who is under 14 years of age, or on the verified petition of the patient's guardian, relative, friend, or any person providing treatment under the order of commitment, request a reexamination or request the court to modify or cancel an order of commitment.

(b) A petition under this subsection may be filed with the court assigned to exercise jurisdiction over probate matters, either for the county from which the patient is committed or for the county in which the patient is detained.

(c) If a hearing has been held with respect to the subject individual's commitment within 30 days of the filing of a petition under this subsection, no hearing shall be held. If such a hearing has not been held within 30 days of the filing of a petition, but has been held within 120 days of the filing, the court shall within 24 hours of the filing order an examination to be completed within 7 days by the appropriate county department under s. 51.42 or 51.437. A hearing may then be held in the court's discretion. If such a hearing has not been held within 120 days of the filing, a hearing shall be held on the petition within 30 days of receipt.

(d) Reexaminations under this subsection are subject to the standards prescribed in sub. (13) (g).

(e) If the court determines or is required to hold a hearing, it shall thereupon proceed in accordance with sub. (9) (a). For the purposes of the examination and observation, the court may order the patient confined in any place designated in s. 51.15 (2).

(f) If a patient is involuntarily committed and placed in a hospital, a notice of the appointment of the examining physicians and copies of their reports shall be furnished to such hospital by the court.

(g) Upon the filing of the examiners' reports the court shall fix a time and place of hearing and cause reasonable notice to be given to the petitioner, the treatment facility, the patient's legal counsel and the guardian of the patient, if any, and may notify any known relative of the patient. Subsections (10) to (13) shall govern the procedure to be used in the conduct of the hearing, insofar as applicable. The privileges provided in ss. 905.03 and 905.04 shall apply to reexamination hearings.

(h) All persons who render services in such proceedings shall receive compensation as provided in sub. (18) and all expenses of such proceedings shall be paid and adjusted as provided in sub. (18).

(i) Subsequent reexaminations may be had at any time in the discretion of the court but may be compelled after 120 days of the preceding examination in accordance with this subsection. All petitions for reexamination must be heard within 30 days of their receipt by the court.

(j) This subsection applies to petitions for reexamination that are filed under ch. 971, but not s. 971.17, and ch. 975, except that the petitions shall be filed with the committing court.

(k) Any order of a county department under s. 51.42 or 51.437 is subject to review by the court assigned to exercise probate jurisdiction upon petition under this subsection.

(L) The pendency of an appeal in either the court of appeals or the supreme court does not deprive the circuit court of jurisdiction to conduct reexamination proceedings under this section with respect to the individual who is the subject of the appeal.

(17) RIGHT TO REEVALUATION. With the exception of alcoholic commitments under s. 51.45 (13), every patient committed involuntarily to a board under this chapter shall be reevaluated by the treatment staff or visiting physician within 30 days after the commitment, and within 3 months after the initial reevaluation, and again thereafter at least once each 6 months for the purpose of determining whether such patient has made sufficient progress to be entitled to transfer to a less restrictive facility or discharge. The findings of such reevaluation shall be written and placed with the patient's treatment record, and a copy shall be sent to the board which has responsibility for the patient and to the committing court.

(18) FEES OF EXAMINERS, WITNESSES; EXPENSES OF PROCEEDINGS. (a) Unless previously fixed by the county board of supervisors in the county in which the examination is held, the examiners shall receive a fee as fixed by the court for participation in commitment proceedings, and reasonable reimbursement for travel expenses.

(b) Witnesses subpoenaed before the court shall be entitled to the same fees as witnesses subpoenaed before the court in other cases.

(c) Expenses of the proceedings from the presentation of the statement of emergency detention or petition for commitment to the conclusion of the proceeding shall be allowed by the court and paid by the county from which the subject individual is detained, committed, or released, in the manner that the expenses of a criminal prosecution are paid, as provided in s. 59.64 (1).

(d) If the subject individual has a legal residence in a county other than the county from which he or she is detained, committed or discharged, that county shall reimburse the county from which the individual was detained, committed or discharged for all expenses under pars. (a) to (c). The county clerk on each July 1 shall submit evidences of payments of all such proceedings on nonresident payments to the department, which shall certify such expenses for reimbursement in the form of giving credits to the detaining, committing or discharging county and assessing such costs against the county of legal residence or against the state at the time of the next apportionment of charges and credits under s. 70.60.

(19) DEPARTMENTAL DUTIES. (a) Prior to filing a petition for commitment of an inmate under sub. (1) (ar) the department shall:

1. Attempt to use less restrictive forms of treatment with the individual. Less restrictive forms of treatment shall include, but are not limited to, voluntary treatment within the prison or voluntary transfer to a state treatment facility, including an admission which meets the requirements of s. 51.10 (4m).

2. Ensure that the individual has been fully informed about his or her treatment needs, the mental health services available to him or her and his or her rights under this chapter and that the individual has had an opportunity to discuss his or her needs, the services available to him or her and his or her rights with a licensed physician or a licensed psychologist.

(b) The department shall promulgate rules:

1. Establishing standards for the use of psychotropic drugs on prisoners in a state prison and inmates committed under sub. (1) (ar).

1m. Establishing standards and procedures for use of and periodic review of the use of psychotropic drugs on inmates in a county jail or house of correction who are being treated in the jail

Electronic reproduction of 2009−10 Wis. Stats. database, current through 2011 Wis. Act 286.

or house of correction under a commitment based on a petition under sub. (1) (a).

2. Providing for the periodic review and evaluation of the appropriateness of and the need for the use of psychotropic drugs on, and the need for the continuation of treatment for, each inmate committed under sub. (1) (ar).

3. Needed to carry out its duties under par. (a).

History: 1975 c. 430; 1977 c. 26, 29; 1977 c. 187 ss. 42, 43, 134, 135; 1977 c. 428 ss. 29 to 65, 115; 1977 c. 447, 449; Sup. Ct. Order, 83 Wis. 2d xiii; 1979 c. 32, 89; Sup. Ct. Order, eff. 1−1−80; 1979 c. 110 s. 60 (1); 1979 c. 175 s. 53; 1979 c. 300, 336, 356; 1981 c. 20, 367; 1981 c. 390 s. 252; 1983 a. 27, 219; 1983 a. 474 ss. 2 to 9m, 14; 1985 a. 29 ss. 1067 to 1071, 3200 (56), 3202 (56); 1985 a. 139, 176, 321, 332; 1987 a. 27; Sup. Ct. Order, 141 Wis. 2d xiii (1987); 1987 a. 366, 394, 403; 1989 a. 31, 334; 1993 a. 98, 196, 227, 316, 451, 474; 1995 a. 77, 201, 268, 292, 440; Sup. Ct. Order No. 96−08, 207 Wis. 2d xv (1997); 1997 a. 35, 130, 237, 283; 1999 a. 83, 89, 162; 2001 a. 16 ss. 1966i to 1966n, 4034ze to 4034zh; 2001 a 38, 61, 109; 2003 a. 33, 50, 326; 2005 a. 22, 264, 277, 387; 2007 a. 20, 45, 116; 2009 a. 137, 258, 260.

Cross−reference: See also s. DOC 314.01, Wis. adm. code.

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

NOTE: 1987 Wis. Act 394, which affected this section, contains a prefatory note and notes following the sections.

Judicial Council Committee's Note, 1981: The final sentence of sub. (1) (am) allows the court to consider the subject individual's conduct during or subsequent to the crime as "recent" for purposes of involuntary civil commitment under this section, if the individual is proceeded against during, or immediately upon discharge from, a commitment for examination or treatment for incompetency to proceed as a criminal defendant. The relevancy of evidence of the individual's conduct prior to the crime is to be determined by the court. The revised statute requires the subject 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.

Sub. (1) (a) 2. e. may be used to involuntarily commit persons with dual diagnoses of mental illness and either drug dependency or developmental disability. The plain meaning of "these services" in sub. (1) (a) 2. e. includes medication. The ch. 55 exclusion in sub. (1) (a) 2. e. includes an individual who is already subject to an order for protective placement or services, if there is another placement or additional services available under ch. 55 that would be effective in reducing the probability of the requisite harm to less than a substantial probability. This exclusion may apply to an individual who is not yet subject to a ch. 55 order but who is eligible for one. Involuntary administration of medication under s. 55.14 may be one of the additional services that would satisfy this exclusion, if the guardian consents and depending on the individual's circumstances. Dane County v. Kelly M. 2011 WI App 69, 333 Wis. 2d 719, 798 N.W.2d 697, 10−1486.

Rehabilitation is a necessary element of treatment under ch. 51. Because there are no techniques that can be employed to bring about rehabilitation from Alzheimer's disease, an individual with the disease cannot be rehabilitated. Accordingly, an Alzheimer's patient is not a proper subject for ch. 51 treatment. Fond du Lac County v. Helen E. F. 2012 WI 50, 340 Wis. 2d 500, 814 N.W.2d 179, 10−2061.

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.

Electronic reproduction of 2009−10 Wis. Stats. database, current through 2011 Wis. Act 286.

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

Electronic reproduction of 2009−10 Wis. Stats. database, current through 2011 Wis. Act 286.

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.

2009−10 Wis. Stats. database current through 2011 Wis. Act 286. Includes all Legislative Acts and all Supreme Court Orders enacted before Oct. 1, 2012. Statutory changes effective on or prior to Oct. 1, 2012 are printed as currently in effect. Changes effective after Oct. 1, 2012 are designated by NOTES. See Are the Statutes on this Website Official? (10−3−12)

Electronic reproduction of 2009−10 Wis. Stats. database, current through 2011 Wis. Act 286.

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 initiating 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:

Electronic reproduction of 2009−10 Wis. Stats. database, current through 2011 Wis. Act 286.

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

Electronic reproduction of 2009−10 Wis. Stats. database, current through 2011 Wis. Act 286.

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.*

Electronic reproduction of 2009−10 Wis. Stats. database, current through 2011 Wis. Act 286.

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.

Under the broad terms of sub. (7), the confidentiality requirements created under this section generally apply to "treatment records" in criminal not guilty by reason of insanity (NGI) cases. All conditional release plans in NGI cases are, by statutory definition, treatment records. They are "created in the course of providing services to individuals for mental illness," and thus should be deemed confidential. An order of placement in an NGI case is not a "treatment record." La Crosse Tribune v. Circuit Court for La Crosse County, 2012 WI App 42, 340 Wis. 2d 663, 814 N.W.2d 867, 10−3120.

This section assigns confidential status to records involving treatment for mental illness. The meaning of "shall" in sub. (4) (a) is established. If the confidentiality provision applies, a court must treat the records as confidential, unless an enumerated exception contained in sub. (4) (b) applies, or there is a circumstance that is comparable to an enumerated exception. La Crosse Tribune v. Circuit Court for La Crosse County, 2012 WI App 42, 340 Wis. 2d 663, 814 N.W.2d 867, 10−3120.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. The requirements and rights under subds. 3. to 5.

b. The patient's right to counsel.

c. The patient's right to have counsel provided at public expense, as provided under s. 51.60.

d. The rights of the patient's counsel to investigate the facts specified in the written statement of reasons for the transfer, to consult with the patient prior to the patient's waiving a hearing under subd. 3., to represent the patient at all proceedings on issues relating to the transfer, and to take any legal steps necessary to challenge the transfer.

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

Electronic reproduction of 2009−10 Wis. Stats. database, current through 2011 Wis. Act 286.

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

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

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

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

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

(3) TRANSFER OF CERTAIN JUVENILES FROM SECURED JUVENILE FACILITIES. (a) A licensed psychologist of a juvenile correctional facility or a secured residential care center for children and youth, or a licensed physician of the department of corrections, who has reason to believe that any individual confined in the juvenile correctional facility or secured residential care center for children and youth is, in his or her opinion, in need of services for developmental disability, alcoholism, or drug dependency or in need of psychiatric services, and who has obtained consent to make a transfer for treatment, shall make a report, in writing, to the superintendent of the juvenile correctional facility or secured residential care center for children and youth, stating the nature and basis of the belief and verifying the consent. In the case of a minor age 14 or older who is in need of services for developmental disability or who is in need of psychiatric services, the minor and the minor's parent or guardian shall consent unless the minor is admitted under s. 51.13 (1) (c) 1. or unless the minor refuses to consent, in which case the minor's parent or guardian may consent on behalf of the minor. In the case of a minor age 14 or older who is in need of services for alcoholism or drug dependency or a minor under the age of 14 who is in need of services for developmental disability, alcoholism, or drug dependency or in need of psychiatric services, only the minor's parent or guardian needs to consent unless the minor is admitted under s. 51.13 (1) (c). The superintendent shall inform, orally and in writing, the minor and the minor's parent or guardian, that transfer is being considered and shall inform them of the basis for the request and their rights as provided in s. 51.13 (3) (am). If the department of corrections, upon review of a request for transfer, determines that transfer is appropriate, that department shall immediately notify the department of health services and, if the department of health services consents, the department of corrections may immediately transfer the individual. The department of health services shall file a petition under s. 51.13 (4) (a) in the court assigned to exercise jurisdiction under chs. 48 and 938 of the county where the treatment facility is located.

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

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

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

(e) The department of corrections may authorize emergency transfer of an individual from a juvenile correctional facility or a secured residential care center for children and youth to a state treatment facility if there is cause to believe that the individual has a mental illness, drug dependency, or developmental disability and exhibits conduct that constitutes a danger as described under s. 51.20 (1) (a) 2. a., b., c., or d. to the individual or to others, has a mental illness, is dangerous, and satisfies the standard under s.

Electronic reproduction of 2009−10 Wis. Stats. database, current through 2011 Wis. Act 286.

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

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

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

(4) DISCHARGE. (a) The county department under s. 51.42 or 51.437 shall grant a discharge from an order of commitment when it determines that the patient no longer meets the standard for recommitment under s. 51.20 (13) (g). The county department shall grant a discharge to a patient who is voluntarily admitted to an inpatient facility if the treatment director determines that treatment is no longer necessary or if the individual requests such discharge. Discharge or retention of a patient who is voluntarily admitted is subject to the procedures prescribed in ss. 51.10 (5) and 51.13 (7).

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

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

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

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

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

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

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

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

(5) RESIDENTIAL LIVING ARRANGEMENTS; TRANSITIONARY SERVICES. The department and any person, director, or board authorized to discharge or transfer patients under this section shall ensure that a proper residential living arrangement and the necessary transitionary services are available and provided for the patient being discharged or transferred. Under this subsection, a proper residential living arrangement may not include a shelter facility, as defined under s. 16.308 (1) (d), unless the discharge or transfer to the shelter facility is made on an emergency basis for a period not to exceed 10 days.

(6) VETERANS. (a) When the department has notice that any person other than a prisoner is entitled to receive care and treatment in a U.S. department of veterans affairs facility, the person may petition the department of health services for a transfer to such facility, and that department may procure admission to the facility.

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

(7) GUARDIANSHIP AND PROTECTIVE SERVICES. Prior to discharge from any state treatment facility, the department shall review the possible need of a developmentally disabled individual, aged infirm individual, or individual with other like incapacities for protective services or protective placement under ch. 55

Electronic reproduction of 2009−10 Wis. Stats. database, current through 2011 Wis. Act 286.

after discharge, including the necessity for appointment of a guardian. The department shall petition for guardianship, or for protective services or protective placement for the person if needed. When the department makes a petition for guardianship under this subsection, it shall not be appointed as guardian.

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

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

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

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

History: 1975 c. 430 ss. 18, 81; 1977 c. 26, 29, 428; 1979 c. 110 s. 60 (1); 1981 c. 74 s. 2; 1981 c. 314 s. 144; 1983 a. 27, 441, 474; 1985 a. 29, 176, 332; 1987 a. 366, 403; 1989 a. 31, 56, 107; 1991 a. 39; 1993 a. 451; 1995 a. 27 ss. 3258m, 3259m, 9126 (19); 1995 a. 77, 292; 1997 a. 35; 1999 a. 9; 2001 a. 16 ss. 1967f to 1967j, 4034zi; 2003 a. 33; 2005 a. 22, 264, 344, 387, 444; 2007 a. 20 ss. 1818 to 1819, 9121 (6) (a); 2007 a. 96; 2009 a. 28; 2011 a. 32.

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

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

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

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

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

(5) (a) When a licensed physician or licensed psychologist of a state prison, of a county jail or of the department of corrections reports in writing to the officer in charge of a jail or institution that any prisoner is, in his or her opinion, mentally ill, drug dependent, or developmentally disabled and is appropriate for treatment as described in s. 51.20 (1), or is an alcoholic and is dangerous as described in s. 51.45 (13) (a) 1. and 2.; or that the prisoner is mentally ill, drug dependent, developmentally disabled or is an alcoholic and is in need of psychiatric or psychological treatment, and that the prisoner voluntarily consents to a transfer for treatment, the officer shall make a written report to the department of corrections which may transfer the prisoner if a voluntary application is made and the department of health services consents. If voluntary application is not made, the department of corrections may file a petition for involuntary commitment under s. 51.20 (1) or 51.45 (13). Any time spent by a prisoner in an institution designated under sub. (3) or s. 51.37 (2), 1983 stats., shall be included as part of the individual's sentence.

(b) The department of corrections may authorize an emergency transfer of an individual from a prison, jail or other criminal detention facility to a state treatment facility if there is cause to believe that the individual is mentally ill, drug dependent or developmentally disabled and exhibits conduct which constitutes a danger as described in s. 51.20 (1) (a) 2. a., b., c. or d. of physical harm to himself or herself or to others, or is mentally ill and satisfies the standard under s. 51.20 (1) (a) 2. e. or is an alcoholic and is dangerous as provided in s. 51.45 (13) (a) 1. and 2. The correctional custodian of the sending institution shall execute a statement of emergency detention or petition for emergency commitment for the individual and deliver it to the receiving state treatment facility. The department of health services shall file the statement or petition with the court within 24 hours after receiving the subject individual for detention. The statement or petition shall conform to s. 51.15 (4) or (5) or 51.45 (12) (b). After an emergency transfer is made, the director of the receiving facility may file a petition for continued commitment under s. 51.20 (1) or 51.45 (13) or may return the individual to the institution from which the transfer was made. As an alternative to this procedure, the emergency detention procedure in s. 51.15 or 51.45 (12) may be used, except that no prisoner may be released without the approval of the court which directed confinement in the institution.

(c) No state treatment facility may accept for admission an individual who is being transferred from a county jail under par. (a) or (b) without the approval of the county department under s. 51.42 or 51.437 of the county in which the jail is located. No state treatment facility may retain such an individual beyond 72 hours without the approval of the county department under s. 51.42 or 51.437 of the county where the transferred individual has legal residence.

(6) After an emergency transfer is made, the director of the receiving facility may file a petition for continued commitment under s. 51.20 (1).

(7) Section 51.20 (18) applies to witness fees, attorney fees and other court fees incurred under this section.

(8) (a) Rights to reexamination under s. 51.20 (16) apply to a prisoner or inmate who is found to be mentally ill or drug dependent except that the petition shall be made to the court that made the finding or, if the prisoner or inmate is detained by transfer, to the circuit court of the county in which he or she is detained. If upon rehearing it is found that the standards for recommitment under s. 51.20 (13) (g) no longer apply to the prisoner or inmate or that he or she is not in need of psychiatric or psychological treatment, the prisoner or inmate shall be returned to the prison or county jail or house of correction unless it is past his or her release date as determined under s. 302.11 or 302.113, whichever is applicable, in which case he or she shall be discharged.

(b) If the condition of any prisoner or inmate committed or transferred under this section requires psychiatric or psychological treatment after his or her date of release as determined under s. 302.11 or 302.113, whichever is applicable, the director of the state treatment facility shall, within a reasonable time before the release date of the prisoner or inmate, make a written application to the court that committed the prisoner or inmate under sub. (5) (a). Thereupon, the proceeding shall be upon application made under s. 51.20, but no physician or psychologist who is connected with a state prison, Winnebago Mental Health Institute, Mendota Mental Health Institute, or any county jail or house of correction may be appointed as an examiner. If the court does not commit the prisoner or inmate, it may dismiss the application and order the prisoner or inmate returned to the institution from which he or she was transferred until the release date of the prisoner or inmate. If the court commits the prisoner or inmate for the period commencing upon his or her release date, the commitment shall be to the care and custody of the county department under s. 51.42 or 51.437.

Electronic reproduction of 2009−10 Wis. Stats. database, current through 2011 Wis. Act 286.

(9) If in the judgment of the director of Mendota Mental Health Institute, Winnebago Mental Health Institute or the Milwaukee County Mental Health Complex, any person who is committed under s. 971.14 or 971.17 is not in such condition as warrants his or her return to the court but is in a condition to receive a conditional transfer or discharge under supervision, the director shall report to the department of health services, the committing court and the district attorney of the county in which the court is located his or her reasons for the judgment. If the court does not file objection to the conditional transfer or discharge within 60 days of the date of the report, the director may, with the approval of the department of health services, conditionally transfer any person to a legal guardian or other person, subject to the rules of the department of health services. Before a person is conditionally transferred or discharged under supervision under this subsection, the department of health services shall so notify the municipal police department and county sheriff for the area where the person will be residing. The notification requirement does not apply if a municipal department or county sheriff submits to the department of health services a written statement waiving the right to be notified. The department of health services may contract with the department of corrections for the supervision of persons who are transferred or discharged under this subsection.

(10) (a) In this subsection:

1. "Crime" has the meaning designated in s. 949.01 (1).

2. "Extended home visit or leave" means a home visit or leave lasting 24 hours or longer.

3. "Member of the family" means spouse, child, sibling, parent or legal guardian.

4. "Victim" means a person against whom a crime has been committed.

(am) The director of a state treatment facility may grant to any patient admitted to the facility as a result of a commitment under ch. 971 or 975, a home visit for up to 15 days, or a leave for employment or education purposes in which the patient is not absent from the facility for more than 15 days.

(b) Such a home visit or leave may be granted by the department at its discretion when it is believed to be in the best therapeutic interests of the patient and it is reasonably believed not to present a substantial risk of harm to the community.

(c) Any patient who is granted a home visit or leave under this subsection shall be restricted to the confines of this state unless otherwise specifically permitted. The patient may, in addition, be restricted to a particular geographic area. Other conditions appropriate to the person's treatment may also be imposed upon the home visit or leave.

(d) If such a patient does not return to the treatment facility by the time designated in the granting of the home visit or leave, or if the patient is believed to have violated other conditions of the home visit or leave, the director of the treatment facility may request the sheriff of the county in which the patient is found to return the patient to the facility. The sheriff shall act in accordance with s. 51.39.

(dg) If the department grants a patient an extended home visit or leave under this subsection, the department shall do all of the following in accordance with par. (dm):

1. Notify the office of the judge who committed the patient.

2. Notify the office of the district attorney who participated in the commitment proceedings.

3. Make a reasonable attempt to notify the victim of the crime committed by the patient or, if the victim died as a result of the crime, an adult member of the victim's family or, if the victim is younger than 18 years old, the victim's parent or legal guardian, after the submission of a card under par. (dx) requesting notification.

(dm) 1. The notice under par. (dg) shall inform the offices and person under par. (dg) 1. to 3. of the patient's name and of the date the patient will begin the home visit or leave. The department shall provide notice under this paragraph for a patient's first extended home visit or leave and, upon request, for subsequent extended home visits or leaves.

2. The department shall send the notice, postmarked at least 7 days before the patient begins the extended home visit or leave, to the last−known address of the offices and person under par. (dg) 1. to 3.

3. If the notice is for a first extended home visit or leave, the notice shall inform the offices and person under par. (dg) 1. to 3. that notification of subsequent extended home visits or leaves will be provided only upon request.

(dx) The department shall design and prepare cards for persons specified in par. (dg) 3. to send to the department. The cards shall have space for these persons to provide their names and addresses, the name of the applicable patient and any other information the department determines is necessary. The department shall provide the cards, without charge, to district attorneys. District attorneys shall provide the cards, without charge, to persons specified in par. (dg) 3. These persons may send completed cards to the department. All departmental records or portions of records that relate to mailing addresses of these persons are not subject to inspection or copying under s. 19.35 (1).

(e) The director of the facility in which the patient under par. (am) is detained or committed shall notify the appropriate correctional officers of the department of corrections of the intention to grant a home visit or leave under this subsection at least 20 days prior to the departure of the patient from the facility.

(f) This section does not apply to persons transferred from a prison or jail under sub. (5).

(g) A home visit or leave does not constitute a transfer under this chapter and return to the facility does not necessitate a hearing under s. 51.35 or 51.61.

(11) When an individual who is in the custody of or under the supervision of a correctional officer of the department of corrections is transferred, discharged or is on unauthorized absence from a treatment facility, the probation, extended supervision and parole agent or other individual within the department of corrections who is responsible for that individual's supervision shall be notified as soon as possible by the director of the treatment facility.

History: 1975 c. 430; 1977 c. 418 ss. 360 to 362, 929 (55); 1977 c. 428 ss. 80, 81, 115; 1977 c. 447; 1977 c. 449 s. 497; 1979 c. 32, 117, 175, 221; 1983 a. 27, 359, 474; 1985 a. 29 ss. 1075 to 1077, 3200 (56), 3202 (23); 1985 a. 176; 1987 a. 307, 394; 1989 a. 31, 359; 1991 a. 39, 269; 1995 a. 27 s. 9126 (19); 1995 a. 292; 1997 a. 181, 283; 2001 a. 16 s. 4034zj; 2001 a. 103; 2007 a. 20 s. 9121 (6) (a).

Cross−reference: See also ch. DHS 98, Wis. adm. code.

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).

51.375 Honesty testing of sex offenders. (1) In this section:

(a) "Community placement" means conditional transfer into the community under s. 51.35 (1), conditional release under s. 971.17, parole from a commitment for specialized treatment under ch. 975, or supervised release under ch. 980.

(b) "Lie detector" has the meaning given in s. 111.37 (1) (b).

(c) "Polygraph" has the meaning given in s. 111.37 (1) (c).

(d) "Sex offender" means a person committed to the department who meets any of the criteria specified in s. 301.45 (1g).

(2) (a) The department may require, as a condition of a community placement, that a sex offender submit to a lie detector test when directed to do so by the department.

(b) The department may administer a lie detector test to a sex offender as part of the sex offender's programming, care, or treatment. A patient may refuse to submit to a lie detector test under this paragraph. This refusal does not constitute a general refusal to participate in treatment. The results of a lie detector test under this paragraph may be used only in the care, treatment, or assessment of the subject or in programming for the subject. The results of a test may be disclosed only to persons employed at the facility at which the subject is placed who need to know the results for pur-

Electronic reproduction of 2009−10 Wis. Stats. database, current through 2011 Wis. Act 286.

poses related to care, treatment, or assessment of the patient, the committing court, the patient's attorney, or the attorney representing the state in a proceeding under ch. 980. The committing court to which the results of a test have been disclosed may admit the results in evidence in a proceeding under ch. 980.

(3) The department shall promulgate rules establishing a lie detector test program for sex offenders who are in a community placement. The rules shall provide for assessment of fees upon persons committed to the department to partially offset the costs of the program.

History: 1995 a. 440; 1999 a. 89; 2001 a. 16; 2005 a. 434.
Cross−reference: See also ch. DHS 98, Wis. adm. code.

51.38 Nonresident patients on unauthorized absence. The circuit court may order the detention of any nonresident individual who is on unauthorized absence from any institution of another state for the treatment of mental illness, developmental disabilities, alcoholism or drug abuse. Detention shall be for the period necessary to complete the deportation of that individual.

History: 1975 c. 430; 1977 c. 428; 1977 c. 449 s. 497.

51.39 Resident patients on unauthorized absence. If any patient who is admitted, transferred, or placed under s. 55.06, 2003 stats., or s. 51.13, 51.15, 51.20, 51.35 (3), 51.37, or 51.45 (11) (b), (12) or (13) or ch. 55, 971, 975, or 980 is on unauthorized absence from a treatment facility, the sheriff or any other law enforcement agency in the county in which the patient is found or in which it is believed the patient may be present, upon the request of the director, shall take charge of and return the patient to the facility. The costs incident to the return shall be paid out of the facility's operating funds and be charged back to the patient's county of residence.

History: 1975 c. 430; 1977 c. 428; 1979 c. 336; 1993 a. 479; 2005 a. 264.

51.40 Determination of residence for certain adults; county of responsibility. (1) DEFINITIONS. In this section:

(a) "Agency of a county department" means a public or private organization with which a county department contracts for provision of services under ch. 46, 51 or 55.

(b) "Arrange or make placement" means perform any action beyond providing basic information concerning the availability of services, facilities or programs in a county to an individual or the individual's family.

(c) "Capable of indicating intent" means able to express by words or other means an informed choice of a place to live.

(d) "County department" means a county department under s. 46.23, 51.42 or 51.437.

(e) "County of responsibility" means the county responsible for funding the provision of care, treatment, or services under this chapter or ch. 46 or 55 to an individual.

(em) "Facility" means a place, other than a hospital, that is licensed, registered, certified, or approved by the department or a county under ch. 50 or 51.

(f) "Guardian" means a guardian of the person appointed by a court under ch. 54 or ch. 880, 2003 stats.

(g) "Incapable of indicating intent" means one of the following:

1. The status of an individual who has a guardian.

2. The status of an individual for whom there is substantial evidence, based on documentation from a licensed physician or psychologist who has personally examined the individual and who has expertise concerning the type of mental disability evidenced by the individual, that the individual is incapable of indicating intent.

(hm) "Other like incapacities" has the meaning given in s. 55.01 (5).

(i) "Parent" has the meaning specified under s. 48.02 (13).

(j) "State facility" means a state mental health institute, center for the developmentally disabled, prison as specified in s. 302.01 or a facility that is operated directly by the department of health services or the department of corrections.

(m) "Voluntary" has the meaning given in s. 49.001 (8).

(2) DETERMINATION OF COUNTY OF RESIDENCE. The county of residence of an individual aged 18 or older with developmental disability or serious and persistent mental illness, degenerative brain disorder, or other like incapacity who is residing in a facility is the county of responsibility for the individual. The county of residence shall be determined as follows:

(a) *Directed placement.* 1. 'Commitment or protective placement or protective services.' If an individual is under a court order of commitment under this chapter or protective placement or protective services under s. 55.06, 2003 stats., or s. 55.12, the individual remains a resident of the county in which he or she has residence at the time the initial commitment or initial order for protective placement or protective services is made. If the court makes no specific finding of a county of residence, the individual is a resident of the county in which the court is located. After notice, including notice to the corporation counsel of each affected county by certified mail, after opportunity to be heard has been provided to all affected counties and parties, and if there is no objection, the court may make a specific finding of a county of residence. If any affected county or party objects to the court's proposed finding, the county or party may request the department to make a determination under par. (g). Any transfer of venue may be suspended until the department's determination is final.

2. 'Placement by a county.' Except for the provision of emergency services under s. 51.15, 51.42 (1) (b), 51.437 (4) (c), or 51.45 (11) and (12), emergency protective services under s. 55.13, or emergency protective placement under s. 55.135, if a county department or an agency of a county department places or makes arrangements for placement of the individual into a facility, the individual is a resident of the county of that county department. Any agency of the county department is deemed to be acting on behalf of the county department in placing or making arrangements for placement. Placement of an individual by a county department or an agency of a county department in a facility outside the jurisdiction of the county department or agency does not transfer the individual's legal residence to the county in which the facility is located. If a resident of a county is physically present in another county and is in need of immediate care, the county in which the individual is present may provide for his or her immediate needs under s. 51.15, 51.20, 51.42 (1) (b), 51.437 (4) (c), or 51.45 (11) or (12), or ch. 54 or 55, without becoming the individual's county of residence.

(b) *Other admissions.* If par. (a) does not apply, the county of residence shall be determined as follows:

1. 'Individuals in state facilities.' An individual who is in a state facility is a resident of the county in which he or she was a resident at the time the admission to the state facility was made. This subdivision may not be applied to change residence from a county, other than the county in which the facility is located, that has accepted responsibility for or provided services to the individual before December 1, 2006.

2. 'Individuals in nursing homes.' The following are presumptions regarding the county of residence of an individual in a nursing home that may be overcome by substantial evidence that clearly establishes other county residence:

ag. An individual in a nursing home who was admitted under s. 50.04 (2r) to the nursing home after December 1, 2006, is a resident of the county that approved the admission under s. 50.04 (2r).

bg. An individual residing in a nursing home on December 1, 2006, is a resident of the county in which the individual is physically present unless another county accepts the individual as a resident.

cg. If the individual had an established residence in another county prior to entering the nursing home; the individual or the individual's guardian, if any, indicates an intent that the individual will return to that county when the purpose of entering the nursing

Electronic reproduction of 2009−10 Wis. Stats. database, current through 2011 Wis. Act 286.

home has been accomplished or when needed care and services can be obtained in that county; and the individual, when capable of indicating intent, or a guardian for the individual, has made no clearly documented expression to a court or county department of an intent to establish residence elsewhere since leaving that county, the individual is a resident of that county.

dg. If the individual is incapable of indicating intent as determined by the county department, has no guardian, ordinarily resides in another county, and is expected to return to that county within one year, the individual is a resident of that county.

eg. If another county has accepted responsibility for or provided services to the individual prior to December 1, 2006, the individual is a resident of that county.

fg. If the individual is incapable of indicating intent; the individual was living in another county outside of a nursing home or state facility on December 1, 2006, or under circumstances that established residence in that county after December 1, 2006; and that county was the last county in which the individual had residence while living outside of a nursing home or state facility, the individual is a resident of that county.

g. If subd. 2. ag. to fg. does not apply, an individual who is incapable of indicating intent and is residing in a facility is a resident of the county in which the individual resided before admittance to the facility.

(f) *Guardian's authority to declare county of residence.* A guardian may declare any of the following, under any of the following conditions:

1. The ward is a resident of the guardian's county of residence, if pars. (a) and (b) do not apply, if the guardian's ward is in a facility and is incapable of indicating intent, and if the guardian is a resident of the county in which the facility is located or states in writing that the ward is expected to return to the guardian's county of residence when the purpose of entering the facility has been accomplished or when needed care and services can be obtained in the guardian's county of residence.

2. The ward is a resident of the county in which the ward is physically present, if pars. (a) and (b) do not apply and if all of the following apply:

a. The ward's presence in the county is voluntary.

b. There is no current order under ch. 55 in effect with respect to the ward, and the ward is not under an involuntary commitment order to the department of corrections or to a county other than the county in which the ward is physically present.

c. The ward is living in a place of fixed habitation.

d. The guardian states in writing that it is the ward's intent to remain in the county for the foreseeable future.

3. The ward is a resident of the county specified by the guardian, regardless if a previous determination of county of residence has been made, notwithstanding pars. (a) and (b) for good cause shown, if, in the ward's best interest, the guardian files with the probate court having jurisdiction of the guardianship and protective placement a written statement declaring the ward's domiciliary intent, subject to court approval, and if notice and opportunity to be heard are provided to all affected counties and parties. Notice under this subdivision shall be sent to the corporation counsel of each affected county by certified mail.

(g) *Determination of county of responsibility.* 1. An individual, an interested person on behalf of the individual, or any county may request that the department make a determination of the county of responsibility of the individual. Any motion for change of venue pending before the court of jurisdiction may be stayed until the determination under this paragraph is final. Within 10 days after receiving the request, the department shall provide written notice to the individual; to the individual's guardian, guardian ad litem, and counsel, if any; to the individual's immediate family, if they can be located; and to all potentially responsible counties that a determination of county of responsibility shall be made and that written information and comments may be submitted within 30 days after the date on which the notice is sent.

2. The department shall review information submitted under subd. 1. and make such investigation as it deems proper. Within 30 days after the end of the period for submitting information, the department shall make a decision as to residence, and send a copy of the decision to the individual and to all involved counties. The decision may be appealed under s. 227.44 by the individual or the county determined to be responsible.

3. Pending a determination under subd. 2., a county department which has been providing services to the individual shall continue to provide services if necessary to meet the individual's needs. If no county department is currently providing services, the county in which the client is physically present shall provide necessary services pending the determination.

4. A determination under subd. 2. may provide for a period of transitional services to assure continuity of services by specifying a date until which the county department which has been providing services shall continue to do so.

5. The decision of the department under subd. 2. is binding on the individual and on any county which received notice of the proceeding. Except as provided in the determination, the county determined to be the county of responsibility shall act as the county of responsibility immediately after receiving notice of the determination, and during the pendency of any appeal of the determination that is brought under ch. 227.

6. The county that is determined to be the county of responsibility shall reimburse any other county for all care, treatment, and services provided by the other county to the individual under ch. 46, 51, or 55. Full reimbursement by the county that is determined to be the county of responsibility shall be made within 120 days after the date of the department's determination of the county of responsibility or within 120 days after the date of the outcome of any appeal of the department's determination that is brought under ch. 227, or by a date or under a schedule of 2 or more payments that is agreed to by both counties.

History: 1987 a. 27; 1989 a. 31, 359; 1995 a. 27 s. 9126 (19); 2005 a. 264, 387; 2007 a. 20 s. 9121 (6) (a); 2007 a. 45.

The residence of an adult who was protectively placed as a minor is discussed. Waukesha County v. B.D. 163 Wis. 2d 779, 472 N.W.2d 563 (Ct. App. 1991).

A community−based residential facility is neither a nursing home nor a state facility. Sub. (2) is limited to individuals living in nursing homes or state facilities. Juneau County v. Sauk County, 217 Wis. 2d 705, 580 N.W.2d 694 (Ct. App. 1998), 97−1365.

51.42 Community mental health, developmental disabilities, alcoholism and drug abuse services. (1) PROGRAM. (a) *Purpose and intent.* All of the following are the purposes and intent of this section:

1. To enable and encourage counties to develop a comprehensive range of services offering continuity of care.

2. To utilize and expand existing governmental, voluntary and private community resources for provision of services to prevent or ameliorate mental disabilities, including but not limited to mental illness, developmental disabilities, alcoholism and drug abuse.

3. To provide for the integration of administration of those services and facilities organized under this section through the establishment of a county department of community programs.

4. To authorize state consultative services, reviews and establishment of standards and grants−in−aid for such program of services and facilities.

(b) *County liability.* The county board of supervisors has the primary responsibility for the well−being, treatment and care of the mentally ill, developmentally disabled, alcoholic and other drug dependent citizens residing within its county and for ensuring that those individuals in need of such emergency services found within its county receive immediate emergency services. This primary responsibility is limited to the programs, services and resources that the county board of supervisors is reasonably able to provide within the limits of available state and federal

Electronic reproduction of 2009−10 Wis. Stats. database, current through 2011 Wis. Act 286.

funds and of county funds required to be appropriated to match state funds. County liability for care and services purchased through or provided by a county department of community programs established under this section shall be based upon the client's county of residence except for emergency services for which liability shall be placed with the county in which the individual is found. For the purpose of establishing county liability, "emergency services" includes those services provided under the authority of s. 55.05 (4), 2003 stats., or s. 55.06 (11) (a), 2003 stats., or s. 51.15, 51.45 (11) (a) or (b) or (12), 55.13, or 55.135 for not more than 72 hours. Nothing in this paragraph prevents recovery of liability under s. 46.10 or any other statute creating liability upon the individual receiving a service or any other designated responsible party, or prevents reimbursement by the department of health services for the actual cost of all care and services from the appropriation under s. 20.435 (7) (da), as provided in s. 51.22 (3).

(2) DEFINITION. In this section, "program" means community services and facilities for the prevention or amelioration of mental disabilities, including but not limited to mental illness, developmental disabilities, alcoholism and drug abuse.

(3) COUNTY DEPARTMENT OF COMMUNITY PROGRAMS. (a) *Creation.* Except as provided under s. 46.23 (3) (b), the county board of supervisors of any county, or the county boards of supervisors of 2 or more counties, shall establish a county department of community programs on a single−county or multicounty basis to administer a community mental health, developmental disabilities, alcoholism and drug abuse program, make appropriations to operate the program and authorize the county department of community programs to apply for grants−in−aid under s. 51.423. The county department of community programs shall consist of a county community programs board, a county community programs director and necessary personnel.

(ar) *Duties.* A county department of community programs shall do all of the following:

1. Enter into contracts to render services to or secure services from other agencies or resources including out−of−state agencies or resources. Notwithstanding ss. 59.42 (1) and (2) (b) and 978.05, any multicounty department of community programs may contract for professional legal services that are necessary to carry out the duties of the multicounty department of community programs if the corporation counsel of each county of the multicounty department of community programs has notified the multicounty department of community programs that he or she is unable to provide those services in a timely manner.

2. Enter into contracts for the use of any facility as an approved public treatment facility under s. 51.45 for the treatment of alcoholics if the county department of community programs deems it to be an effective and economical course to follow.

3. Plan for and establish a community developmental disabilities program to deliver the services required under s. 51.437 if, under s. 51.437 (4g) (b), the county board of supervisors in a county with a single−county department of community programs or the county boards of supervisors in counties with a multicounty department of community programs transfer the powers and duties of the county department under s. 51.437 to the county department of community programs. The county board of supervisors in a county with a single−county department of community programs and the county boards of supervisors in counties with a multicounty department of community programs may designate the county department of community programs to which these powers and duties have been transferred as the administrative agency of the long−term support community options program under s. 46.27 (3) (b) 1. and 5. and the community integration programs under ss. 46.275, 46.277 and 46.278.

4. Within the limits of available state and federal funds and of county funds required to be appropriated to match state funds, provide for the program needs of persons suffering from mental disabilities, including mental illness, developmental disabilities, alcoholism or drug abuse, by offering the following services:

a. Collaborative and cooperative services with public health and other groups for programs of prevention.

b. Comprehensive diagnostic and evaluation services, including assessment as specified under ss. 114.09 (2) (bm), 343.30 (1q) and 343.305 (10) and assessments under ss. 48.295 (1) and 938.295 (1).

c. Inpatient and outpatient care and treatment, residential facilities, partial hospitalization, emergency care and supportive transitional services.

d. Related research and staff in−service training, including periodic training on emergency detention procedures under s. 51.15, emergency protective services under s. 55.13, and emergency protective placement procedures under s. 55.135, for persons within the jurisdiction of the county department of community programs who are authorized to take individuals into custody under ss. 51.15 and 55.135. In developing in−service training on emergency detention and emergency protective placement procedures, the county department of community programs shall consult the county department of developmental disabilities services under s. 51.437 in counties where these departments are separate.

e. Continuous planning, development and evaluation of programs and services for all population groups.

4m. If state, federal and county funding for alcohol and other drug abuse treatment services provided under subd. 4. are insufficient to meet the needs of all eligible individuals, ensure that first priority for services is given to pregnant women who suffer from alcoholism or alcohol abuse or are drug dependent.

5. Prepare a local plan which includes an inventory of all existing resources, identifies needed new resources and services and contains a plan for meeting the needs of the mentally ill, developmentally disabled, alcoholic, drug abusers and those with other psychiatric disabilities for citizens residing within the jurisdiction of the county department of community programs and for persons in need of emergency services found within the jurisdiction of the county department of community programs. The plan shall also include the establishment of long−range goals and intermediate−range plans, detailing priorities and estimated costs and providing for coordination of local services and continuity of care. The plan shall state how the needs of homeless persons and adults with serious and persistent mental illness, children with serious emotional disturbances and minorities will be met by the county department of community programs. The county department of community programs shall submit the plan to the department for review under sub. (7) (a) 9. and s. 51.02 (1) (f) in accordance with the schedule and deadlines established under sub. (7) (a) 9.

6. Under the supervision of the county community programs director, using qualified personnel with training or experience, or both, in mental health, developmental disabilities, or in alcoholism and drug abuse, be responsible for the planning and implementation of programs relating to mental health, developmental disabilities, alcoholism or drug abuse. A single coordinator may be responsible for alcoholism, drug abuse, mental health and developmental disabilities programs.

7. Acknowledge receipt of the notification received under s. 115.812 (2).

8. By September 30, submit for inclusion as part of the proposed county budget to the county executive or county administrator or, in those counties without a county executive or county administrator, directly to the county board of supervisors in a county with a single−county department of community programs or the county boards of supervisors in counties with a multicounty department of community programs a proposed budget for the succeeding calendar year covering services, including active treatment community mental health center services, based on the

Electronic reproduction of 2009−10 Wis. Stats. database, current through 2011 Wis. Act 286.

plan required under subd. 5. The final budget shall be submitted to the department of health services.

9. Develop the cost of all services which it purchases based on the standards and requirements of s. 46.036.

11. Annually report to the department of health services regarding the use of any contract entered into under s. 51.87.

13. Except in an emergency, review and approve or disapprove all admissions to nursing homes of mentally ill persons under age 65 who are residents of the county.

14. If the county board of supervisors establishes an initiative to provide coordinated services under s. 59.53 (7), participate in and may administer the initiative, including entering into any written interagency agreements or contracts.

15. Submit to the department in a timely fashion, as specified by the department, any reports necessary to comply with the requirements under 42 USC 300x−52.

17. If authorized under s. 46.283 (1) (a) 1., apply to the department of health services to operate a resource center under s. 46.283 and, if the department contracts with the county under s. 46.283 (2), operate the resource center.

18. If authorized under s. 46.284 (1) (a) 1., apply to the department of health services to operate a care management organization under s. 46.284 and, if the department contracts with the county under s. 46.284 (2), operate the care management organization and, if appropriate, place funds in a risk reserve.

(as) *Care in other facilities.* 1g. In this paragraph, "county department" means a county department of community programs.

1m. A county department shall reimburse a mental health institute at the institute's daily rate for custody of any person who is ordered by a court located in that county to be examined at the mental health institute under s. 971.14 (2) for all days that the person remains in custody at the mental health institute, beginning 48 hours, not including Saturdays, Sundays, and legal holidays, after the sheriff and county department receive notice under s. 971.14 (2) (d) that the examination has been completed.

1r. A county department shall authorize all care of any patient in a state, local, or private facility under a contractual agreement between the county department and the facility, unless the county department governs the facility. The need for inpatient care shall be determined by the program director or designee in consultation with and upon the recommendation of a licensed physician trained in psychiatry and employed by the county department or its contract agency. In cases of emergency, a facility under contract with any county department shall charge the county department having jurisdiction in the county where the patient is found. The county department shall reimburse the facility for the actual cost of all authorized care and services less applicable collections under s. 46.036, unless the department of health services determines that a charge is administratively infeasible, or unless the department of health services, after individual review, determines that the charge is not attributable to the cost of basic care and services. Except as provided in subd. 1m., a county department may not reimburse any state institution or receive credit for collections for care received in a state institution by nonresidents of this state, interstate compact clients, transfers under s. 51.35 (3), transfers from Wisconsin state prisons under s. 51.37 (5) (a), commitments under s. 975.01, 1977 stats., or s. 975.02, 1977 stats., or s. 971.14, 971.17 or 975.06 or admissions under s. 975.17, 1977 stats., or children placed in the guardianship of the department of children and families under s. 48.427 or 48.43 or under the supervision of the department of corrections under s. 938.183 or 938.355. The exclusionary provisions of s. 46.03 (18) do not apply to direct and indirect costs that are attributable to care and treatment of the client.

2. If a mental health institute has provided a county department with service, the department of health services shall regularly collect for the cost of care from the county department. If collections for care from the county department and from other sources exceed current billings, the difference shall be remitted to the county department through the appropriation under s. 20.435 (2) (gk). For care provided on and after February 1, 1979, the department of health services shall adjust collections from medical assistance to compensate for differences between specific rate scales for care charged to the county department and the average daily medical assistance reimbursement rate. The department of health services shall deduct the amount due from a county department under this subdivision from any payment due from the department of health services to the county department.

3. Care, services and supplies provided after December 31, 1973, to any person who, on December 31, 1973, was in or under the supervision of a mental health institute, or was receiving mental health services in a facility authorized by s. 51.08 or 51.09, but was not admitted to a mental health institute by the department of health services, shall be charged to the county department which was responsible for such care and services at the place where the patient resided when admitted to the institution. The department of health services may bill county departments for care provided at the mental health institutes at rates which the department of health services sets on a flexible basis, except that this flexible rate structure shall cover the cost of operations of the mental health institutes.

(aw) *Powers.* 1. Within the limits of state and county appropriations and maximum available funding from other sources, a county department of community programs may provide for the program needs of persons suffering from mental disabilities, including but not limited to mental illness, developmental disability, alcoholism or drug abuse, by offering the following services:

a. Precare, aftercare and rehabilitation and habilitation services.

b. Professional consultation.

c. Public informational and educational services.

d. Provide treatment and services that are specified in a conditional release plan approved by a court for a person who is a county resident and is conditionally released under s. 971.17 (3) or (4) or that are specified in a supervised release plan approved by a court under s. 980.06 (2) (c), 1997 stats., s. 980.08 (5), 2003 stats., or s. 980.08 (4) (g). If the county department provides treatment and services under this subdivision, the department of health services shall, from the appropriation under s. 20.435 (2) (bj), pay the county department for the costs of the treatment and services.

2. A county department of community programs may allocate services among service recipients to reflect the availability of limited resources.

3. A county department of community programs may own, lease or manage real property for the purposes of operating a treatment facility.

(b) *Other powers and duties.* The county board of supervisors of any county with a single−county department of community programs and the county boards of supervisors of counties with a multicounty department of community programs may designate the county department of community programs as the administrator of any other county health care program or institution, but the operation of such program or institution is not reimbursable under s. 51.423.

(bm) *Educational services.* A county department of community programs may not furnish services and programs provided by the department of public instruction and local educational agencies.

(c) *Multicounty contract.* No grant−in−aid may be made under s. 51.423 to any multicounty department of community programs until the counties which established the multicounty department of community programs have drawn up a detailed contractual agreement, approved by the secretary, setting forth the plans for joint sponsorship.

(e) *Exchange of information.* Notwithstanding ss. 46.2895 (9), 48.78 (2) (a), 49.45 (4), 49.83, 51.30, 51.45 (14) (a), 55.22 (3), 146.82, 252.11 (7), 253.07 (3) (c), and 938.78 (2) (a), any subunit of a county department of community programs or tribal agency

Electronic reproduction of 2009−10 Wis. Stats. database, current through 2011 Wis. Act 286.

acting under this section may exchange confidential information about a client, without the informed consent of the client, with any other subunit of the same county department of community programs or tribal agency, with a resource center, a care management organization, or a long−term care district, or with any person providing services to the client under a purchase of services contract with the county department of community programs or tribal agency or with a resource center, care management organization, or long−term care district, if necessary to enable an employee or service provider to perform his or her duties, or to enable the county department of community programs or tribal agency to coordinate the delivery of services to the client. Any agency releasing information under this paragraph shall document that a request was received and what information was provided.

(4) COUNTY COMMUNITY PROGRAMS BOARD. (a) *Appointment.* 1. Except as provided under subd. 2., the county board of supervisors of every county with a single−county department of community programs or the county boards of supervisors in counties with a multicounty department of community programs shall, before qualification under this section, appoint a governing and policy−making board to be known as the county community programs board. A county community programs board appointed under this subdivision shall govern the single−county or multicounty department of community programs and shall assume all of the powers and duties of the county department of community programs under sub. (3) (ar) to (bm). A member of a county community programs board appointed under this subdivision may be removed from office under the following circumstances:

a. For cause, by a two−thirds vote of each county board of supervisors participating in the appointment, on due notice in writing and hearing of the charges against the member.

b. If the member when appointed was a member of the county board of supervisors and the member is not reelected to that office, on due notice in writing.

2. In any county with a county executive or county administrator and which has established a single−county department of community programs, the county executive or county administrator shall appoint, subject to confirmation by the county board of supervisors, the county community programs board, which shall be only a policy−making body determining the broad outlines and principles governing the administration of programs under this section. A member of a county community programs board appointed under this subdivision may be removed by the county executive or county administrator under the following circumstances:

a. For cause.

b. If the member when appointed was a member of the county board of supervisors and the member is not reelected to that office.

(b) *Composition.* 1. In a single−county department of community programs the county community programs board shall be composed of not less than 9 nor more than 15 persons of recognized ability and demonstrated interest in the problems of the mentally ill, developmentally disabled, alcoholic or drug dependent persons and shall have representation from the interest group of the mentally ill, the interest group of the developmentally disabled, the interest group of the alcoholic and the interest group of the drug dependent. At least one member appointed to a county community programs board shall be an individual who receives or has received services for mental illness, developmental disability, alcoholism or drug dependency or shall be a family member of such an individual. No more than 5 members may be appointed from the county board of supervisors.

2. In a multicounty department of community programs, the county community programs board shall be composed of 11 members with 3 additional members for each county in a multicounty department of community programs in excess of 2. Appointments shall be made by the county boards of supervisors of the counties in a multicounty department of community programs in a manner acceptable to the counties in the multicounty department of community programs and shall have representation from the interest group of the mentally ill, the interest group of the developmentally disabled, the interest group of the alcoholic and the interest group of the drug dependent. At least one member appointed to a county community programs board shall be an individual who receives or has received services for mental illness, developmental disability, alcoholism or drug dependency or shall be a family member of such an individual. Each of the counties in the multicounty department of community programs may appoint to the county community programs board not more than 3 members from its county board of supervisors.

(d) *Term.* The term of office of any member of a county community programs board shall be 3 years, but of the members first appointed, at least one−third shall be appointed for one year; at least one−third for 2 years; and the remainder for 3 years. Vacancies shall be filled for the residue of the unexpired term in the manner that original appointments are made.

(5) POWERS AND DUTIES OF COUNTY COMMUNITY PROGRAMS BOARD IN CERTAIN COUNTIES. (a) A county community programs board appointed under sub. (4) (a) 1. shall do all of the following:

1. Establish long−range goals and intermediate−range plans, detail priorities and estimate costs.

2. Develop coordination of local services and continuity of care where indicated.

3. Utilize available community resources and develop new resources necessary to carry out the purposes of this section.

4. Appoint a county community programs director, subject to the approval of each county board of supervisors which participated in the appointment of the county community programs board, on the basis of recognized and demonstrated interest in and knowledge of the problems of mental health, developmental disability, alcoholism and drug addiction, with due regard to training, experience, executive and administrative ability, and general qualification and fitness for the performance of the duties of the county community programs director under sub. (6). The county board of supervisors in a county with a single−county department of community programs or the county boards of supervisors in counties with a multicounty department of community programs may delegate this appointing authority to the county community programs board.

5. Fix the salaries of the employees of the county department of community programs, subject to the approval of each county board of supervisors which participated in the appointment of the county community programs board unless such county board of supervisors elects not to review the salaries.

6. Prepare a proposed budget for submission to the county board and a final budget for submission to the department of health services in accordance with s. 46.031 (1).

7. Appoint committees consisting of residents of the county to advise the county community programs board as it deems necessary.

8. Develop county community programs board operating procedures.

9. Comply with state requirements.

10. Assist in arranging cooperative working agreements with persons providing health, education, vocational or welfare services related to services provided under this section.

11. Evaluate service delivery.

12. Determine, subject to the approval of the county board of supervisors in a county with a single−county department of community programs or the county boards of supervisors in counties with a multicounty department of community programs and with the advice of the county community programs director appointed under subd. 4., whether services are to be provided directly by the county department of community programs or contracted for with other providers and make such contracts. The county board of supervisors in a county with a single−county department of community programs or the county boards of supervisors in counties

Electronic reproduction of 2009−10 Wis. Stats. database, current through 2011 Wis. Act 286.

with a multicounty department of community programs may elect to require the approval of any such contract by the county board of supervisors in a county with a single−county department of community programs or the county boards of supervisors in counties with a multicounty department of community programs.

13. Administer funds provided under s. 46.266 in accordance with s. 46.266 (5).

(b) Subject to the approval of the county board of supervisors in a county with a single−county department of community programs or the county boards of supervisors in counties with a multicounty department of community programs and with the advice of the county community programs director appointed under par. (a) 4., a county community programs board appointed under sub. (4) (a) 1. may, together with a private or public organization or affiliation, do all of the following:

1. Organize, establish and participate in the governance and operation of an entity to operate, wholly or in part, any mental health−related service.

2. Participate in the financing of the entity under subd. 1.

3. Provide administrative and financial services or resources for operation of the entity under subd. 1. on terms prescribed by the county board of supervisors.

(5a) POWERS AND DUTIES OF COUNTY COMMUNITY PROGRAMS BOARD IN CERTAIN COUNTIES WITH A COUNTY EXECUTIVE OR COUNTY ADMINISTRATOR. (a) A county community programs board appointed under sub. (4) (a) 2. shall do all of the following:

1. Appoint committees consisting of residents of the county to advise the county community programs board as it deems necessary.

2. Recommend program priorities, identify unmet service needs and prepare short−term and long−term plans and budgets for meeting such priorities and needs.

3. Prepare, with the assistance of the county community programs director appointed under sub. (6m), a proposed budget for submission to the county executive or county administrator and a final budget for submission to the department of health services in accordance with s. 46.031 (1) for authorized services.

4. Advise the county community programs director appointed under sub. (6m) regarding purchasing and providing services and the selection of purchase of service vendors, and make recommendations to the county executive or county administrator regarding modifications in such purchasing, providing and selection.

5. Develop county community programs board operating procedures.

6. Comply with state requirements.

7. Assist in arranging cooperative working agreements with persons providing health, education, vocational or welfare services related to services provided under this section.

8. Advise the county community programs director regarding coordination of local services and continuity of care.

(b) The county community programs director, subject only to the supervision of the county executive or county administrator, may do all of the following:

1. Organize, establish and participate in the governance and operation of an entity to operate, wholly or in part, any mental health−related service.

2. Participate in the financing of the entity under subd. 1.

3. Provide administrative and financial services or resources for operation of the entity under subd. 1. on terms prescribed by the county executive or county administrator.

(6) POWERS AND DUTIES OF COUNTY COMMUNITY PROGRAMS DIRECTOR IN CERTAIN COUNTIES. A county community programs director appointed under sub. (5) (a) 4. shall have all of the administrative and executive powers and duties of managing, operating, maintaining, and improving the programs of the county department of community programs, subject to such delegation of authority as is not inconsistent with this section and the rules of the department of health services promulgated under this section. In consultation and agreement with the county community programs board, the county community programs director appointed under sub. (5) (a) 4. shall do all of the following:

(a) Prepare an annual comprehensive plan and budget of all funds necessary for the program and services authorized by this section in which priorities and objectives for the year are established as well as any modifications of long−range objectives.

(b) Prepare intermediate−range plans.

(c) Prepare an annual report of the operation of the program.

(d) Prepare other reports as are required by the secretary and the county board of supervisors in a county with a single−county department of community programs or the county boards of supervisors in counties with a multicounty department of community programs.

(e) Make recommendations to the county community programs board under sub. (5) for all of the following:

1. Personnel and the salaries of employees.

2. Changes in program services.

(f) After consultation with the county community programs board, administer the duties of the county department of community programs under sub. (3) (aw) 2.

(g) Comply with state requirements.

(6m) COUNTY COMMUNITY PROGRAMS DIRECTOR IN CERTAIN COUNTIES WITH A COUNTY EXECUTIVE OR COUNTY ADMINISTRATOR. In any county with a county executive or county administrator in which the county board of supervisors has established a single−county department of community programs, the county executive or county administrator shall appoint and supervise the county community programs director. In any county with a population of 500,000 or more, the county executive or county administrator shall appoint the director of the county department of human services under s. 46.21 as the county community programs director. The appointment of a county community programs director under this subsection shall be on the basis of recognized and demonstrated interest in and knowledge of the problems of mental health, intellectual disability, alcoholism and drug addiction, with due regard to training, experience, executive and administrative ability, and general qualification and fitness for the performance of the duties of the director. The appointment of a county community programs director under this subsection is subject to confirmation by the county board of supervisors unless the county board of supervisors, by ordinance, elects to waive confirmation or unless the appointment is made under a civil service system competitive examination procedure established under s. 59.52 (8) or ch. 63. The county community programs director, subject only to the supervision of the county executive or county administrator, shall:

(a) Supervise and administer any program established under this section, subject to such delegation of authority as is not inconsistent with this section and the rules of the department of health services promulgated under this section.

(b) Determine administrative and program procedures.

(c) Determine, subject to the approval of the county board of supervisors and with the advice of the county community programs board, whether services are to be provided directly by the county department of community programs or contracted for with other providers and make such contracts. The county board of supervisors may elect to require the approval of any such contract by the county board of supervisors.

(e) Assist the county community programs board under sub. (5a) in the preparation of the budgets required under sub. (5a) (a) 3.

(f) Make recommendations to the county executive or county administrator regarding modifications to the proposed budget prepared by the county community programs board under sub. (5a) (a) 3.

Electronic reproduction of 2009−10 Wis. Stats. database, current through 2011 Wis. Act 286.

(g) Evaluate service delivery.

(h) After consultation with the county community programs board under sub. (5a), administer the duties of the county department of community programs under sub. (3) (aw) 2.

(i) Establish salaries and personnel policies of the programs of the county department of community programs subject to approval of the county executive or county administrator and county board of supervisors unless the county board of supervisors elects not to review the salaries and personnel policies.

(j) Perform other functions necessary to manage, operate, maintain and improve programs.

(k) Comply with state requirements.

(L) Utilize available community resources and develop new resources necessary to carry out the purposes of this section.

(m) In consultation with the county community programs board under sub. (5a), prepare:

1. Intermediate−range plans and budget.

2. An annual report of the operation of the county department of community programs.

3. Such other reports as are required by the secretary and the county board of supervisors.

(n) Provide for coordination of local services and continuity of care.

(o) Administer funds provided under s. 46.266 in accordance with s. 46.266 (5).

(7) DUTIES OF THE DEPARTMENT OF HEALTH SERVICES. (a) The department of health services shall:

1. Review requests and certify county departments of community programs and community mental health programs to assure that those county departments and those programs are in compliance with this section.

2. Periodically review and evaluate county departments of community programs to assure compliance with this section. The review shall include a periodic assessment of need which shall separately identify elements of service required under this section. The periodic review of community mental health programs shall be made at least once every 36 months, except that all of the following apply:

a. The secretary may require annual review of a community mental health program that, in the immediately preceding 36 months, substantially failed to comply with the requirements for certification or was the subject of grievances or an investigation.

b. The department may review and evaluate a community mental health program at any time.

2m. Review and evaluate at random at least 5 community mental health programs each year. Review and evaluation under this subdivision may be coincident with or in addition to that made under subd. 2. and may be conducted with or without notice to a community mental health program.

3. Provide consultative staff services to communities to assist in ascertaining local needs and in planning, establishing and operating programs.

3m. Develop a training curriculum for use in training members of county community programs boards and county human services boards. The training curriculum shall delineate the board members' roles and responsibilities and shall provide information on client groups served and programs provided by the county department of community programs or human services. In developing the training curriculum, the department shall consult with representatives of county interests, consumer and advocacy groups and community mental health program providers. The department shall submit the training curriculum to the council on mental health under s. 51.02 (1) (h) for the council's review and comment.

3r. Establish a training schedule that ensures that county community programs boards and county human services boards in all geographical areas of the state are provided access to training under the training curriculum under subd. 3m. once every 2 years.

4. Develop and implement a uniform cost reporting system according to s. 46.18 (8) to (10).

5. Ensure that county departments of community programs that elect to provide special education programs to children aged 3 years and under comply with requirements established by the department of public instruction.

6. Provide, as available after provision of services under s. 51.05 (6), the following:

a. Mental health outpatient and follow−up services appropriate for hearing−impaired mentally ill individuals, including advocacy training relating to the rights of mentally ill individuals.

b. Technical assistance to a county department of community programs concerning provision of services to hearing−impaired mentally ill individuals.

7. Develop a program in consultation with the department of safety and professional services to use voluntary, uncompensated services of licensed or certified professionals to assist the department of health services in evaluating community mental health programs in exchange for continuing education credits for the professionals under ss. 448.40 (2) (e) and 455.065 (5).

8. Enter into an agreement with an institution of higher education or a private, nonprofit organization to develop a community mental health client survey prototype. The department shall attempt to secure a grant to fund the development of the survey prototype.

9. Develop a model community mental health plan available for use by counties and to assist them in developing their community plans as required under s. 51.42 (3) (ar) 5. In the process of developing the model community mental health plan, the department shall select 6 counties, both urban and rural, to submit plans to the department for review. The department shall revise the model plan, if necessary, considering the comments of the 6 counties selected. The department shall also consult with the council on mental health and with groups that represent counties, consumers of mental health services and family members of the consumers in developing the model community mental health plan. The department shall establish a schedule that requires each county in this state to submit a plan under s. 51.42 (3) (ar) 5. once every 3 years, in accordance with deadlines established by the subunit of the department with jurisdiction over community mental health. The department, in conjunction with the council on mental health, shall review the plans submitted by counties.

(b) The department shall promulgate rules which do all of the following:

1. Govern the administrative structure deemed necessary to administer community mental health, developmental disabilities, alcoholism and drug abuse services.

2. Establish uniform cost record−keeping requirements.

3. Prescribe standards for qualifications and salaries of personnel.

4. Prescribe standards for quality of professional services.

5. Prescribe requirements for in−service and educational leave programs for personnel.

6. Prescribe standards for establishing patient fee schedules.

7. Govern eligibility of patients to the end that no person is denied service on the basis of age, race, color, creed, location or inability to pay.

7m. Define "first priority for services" under and otherwise implement sub. (3) (ar) 4m.

8. Prescribe such other standards and requirements as may be necessary to carry out the purposes of this section.

9. Promulgate rules establishing medication procedures to be used in the delivery of mental health services.

10. Establish criteria for the level of scrutiny for evaluation of community mental health programs.

Electronic reproduction of 2009−10 Wis. Stats. database, current through 2011 Wis. Act 286.

11. Prescribe requirements for certification of community mental health programs, except as provided in s. 51.032, including all of the following:

a. A requirement that, as part of the certification process, community mental health programs must demonstrate that their staff have knowledge of laws, regulations and standards of practice which apply to the program and its clients.

b. A requirement that, when conducting certifications, certification staff must use a random selection process in reviewing client records.

c. A requirement that certification staff conduct client interviews as part of the certification process.

d. A requirement that certification staff provide certification results to the community mental health program reviewed, to subunits within the department responsible for community mental health program monitoring and to the county department under this section in which the community mental health program is located upon completion of certification.

Cross−reference: See also ch. DHS 35, Wis. adm. code.

(c) The secretary shall designate the subunit of the department that is responsible for supervising the grievance process for clients of mental health services.

(8) CONSTRUCTION. (a) Any reference in any law to a county department of community programs applies to a county department under s. 46.23 in its administration of the powers and duties of the county department of community programs under s. 46.23 (3) (b) or applies to a county department under s. 46.21 (2m) in its administration of the powers and duties of the county department of community programs under s. 46.21 (2m) (b) 1. a.

(b) 1. Any reference in any law to a county community programs director appointed under sub. (5) (a) 4. applies to the director of a county department appointed under s. 46.23 (5) (f) in his or her administration of the powers and duties of that county community programs director.

2. Any reference in any law to a county community programs director appointed under sub. (6m) (intro.) applies to the director of a county department appointed under s. 46.23 (6m) (intro.) or appointed under s. 46.21 (1m) (a) in his or her administration of the powers and duties of that county community programs director.

(c) 1. Any reference in any law to a county community programs board appointed under sub. (4) (a) 1. applies to the board of a county department appointed under s. 46.23 (4) (b) 1. in its administration of the powers and duties of that county community programs board.

2. a. Except as provided in subd. 2. b., reference in any law to a county community programs board appointed under sub. (4) (a) 2. applies to the board of a county department appointed under s. 46.23 (4) (b) 2. in its administration of the powers and duties of that county community programs board.

b. Any reference in any law to a county community programs board appointed under sub. (4) (a) 2. is limited, with respect to the county department of human services under s. 46.21 (2m), to the powers and duties of the county community programs board as specified in sub. (5a).

History: 1971 c. 125; 1973 c. 90, 198, 333, 336; 1975 c. 39, 198, 199, 224, 422; 1975 c. 428 s. 16; 1975 c. 430 ss. 24 to 31, 80; 1977 c. 26 ss. 37, 38, 75; 1977 c. 29 ss. 612 to 623p, 1656 (18); 1977 c. 193; 1977 c. 203 s. 106; 1977 c. 272; 1977 c. 354 s. 101; 1977 c. 418, 428, 447; 1979 c. 34, 117, 177, 221, 330, 355; 1981 c. 20 ss. 923 to 942, 2202 (20) (d), (n), (q); 1981 c. 93 ss. 105 to 122, 186; 1981 c. 329; 1983 a. 27 ss. 1106 to 1112, 2202 (20); 1983 a. 189 ss. 44, 329 (5); 1983 a. 192, 239, 365, 375, 524; 1985 a. 29, 120, 176; 1987 a. 3, 27, 199, 339, 366; 1989 a. 31, 122; 1991 a. 39, 274, 315; 1993 a. 16, 437, 445; 1995 a. 27 ss. 3260 to 3262, 9126 (19), 9145 (1); 1995 a. 64, 77, 92, 201, 224, 276, 352, 417; 1997 a. 27, 164, 237, 268; 1999 a. 9; 2001 a. 10, 16, 38; 2003 a. 320; 2005 a. 264, 388, 431, 434; 2007 a. 20 ss. 1819m to 1821, 9121 (6) (a); 2007 a. 45, 97; 2009 a. 28, 180, 276, 334; 2011 a. 32, 126.

Cross−reference: See also chs. DHS 34, 40, 61, 63, 65, and 75, Wis. adm. code.

Costs could not be assessed under sub. (1) (b) against the subject of an emergency protective placement proceeding that was outside of the statutory guidelines under s. 55.06 (11) [now s. 55.135]. Ethelyn I.C. v. Waukesha County, 221 Wis. 2d 109, 584 N.W.2d 211 (Ct. App. 1998), 97−2236.

Members of a county board appointed to a unified board, created under sub. (4) (b), serve for the full term for which appointed, without reference to the termination of their office as county board members by election defeat. 63 Atty. Gen. 203.

The corporation counsel should provide legal advice and representation to ss. 51.42 and 51.437 boards as well as to the county board. 63 Atty. Gen. 468.

Liability, reimbursement, and collection for services provided under ss. 51.42 and 51.437 programs are discussed. 63 Atty. Gen. 560, 65 Atty. Gen. 49.

The county board of supervisors may require its approval of contracts for purchase of services by a community services board if it so specified in its coordinated plan and budget. Otherwise it may not. 69 Atty. Gen. 128.

Menominee Tribe members are eligible to participate in voluntary programs but the state cannot accept tribe members into involuntary programs on the basis of tribal court orders alone. 70 Atty. Gen. 219.

A multicounty 51.42/51.437 board may retain private legal counsel only when the corporation counsel of each county, or the district attorney of each county not having a corporation counsel, notifies the board that he or she is unable to provide specific services in a timely manner. 73 Atty. Gen. 8.

The appointing authority has broad discretion to determine the interests and abilities of persons appointed to a "51.42 board." 78 Atty. Gen. 56.

Counties may enter into joint agreements to collectively furnish and fund nursing home services if the agreements do not violate federal and state Medicaid statutes and regulations prohibiting supplementation. Assessments resulting from such agreements that are computed without reference to and are not attributable to purchase of services contracts involving particular Medicaid patients would not be considered supplementation. Assessments that are computed with reference to or are attributable to purchase of services contracts involving particular Medicaid patients are not permissible. The validity of hybrid assessments that do not fit solely within either one of those two categories must be determined on a case−by−case basis. OAG 4−09.

51.421 Community support programs. (1) PURPOSE. In order to provide the least restrictive and most appropriate care and treatment for persons with serious and persistent mental illness, community support programs should be available in all parts of the state. In order to integrate community support programs with other long−term care programs, community support programs shall be coordinated, to the greatest extent possible, with the community options program under s. 46.27, with the protective services system in a county, with the medical assistance program under subch. IV of ch. 49 and with other care and treatment programs for persons with serious and persistent mental illness.

(2) SERVICES. If funds are provided, and within the limits of the availability of funds provided under s. 51.423 (2), each county department under s. 51.42 shall establish a community support program. Each community support program shall use a coordinated case management system and shall provide or assure access to services for persons with serious and persistent mental illness who reside within the community. Services provided or coordinated through a community support program shall include assessment, diagnosis, identification of persons in need of services, case management, crisis intervention, psychiatric treatment including medication supervision, counseling and psychotherapy, activities of daily living, psychosocial rehabilitation which may include services provided by day treatment programs, client advocacy including assistance in applying for any financial support for which the client may be eligible, residential services and recreational activities. Services shall be provided to an individual based upon his or her treatment and psychosocial rehabilitation needs.

(3) DEPARTMENTAL DUTIES. The department shall:

(a) Promulgate rules establishing standards for the certified provision of community support programs by county departments under s. 51.42, except as provided in s. 51.032. The department shall establish standards that ensure that providers of services meet federal standards for certification of providers of community support program services under the medical assistance program, 42 USC 1396 to 1397e. The department shall develop the standards in consultation with representatives of county departments under s. 51.42, elected county officials and consumer advocates.

(b) Ensure the development of a community support program in each county through the provision of technical assistance, consultation and funding.

(c) Monitor the establishment and the continuing operation of community support programs and ensure that community support programs comply with the standards promulgated by rule. The department shall ensure that the persons monitoring community support programs to determine compliance with the standards are persons who are knowledgeable about treatment programs for persons with serious and persistent mental illness.

Electronic reproduction of 2009−10 Wis. Stats. database, current through 2011 Wis. Act 286.

(d) Develop and conduct training programs for community support program staff.

(e) Distribute, from the appropriation account under s. 20.435 (5) (bL), moneys in each fiscal year for community support program services.

History: 1983 a. 441; 1985 a. 120, 176; 1987 a. 27, 368; 1989 a. 31; 1993 a. 16; 1995 a. 27; 1997 a. 237; 2001 a. 16; 2005 a. 264; 2009 a. 28.

Cross−reference: See also chs. DHS 63 and 65, Wis. adm. code.

51.423 Grants−in−aid. (1) The department shall fund, within the limits of the department's allocation for mental health services under s. 20.435 (7) (b) and (o) and subject to this section, services for mental illness, developmental disability, alcoholism, and drug abuse to meet standards of service quality and accessibility. The department's primary responsibility is to guarantee that county departments established under either s. 51.42 or 51.437 receive a reasonably uniform minimum level of funding and its secondary responsibility is to fund programs which meet exceptional community needs or provide specialized or innovative services. Moneys appropriated under s. 20.435 (7) (b) and earmarked by the department for mental health services under s. 20.435 (7) (o) shall be allocated by the department to county departments under s. 51.42 or 51.437 in the manner set forth in this section.

(2) From the appropriations under s. 20.435 (7) (b) and (o), the department shall distribute the funding for services provided or purchased by county departments under s. 46.23, 51.42, or 51.437 to such county departments as provided under s. 46.40. County matching funds are required for the distributions under s. 46.40 (2) and (9) (b). Each county's required match for the distributions under s. 46.40 (2) for a year equals 9.89% of the total of the county's distributions under s. 46.40 (2) for that year for which matching funds are required plus the amount the county was required by s. 46.26 (2) (c), 1985 stats., to spend for juvenile delinquency−related services from its distribution for 1987. Each county's required match for the distribution under s. 46.40 (9) (b) for a year equals 9.89% of that county's amounts described in s. 46.40 (9) (ar) (intro.) for that year. Matching funds may be from county tax levies, federal and state revenue sharing funds, or private donations to the counties that meet the requirements specified in sub. (5). Private donations may not exceed 25% of the total county match. If the county match is less than the amount required to generate the full amount of state and federal funds distributed for this period, the decrease in the amount of state and federal funds equals the difference between the required and the actual amount of county matching funds.

(3) From the appropriation account under s. 20.435 (5) (bL), the department shall award one−time grants to applying counties that currently do not operate certified community support programs, to enable uncertified community support programs to meet requirements for certification as providers of medical assistance services.

(4) The department shall prorate the amount allocated to any county department under sub. (2) to reflect actual federal funds available.

(5) (a) A private donation to a county may be used to match the state grant−in−aid under s. 46.495 (1) (d) or under sub. (2) only if the donation is both of the following:

1. Donated to a county department under s. 46.215, 46.22, 51.42 or 51.437 and the donation is under the administrative control of such county department.

2. Donated without restrictions as to use, unless the restrictions specify that the donation be used for a particular service and the donor neither sponsors nor operates the service.

(b) Voluntary federated fund−raising organizations are not sponsors or operators of services within the meaning of par. (a) 2. Any member agency of such an organization that sponsors or operates services is deemed an autonomous entity separate from the organization unless the board membership of the organization and the agency interlock.

(6) The county allocation to match aid increases shall be included in the contract under s. 46.031 (2g) and approved by January 1 of the year for which the funds are allocated, in order to generate state aid matching funds. All funds allocated under sub. (2) shall be included in the contract under s. 46.031 (2g) and approved.

(7) Each county department under either s. 51.42 or 51.437, but not both, shall be treated, for the purpose of this section only, as unified with any other county department established in its jurisdiction under either s. 51.42 or 51.437 and shall receive an amount determined under sub. (2).

(9) If the funds appropriated under s. 20.435 (7) (b) for any fiscal year are insufficient to provide county departments with the sums calculated under subs. (1) to (7), the appropriation shall be allocated among county departments in proportion to the sums they would receive under subs. (1) to (7).

(10) Each county department which is eligible under the state plan for medical assistance shall obtain a medical assistance provider number and shall bill for all eligible clients. A county department operating an inpatient facility shall apply for a special hospital license under s. 50.33 (2) (c). Under powers delegated under s. 46.10 (16), each county department shall retain 100% of all collections it makes and its providers make for care other than that provided or purchased by the state.

(11) Each county department under s. 51.42 or 51.437, or both, shall apply all funds it receives under subs. (1) to (7) to provide the services required under ss. 51.42, 51.437 and 51.45 (2) (g) to meet the needs for service quality and accessibility of the persons in its jurisdiction, except that the county department may pay for inpatient treatment only with funds designated by the department for inpatient treatment. The county department may expand programs and services with county funds not used to match state funds under this section subject to the approval of the county board of supervisors in a county with a single−county department or the county boards of supervisors in counties with multicounty departments and with other local or private funds subject to the approval of the department and the county board of supervisors in a county with a single−county department under s. 51.42 or 51.437 or the county boards of supervisors in counties with a multicounty department under s. 51.42 or 51.437. The county board of supervisors in a county with a single−county department under s. 51.42 or 51.437 or the county boards of supervisors in counties with a multicounty department under s. 51.42 or 51.437 may delegate the authority to expand programs and services to the county department under s. 51.42 or 51.437. The county department under s. 51.42 or 51.437 shall report to the department all county funds allocated to the county department under s. 51.42 or 51.437 and the use of such funds. Moneys collected under s. 46.10 shall be applied to cover the costs of primary services, exceptional and specialized services or to reimburse supplemental appropriations funded by counties. County departments under ss. 51.42 and 51.437 shall include collections made on and after October 1, 1978, by the department that are subject to s. 46.10 (8m) (a) 3. and 4. and are distributed to county departments under ss. 51.42 and 51.437 from the appropriation account under s. 20.435 (5) (gg), as revenues on their grant−in−aid expenditure reports to the department.

(12) The department may not provide state aid to any county department under s. 51.42 or 51.437 for excessive inpatient treatment. For each county department under ss. 51.42 and 51.437 in each calendar year, sums expended for the 22nd and all subsequent average days of care shall be deemed excessive inpatient treatment. No inpatient treatment provided to children, adolescents, chronically mentally ill patients, patients requiring specialized care at a mental health institute, or patients at the centers for the developmentally disabled may be deemed excessive. If a patient is discharged or released and then readmitted within 60 days after such discharge or release from an inpatient facility, the number of days of care following readmission shall be added to

Electronic reproduction of 2009−10 Wis. Stats. database, current through 2011 Wis. Act 286.

the number of days of care before discharge or release for the purpose of calculating the total length of such patient's stay in the inpatient facility.

(15) Funds allocated under this section and recovered from audit adjustments from a prior fiscal year may be included in subsequent certifications only to pay counties owed funds as a result of any audit adjustment. By June 30 of each year the department shall submit to the chief clerk of each house of the legislature, for distribution to the appropriate standing committees under s. 13.172 (3), a report on funds recovered and paid out during the previous calendar year as a result of audit adjustments.

History: 1985 a. 176 ss. 452 to 454, 456 to 461, 463, 466; 1987 a. 27, 186; 1989 a. 31, 56, 122; 1991 a. 39, 269; 1993 a. 16, 445; 1995 a. 27; 1997 a. 27; 1999 a. 9; 2001 a. 16; 2005 a. 25; 2007 a. 20; 2009 a. 28.

51.437 Developmental disabilities services. (1) DEFINITION. In this section, "services" means specialized services or special adaptations of generic services directed toward the prevention and alleviation of a developmental disability or toward the social, personal, physical or economic habilitation or rehabilitation of an individual with such a disability, and includes diagnosis, evaluation, treatment, personal care, day care, domiciliary care, special living arrangements, training, sheltered employment, protective and other social and socio−legal services, follow−along services and transportation services necessary to assure delivery of services to individuals with developmental disabilities.

(4) RESPONSIBILITY OF COUNTY GOVERNMENT. (a) The county board of supervisors has the primary governmental responsibility for the well−being of those developmentally disabled citizens residing within its county and the families of the developmentally disabled insofar as the usual resultant family stresses bear on the well−being of the developmentally disabled citizen. This primary governmental responsibility is limited to the 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.

(c) County liability for care and services purchased through or provided by a county department of developmental disabilities services established under this section shall be based upon the client's county of residence except for emergency services for which liability shall be placed with the county in which the individual is found. For the purpose of establishing county liability, "emergency services" means those services provided under the authority of s. 55.05 (4), 2003 stats., or s. 55.06 (11) (a), 2003 stats., or s. 51.15, 55.13, or 55.135. Nothing in this paragraph prevents recovery of liability under s. 46.10 or any other statute creating liability upon the individual receiving a service or any other designated responsible party.

(4g) COUNTY DEPARTMENT OF DEVELOPMENTAL DISABILITIES SERVICES ESTABLISHED; INTEGRATION OF SERVICES. (a) Except as provided under par. (b) and ss. 46.21 (2m) (b) and 46.23 (3) (b), every county board of supervisors shall establish a county department of developmental disabilities services on a single−county or multicounty basis to furnish services within its county. Counties lacking the financial resources and professional personnel needed to provide or secure such services on a single−county basis may combine their energies and financial resources to provide these joint services and facilities with the approval of the department of health services. The county department of developmental disabilities services shall consist of a county developmental disabilities services board, a county developmental disabilities services director and necessary personnel.

(b) A county board of supervisors may transfer the powers and duties of a county department of developmental disabilities services under this section to a county department under s. 51.42, which shall act under s. 51.42 (3) (ar) 3.

(c) In a county with a population of 500,000 or more, the county board of supervisors shall integrate day care programs for persons with an intellectual disability and those programs for persons with other developmental disabilities into the county developmental disabilities program.

(4m) DUTIES OF COUNTY DEPARTMENT OF DEVELOPMENTAL DISABILITIES SERVICES. A county department of developmental disabilities services shall do all of the following:

(a) Within the limits of available state and federal funds and of county funds required to be appropriated to match state funds, establish a county developmental disabilities services program. Such services shall be provided either directly or by contract.

(b) Develop, approve and modify on a continuing basis a single−county or multicounty plan for the delivery of services, including the construction of facilities, to those citizens affected by developmental disabilities. The purpose of the plan shall be to ensure the delivery of needed services and the prevention of unnecessary duplication, fragmentation of services and waste of resources. Plans shall include, to the fullest extent possible, participation by existing and planned agencies of the state, counties, municipalities, school districts and all other public and private agencies as are required to, or may agree to, participate in the delivery of services. The plan shall, to the fullest extent possible, be coordinated with and integrated into plans developed by regional comprehensive health planning agencies.

(c) Provide continuing counsel to public and private agencies as well as other appointed and elected bodies within the county.

(d) Establish a program of citizen information and education concerning the problems associated with developmental disabilities.

(e) Establish a fixed point of information and referral within the community for developmentally disabled individuals and their families. The fixed point of information and referral shall consist of a specific agency designated to provide information on the availability of services and the process by which the services may be obtained.

(f) Enter into contracts to provide or secure services from other agencies or resources including out−of−state agencies or resources. Notwithstanding ss. 59.42 (1) and (2) (b) and 978.05, any multicounty department of developmental disabilities services may contract for professional legal services that are necessary to carry out the duties of the multicounty department of developmental disabilities services if the corporation counsel of each county of the multicounty department of developmental disabilities services has notified the multicounty department of developmental disabilities services that he or she is unable to provide those services in a timely manner.

(g) Acknowledge receipt of the notification received under s. 115.812 (2).

(h) Submit final budgets under s. 46.031 (1) for funding under s. 51.423.

(i) Annually report to the department of health services regarding the use of any contract entered into under s. 51.87.

(j) By September 30, submit for inclusion as part of the proposed county budget to the county executive or county administrator or, in those counties without a county executive or county administrator, directly to the county board of supervisors in a county with a single−county department of developmental disabilities services or the county boards of supervisors in counties with a multicounty department of developmental disabilities services a proposed budget for the succeeding calendar year covering services, including active treatment community mental health center services, based on the plan required under s. 51.42 (3) (ar) 5. The final budget shall be submitted to the department of health services.

(k) Develop the cost of all services which it purchases based on the standards and requirements of s. 46.036.

(L) Except in an emergency, review and approve or disapprove all admissions to nursing homes of persons with a developmental disability who are residents of the county.

Electronic reproduction of 2009−10 Wis. Stats. database, current through 2011 Wis. Act 286.

(m) If the county board of supervisors establishes an initiative to provide coordinated services under s. 59.53 (7), participate in the initiative, including entering into any written interagency agreements or contracts.

(n) If authorized under s. 46.283 (1) (a) 1., apply to the department of health services to operate a resource center under s. 46.283 and, if the department contracts with the county under s. 46.283 (2), operate the resource center.

(p) If authorized under s. 46.284 (1) (a) 1., apply to the department of health services to operate a care management organization under s. 46.284 and, if the department contracts with the county under s. 46.284 (2), operate the care management organization and, if appropriate, place funds in a risk reserve.

(4r) POWERS OF COUNTY DEPARTMENT OF DEVELOPMENTAL DISABILITIES SERVICES. (a) A county department of developmental disabilities services:

1. May not furnish services and programs provided by the department of public instruction and local educational agencies.

2. May allocate services among service recipients to reflect the availability of limited resources.

3. May administer an initiative to provide coordinated services under s. 59.53 (7), if the county board of supervisors establishes the initiative.

4. May own, lease or manage real property for the purposes of operating a treatment facility.

(b) Notwithstanding ss. 46.2895 (9), 48.78 (2) (a), 49.45 (4), 49.83, 51.30, 51.45 (14) (a), 55.22 (3), 146.82, 252.11 (7), 253.07 (3) (c), and 938.78 (2) (a), any subunit of a county department of developmental disabilities services or tribal agency acting under this section may exchange confidential information about a client, without the informed consent of the client, with any other subunit of the same county department of developmental disabilities services or tribal agency, with a resource center, a care management organization, or a long−term care district, or with any person providing services to the client under a purchase of services contract with the county department of developmental disabilities services or tribal agency or with a resource center, a care management organization, or a long−term care district, if necessary to enable an employee or service provider to perform his or her duties, or to enable the county department of developmental disabilities services or tribal agency to coordinate the delivery of services to the client. Any agency releasing information under this paragraph shall document that a request was received and what information was provided.

(4rm) COST OF SERVICES. (a) A county department of developmental disabilities services shall authorize all care of any patient in a state, local, or private facility under a contractual agreement between the county department of developmental disabilities services and the facility, unless the county department of developmental disabilities services governs the facility. The need for inpatient care shall be determined by the program director or designee in consultation with and upon the recommendation of a licensed physician trained in psychiatry and employed by the county department of developmental disabilities services or its contract agency prior to the admission of a patient to the facility except in the case of emergency services. In cases of emergency, a facility under contract with any county department of developmental disabilities services shall charge the county department of developmental disabilities services having jurisdiction in the county where the individual receiving care is found. The county department of developmental disabilities services shall reimburse the facility, except as provided under par. (c), for the actual cost of all authorized care and services less applicable collections under s. 46.036, unless the department of health services determines that a charge is administratively infeasible, or unless the department of health services, after individual review, determines that the charge is not attributable to the cost of basic care and services. The exclusionary provisions of s. 46.03 (18) do not apply to direct and indirect costs which are attributable to care and treatment of the client. County departments of developmental disabilities services may not reimburse any state institution or receive credit for collections for care received in a state institution by nonresidents of this state, interstate compact clients, transfers under s. 51.35 (3) (a), commitments under s. 975.01, 1977 stats., or s. 975.02, 1977 stats., or s. 971.14, 971.17 or 975.06, admissions under s. 975.17, 1977 stats., children placed in the guardianship of the department of children and families under s. 48.427 or 48.43 or juveniles under the supervision of the department of corrections under s. 938.183 or 938.355.

(b) If any of the county developmental disabilities services authorized under par. (a) are provided by any of the institutions specified in s. 46.10, the costs of such services shall be segregated from the costs of residential care provided at such institutions. The uniform cost record−keeping system established under s. 46.18 (8) to (10) shall provide for such segregation of costs.

(c) If a center for the developmentally disabled has provided a county department of developmental disabilities services under this section with service, the department of health services shall:

1. Regularly bill the county department of developmental disabilities services for services as specified in par. (c) 2. a. and 2m. Under this section, collections on or after January 1, 1976, from medical assistance shall be the approved amounts listed by the patient on remittance advices from the medical assistance carrier, not including adjustments due to retroactive rate approval and less any refunds to the medical assistance program. For care provided on and after January 1, 1978, the department of health services shall adjust collections from medical assistance to compensate for differences between specific rate scales for care charged to the county department of developmental disabilities services and the average daily medical assistance reimbursement rate. Payment shall be due from the county department of developmental disabilities services within 60 days of the billing date subject to provisions of the contract. If any payment has not been received within 60 days, the department of health services shall deduct all or part of the amount due from any payment due from the department of health services to the county department of developmental disabilities services.

2. a. Bill the county department of developmental disabilities services for services provided on or after January 1, 1982, to persons ineligible for medical assistance benefits and who lack other means of full payment, using the procedure established under subd. 1.

b. Bill the county department of developmental disabilities services for services provided on or after December 31, 1997, at $48 per day, if an independent professional review established under 42 USC 1396a (a) (31) designates the person served as appropriate for community care, including persons who have been admitted for more than 180 consecutive days and for whom the cost of care in the community would be equal to or less than the daily rate for services under s. 46.275. The department of health services shall use money it receives from the county department of developmental disabilities services to offset the state's share of medical assistance. Payment is due from the county department of developmental disabilities services within 60 days of the billing date, subject to provisions of the contract. If the department of health services does not receive any payment within 60 days, it shall deduct all or part of the amount due from any payment the department of health services is required to make to the county department of developmental disabilities services. The department of health services shall first use collections received under s. 46.10 as a result of care at a center for the developmentally disabled to reduce the costs paid by medical assistance, and shall remit the remainder to the county department of developmental disabilities services up to the portion billed. The department of health services shall use the appropriation under s. 20.435 (2) (gk) to remit collection credits and other appropriate refunds to county departments of developmental disabilities services.

2009−10 Wis. Stats. database current through 2011 Wis. Act 286. Includes all Legislative Acts and all Supreme Court Orders enacted before Oct. 1, 2012. Statutory changes effective on or prior to Oct. 1, 2012 are printed as currently in effect. Changes effective after Oct. 1, 2012 are designated by NOTES. See Are the Statutes on this Website Official? (10−3−12)

Electronic reproduction of 2009−10 Wis. Stats. database, current through 2011 Wis. Act 286.

c. Regularly provide the county department of developmental disabilities services with a list of persons who are eligible for medical assistance benefits and who are receiving care in a center for the developmentally disabled.

2m. Bill the county department of developmental disabilities services for services that are not provided by the federal government and that are provided under s. 51.06 (1m) (d) to individuals who are eligible for medical assistance, plus any applicable surcharge under s. 51.06 (5), using the procedure established under subd. 1.

3. Establish by rule a process for appealing determinations of the independent professional review that result in billings under subd. 2. b.

(d) Notwithstanding pars. (a) to (c), for individuals receiving the family care benefit under s. 46.286, the care management organization that manages the family care benefit for the recipient shall pay the portion of the payment that is for services that are covered under the family care benefit; the department shall pay the remainder of the payment.

Cross−reference: See also ch. DHS 86, Wis. adm. code.

(7) COUNTY DEVELOPMENTAL DISABILITIES SERVICES BOARD. (a) *Appointments.* 1. Except as provided under subd. 2., the county board of supervisors in a county with a single−county department of developmental disabilities services or the county boards of supervisors in counties with a multicounty department of developmental disabilities services shall, before qualification under this section, appoint a county developmental disabilities services board. A county developmental disabilities services board appointed under this subdivision shall govern the single−county or multicounty department of developmental disabilities services. A member of a county developmental disabilities services board appointed under this subdivision may be removed from office for cause by a two−thirds vote of the appointing authority, on due notice in writing and hearing of the charges against the member.

2. In any county with a county executive or county administrator and which has established a single−county department of developmental disabilities services, the county executive or county administrator shall appoint, subject to confirmation by the county board of supervisors, the county developmental disabilities services board, which shall be only a policy−making body determining the broad outlines and principles governing the administration of programs under this section. A member of the county developmental disabilities services board appointed under this subdivision may be removed by the county executive or county administrator for cause.

(am) *Composition.* 1. In a single−county department of developmental disabilities services, the county developmental disabilities services board shall be composed of not less than 9 nor more than 15 persons of recognized ability and demonstrated interest in the problems of the developmentally disabled but not more than 3 members shall be appointed from the county board of supervisors.

2. In a multicounty department of developmental disabilities services, the county developmental disabilities services board shall be composed of 11 members and with 2 additional members for each county in a multicounty department of developmental disabilities services in excess of 2. Appointments shall be made by the county boards of supervisors of the counties in a multicounty department of developmental disabilities services in a manner acceptable to the counties in the multicounty department of developmental disabilities services, but each of the counties in the multicounty department of developmental disabilities services may appoint only 2 members from its county board of supervisors.

3. At least one−third of the members of every county developmental disabilities services board serving at any one time shall be appointed from the developmentally disabled citizens or their parents residing in a county with a single−county department of developmental disabilities services or in any of the counties with a multicounty department of developmental disabilities services.

(b) *Terms.* Appointments to the county developmental disabilities services board shall be for staggered 3−year terms. Vacancies shall be filled for the residue of the unexpired term in the manner that original appointments are made.

(9) POWERS AND DUTIES OF COUNTY DEVELOPMENTAL DISABILITIES SERVICES BOARD IN CERTAIN COUNTIES. A county developmental disabilities services board appointed under sub. (7) (a) 1. shall do all of the following:

(a) Appoint a county developmental disabilities services director, subject to the approval of each county board of supervisors which participated in the appointment of the county developmental disabilities services board, establish salaries and personnel policies for the county department of developmental disabilities services subject to the approval of each such county board of supervisors and arrange and promote local financial support for the program. Each county board of supervisors in a county with a single−county department of developmental disabilities services or the county boards of supervisors in counties with a multicounty department of developmental disabilities services may delegate such appointing authority to the county developmental disabilities services board.

(am) Prepare a local plan which includes an inventory of all existing resources, identifies needed new resources and services and contains a plan for meeting the needs of developmentally disabled individuals based upon the services designated under sub. (1). The plan shall also include the establishment of long−range goals and intermediate−range plans, detailing priorities and estimated costs and providing for coordination of local services and continuity of care.

(b) Assist in arranging cooperative working agreements with other health, educational, vocational and welfare services, public or private, and with other related agencies.

(d) Comply with the state requirements for the program.

(e) Appoint committees consisting of residents of the county to advise the county developmental disabilities services board as it deems necessary.

(f) Develop county developmental disabilities services board operating procedures.

(g) Determine, subject to the approval of the county board of supervisors in a county with a single−county department of developmental disabilities services or the county boards of supervisors in counties with a multicounty department of developmental disabilities services and with the advice of the county developmental disabilities services director appointed under par. (a), whether services are to be provided directly by the county department of developmental disabilities services or contracted for with other providers and make such contracts. The county board of supervisors in a county with a single−county department of developmental disabilities services or the county boards of supervisors in counties with a multicounty department of developmental disabilities services may elect to require the approval of any such contract by the county board of supervisors in a county with a single−county department of developmental disabilities services or the county boards of supervisors in counties with a multicounty department of developmental disabilities services.

(h) Assume the powers and duties of the county department of developmental disabilities services under subs. (4m) and (4r).

(i) 1. Annually identify brain−injured persons in need of services within the county.

2. Annually, no later than January 30, report to the department the age and location of those brain−injured persons who are receiving treatment.

(9b) POWERS AND DUTIES OF COUNTY DEVELOPMENTAL DISABILITIES SERVICES BOARD IN CERTAIN COUNTIES WITH A COUNTY EXECUTIVE OR A COUNTY ADMINISTRATOR. The county develop-

Electronic reproduction of 2009−10 Wis. Stats. database, current through 2011 Wis. Act 286.

mental disabilities services board appointed under sub. (7) (a) 2. shall:

(a) Appoint committees consisting of residents of the county to advise the board as it deems necessary.

(am) Prepare a local plan which includes an inventory of all existing resources and services and contains a plan for meeting the needs of developmentally disabled individuals based upon the services designated under sub. (1).

(b) Recommend program priorities, identify unmet service needs and prepare short−term and long−term plans and budgets for meeting such priorities and needs.

(c) Prepare, with the assistance of the county developmental disabilities director appointed under sub. (10m), a proposed budget for submission to the county executive or county administrator and a final budget for submission to the department of health services under s. 46.031 (1) for authorized services.

(d) Advise the county developmental disabilities services director appointed under sub. (10m) regarding purchasing and providing services and the selection of purchase of service vendors, and make recommendations to the county executive or county administrator regarding modifications in such purchasing, providing and selection.

(e) Develop county developmental disabilities services board operating procedures.

(f) Comply with state requirements.

(g) Assist in arranging cooperative working agreements with persons providing health, education, vocational or welfare services related to services provided under this section.

(h) Advise the county developmental disabilities services director regarding coordination of local services and continuity of care.

(10) COUNTY DEVELOPMENTAL DISABILITIES SERVICES DIRECTOR IN CERTAIN COUNTIES. The county developmental disabilities services director appointed under sub. (9) (a) shall:

(am) Operate, maintain and improve the county department of developmental disabilities services.

(ar) With the county developmental disabilities services board under sub. (9), prepare:

1. Annual proposed and final budgets of all funds necessary for the program and services authorized by this section.

2. An annual report of the operation of the program.

3. Such other reports as are required by the department of health services and the county board of supervisors in a county with a single−county department of developmental disabilities services or the county boards of supervisors in counties with a multicounty department of developmental disabilities services.

(b) Make recommendations to the county developmental disabilities services board under sub. (9) for:

1. Personnel and salaries.

2. Changes in the program and services.

(c) Evaluate service delivery.

(d) After consultation with the county developmental disabilities services board administer the duties of the county department of disabilities services under sub. (4r) (a) 2.

(e) Comply with state requirements.

(10m) COUNTY DEVELOPMENTAL DISABILITIES SERVICES DIRECTOR IN CERTAIN COUNTIES WITH A COUNTY EXECUTIVE OR COUNTY ADMINISTRATOR. In any county with a county executive or a county administrator in which the county board of supervisors has established a single−county department of developmental disabilities services, the county executive or county administrator shall appoint and supervise the county developmental disabilities services director. In any county with a population of 500,000 or more, the county executive or county administrator shall appoint the director of the county department of human services under s. 46.21 as the county developmental disabilities services director. The appointment is subject to confirmation by the county board of supervisors unless the county board of supervisors, by ordinance, elects to waive confirmation or unless the appointment is made under a civil service system competitive examination procedure established under s. 59.52 (8) or ch. 63. The county developmental disabilities services director, subject only to the supervision of the county executive or county administrator, shall:

(a) Supervise and administer any program established under this section.

(b) Determine administrative and program procedures.

(c) Determine, subject to the approval of the county board of supervisors and with the advice of the county developmental disabilities services board under sub. (9b) (e), whether services are to be provided directly by the county department of developmental disabilities services or contracted for with other providers and make such contracts. The county board of supervisors may elect to require the approval of any such contract by the county board of supervisors.

(e) Assist the county developmental disabilities services board under sub. (9b) in the preparation of the budgets required under sub. (9b) (c).

(f) Make recommendations to the county executive or county administrator regarding modifications to the proposed budget prepared by the county developmental disabilities services board under sub. (9b) (c).

(g) Evaluate service delivery.

(h) After consultation with the county developmental disabilities services board administer the duties of the county department of disabilities services under sub. (4r) (a) 2.

(i) Establish salaries and personnel policies of the program subject to approval of the county executive or county administrator and county board of supervisors.

(j) Perform other functions necessary to manage, operate, maintain and improve programs.

(k) Comply with state requirements.

(L) Assist in arranging cooperative working agreements with other persons providing health, education, vocational or welfare services related to services provided under this section.

(m) Arrange and promote local financial support for the program.

(n) In consultation with the county developmental disabilities services board, prepare:

1. Intermediate−range plans and budget.

2. An annual report of the operation of the program.

3. Such other reports as are required by the department of health services and the county board of supervisors.

(o) 1. Annually identify brain−injured persons in need of services within the county.

2. Annually, no later than January 30, 1987, and January 30 of each year thereafter, report to the department the age and location of those brain−injured persons who are receiving treatment.

(14) DUTIES OF THE DEPARTMENT OF HEALTH SERVICES. The department of health services shall:

(a) Review requests and certify county departments of developmental disabilities services to assure that the county departments of developmental disabilities services are in compliance with this section.

(c) Periodically review and evaluate the program of each county department of developmental disabilities services.

(d) Provide consultative staff services to communities to assist in ascertaining local needs and in planning, establishing and operating programs.

(e) Develop and implement a uniform cost reporting system according to s. 46.18 (8), (9) and (10).

(g) Ensure that any county department of developmental disabilities services which elects to provide special education programs to children aged 3 years and under complies with requirements established by the department of public instruction.

Electronic reproduction of 2009−10 Wis. Stats. database, current through 2011 Wis. Act 286.

(h) Organize and foster education and training programs for all persons engaged in treatment of brain−injured persons and keep a central record of the age and location of those persons treated.

(i) Ensure that the matching−funds requirement for the state developmental disabilities councils grant, as received from the federal department of health and human services, is met by reporting to the federal department of health and human services expenditures made for the provision of developmental disabilities services under the basic county allocation distributed under s. 46.40 (2).

(14m) DUTIES OF THE SECRETARY. The secretary shall:

(a) Maintain a listing of present or potential resources for serving the needs of the developmentally disabled, including private and public persons, associations and agencies.

(b) Collect factual information concerning the problems.

(c) Provide information, advice and assistance to communities and try to coordinate their activities on behalf of the developmentally disabled.

(d) Assist counties in obtaining professional services on a shared−time basis.

(e) Establish and maintain liaison with all state and local agencies to establish a continuum of services, consultative and informational.

(14r) DUTIES OF THE BOARD FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES. (a) The board for people with developmental disabilities shall:

1. Designate appropriate state or local agencies for the administration of programs and fiscal resources made available to the board for people with developmental disabilities under federal legislation affecting the delivery of services to the developmentally disabled.

2. Perform the following responsibilities related to the state plan, for the delivery of services, that is required under 42 USC 6022, including the construction of facilities:

a. Develop, approve, and continue modification of the statewide plan.

b. Monitor and evaluate the implementation of the statewide plan.

3. Review and advise the department of health services on community budgets and community plans for programs affecting persons with developmental disabilities.

4. Participate in the development of, review, comment on, and monitor all state plans in the state which relate to programs affecting persons with developmental disabilities.

5. Serve as an advocate for persons with developmental disabilities.

6. Provide continuing counsel to the governor and the legislature.

7. Notify the governor regarding membership requirements of the board and if vacancies on the board remain unfilled for a significant period of time.

(b) The board may establish such reasonable procedures as are essential to the conduct of the affairs of the board.

(c) The board for people with developmental disabilities may or, if requested by the governor, shall coordinate recommendations of the board and the public to the governor regarding board membership.

(15) CONSTRUCTION. (a) Nothing in this section shall be construed to mean that developmentally disabled persons are not eligible for services available from all sources.

(b) Nothing in this section may be deemed to require a county department of developmental disabilities services to provide education, recreation, counseling, information or referral services to any individual with a developmental disability or to his or her family.

(c) 1. Any reference in any law to a county department of developmental disabilities services applies to the county department under s. 46.23 in its administration of the powers and duties of the county department of developmental disabilities services under s. 46.23 (3) (b), if the powers and duties of a county department of developmental disabilities services are transferred under s. 46.23 (3) (b) 1. Any reference in any law to a county department of developmental disabilities services applies to a county department under s. 46.21 (2m) in its administration of the powers and duties of the county department of developmental disabilities services under s. 46.21 (2m) (b) 1. a.

2. a. Any reference in any law to a county developmental disabilities services director appointed under sub. (9) (a) applies to the director of a county department appointed under s. 46.23 (5) (f) in his or her administration of the powers and duties of that county developmental disabilities services director, if the powers and duties of a county department of developmental disabilities services are transferred under s. 46.23 (3) (b) 1.

b. Any reference in any law to a county developmental disabilities services director appointed under sub. (10m) (intro.) applies to the director of a county department appointed under s. 46.23 (6m) (intro.), if the powers and duties of a county department of developmental disabilities services are transferred under s. 46.23 (3) (b) 1. Any reference in any law to a county developmental disabilities services director appointed under sub. (10m) (intro.) applies to the director of a county department appointed under s. 46.21 (1m) (a) in his or her administration of the powers and duties of that county developmental disabilities services director.

3. a. Any reference in any law to a county developmental disabilities services board appointed under sub. (7) (a) 1. applies to the board of a county department appointed under s. 46.23 (4) (b) 1. in its administration of the powers and duties of that county developmental disabilities services board, if the powers and duties of a county department of developmental disabilities services are transferred under s. 46.23 (3) (b) 1.

b. Except as provided in subd. 3. c., any reference in any law to a county developmental disabilities services board appointed under sub. (7) (a) 2. applies to the board of a county department appointed under s. 46.23 (4) (b) 2. in its administration of the powers and duties of that county developmental disabilities services board, if the powers and duties of a county department of developmental disabilities services are transferred under s. 46.23 (3) (b) 1.

c. Any reference in any law to a county developmental disabilities services board appointed under sub. (7) (a) 2. is limited, with respect to the county department of human services under s. 46.21 (2m), to the powers and duties of the county developmental services board as specified in sub. (9b).

(16) ADMINISTRATIVE STRUCTURE. Rules promulgated by the secretary under s. 51.42 (7) (b) shall apply to services provided through county departments of developmental disabilities services under this section.

History: 1971 c. 307, 322; 1973 c. 90, 333; 1975 c. 39, 199, 430; 1977 c. 26 ss. 39, 75; 1977 c. 29; 1977 c. 354 s. 101; 1977 c. 418; 1977 c. 428 s. 85, 86, 115; 1979 c. 32, 117, 221, 330, 355; 1981 c. 20, 93, 329; 1983 a. 27, 365, 375, 524; 1985 a. 29 ss. 1094 to 1105m, 3200 (56) (a); 1985 a. 120, 176, 307, 332; 1987 a. 27; 1989 a. 31, 56, 107, 262; 1991 a. 39, 274, 315; 1993 a. 16, 83; 1995 a. 27 ss. 3266m, 9116 (5), 9126 (19), 9145 (1); 1995 a. 64, 77, 92, 201, 225, 352, 417; 1997 a. 27, 35, 164, 252; 1999 a. 9; 2001 a. 16, 59; 2003 a. 33; 2005 a. 25, 264, 388; 2007 a. 20 ss. 1822 to 1824b, 9121 (6) (a); 2007 a. 45, 96; 2009 a. 28, 180, 334; 2011 a. 32, 126.

Cross−reference: See also chs. DHS 61 and 65, Wis. adm. code.

The corporation counsel should provide legal advice and representation to 51.42 and 51.437 boards as well as to the county board. 63 Atty. Gen. 468.

Liability, reimbursement, and collection for services provided under ss. 51.42 and 51.437 programs are discussed. 63 Atty. Gen. 560, 65 Atty. Gen. 49.

The county board of supervisors may require its approval of contracts for purchase of services by a community services board if it so specified in its coordinated plan and budget. Otherwise it may not. 69 Atty. Gen. 128.

Menominee Tribe members are eligible to participate in voluntary programs, but the state cannot accept tribe members into involuntary programs on the basis of tribal court orders alone. 70 Atty. Gen. 219.

A multicounty 51.42/51.437 board may retain private legal counsel only when the corporation counsel of each county, or the district attorney of each county not having a corporation counsel, notifies the board that he or she is unable to provide specific services in a timely manner. 73 Atty. Gen. 8.

Electronic reproduction of 2009−10 Wis. Stats. database, current through 2011 Wis. Act 286.

51.44 Early intervention services. (1) In this section:

(ag) "Case management services" means activities carried out by a service coordinator to assist and enable a child eligible for early intervention services under this section and the child's family to receive the rights and services authorized to be provided under the early intervention program under this section.

(ar) "Individualized family service plan" means a written plan for providing early intervention services to an eligible child and the child's family.

(b) "Local health department" has the meaning given in s. 250.01 (4).

(c) "Multidisciplinary evaluation" means the process used by qualified professionals to determine eligibility for early intervention services under this section based on the child's developmental status, the child's health, physical condition and mental condition or the child's atypical development.

(1m) The department is the lead agency in this state for the development and implementation of a statewide system of coordinated, comprehensive multidisciplinary programs to provide appropriate early intervention services under the requirements of 20 USC 1476.

(3) (a) From the appropriations under s. 20.435 (7) (bt) and (nL) the department shall allocate and distribute funds to counties to provide or contract for the provision of early intervention services to individuals eligible to receive the early intervention services.

(b) Funds that are distributed to counties under par. (a) may not be used to supplant funding from any other source.

(c) No county may contribute less funding for early intervention services under this section than the county contributed for early intervention services in 1999, except that, for a county that demonstrated extraordinary effort in 1999, the department may waive this requirement and establish with the county a lesser required contribution.

(4) Each county board of supervisors shall designate the appropriate county department under s. 46.21, 46.23 or 51.437, the local health department of the county or another entity as the local lead agency to provide early intervention services under the funding specified in sub. (3).

(5) The department shall do all of the following:

(a) Promulgate rules for the statewide implementation of the program under this section that do all of the following:

1. Specify the population of children who would be eligible for services under the program.

2. Define the term "early intervention services".

3. Establish personnel standards and a comprehensive plan for the development of personnel providing services in the program.

4. Establish procedures for the resolution of complaints by clients in the program.

5. Specify data collection requirements, including a system for making referrals to service providers.

6. Establish monitoring and supervision authority.

7. Establish policies and procedures for the implementation of individual family services plans and case management services.

8. Develop requirements for local coordination and interagency agreements at state and local levels.

9. Establish requirements for public awareness activities and a statewide directory of services.

(am) Promulgate rules that define the term "service coordinator".

(b) Ensure that the children eligible for early intervention services under this section receive all of the following services:

1. A multidisciplinary evaluation.

2. An individualized family service plan.

3. Assignment of a service coordinator, as defined by the department by rule, to provide case management services.

(c) Annually, submit to the chief clerk of each house of the legislature for distribution to the legislature under s. 13.172 (2) a report on the department's progress toward full implementation of the program under this section, including the progress of counties in implementing goals for participation in 5th−year requirements under 20 USC 1476.

History: 1991 a. 39, 269; 1993 a. 16, 27; 1995 a. 27; 1997 a. 27; 2001 a. 16.

Cross−reference: See also ch. DHS 90, Wis. adm. code.

51.45 Prevention and control of alcoholism. (1) DECLARATION OF POLICY. It is the policy of this state that alcoholics and intoxicated persons may not be subjected to criminal prosecution because of their consumption of alcohol beverages but rather should be afforded a continuum of treatment in order that they may lead normal lives as productive members of society.

(2) DEFINITIONS. As used in this section, unless the context otherwise requires:

(b) "Approved private treatment facility" means a private agency meeting the standards prescribed in sub. (8) (a) and approved under sub. (8) (c).

(c) "Approved public treatment facility" means a treatment agency operating under the direction and control of the department or providing treatment under this section through a contract with the department under sub. (7) (g) or with the county department under s. 51.42 (3) (ar) 2., and meeting the standards prescribed in sub. (8) (a) and approved under sub. (8) (c).

(cm) "County department" means a county department under s. 51.42.

(cr) "Designated person" means a person who performs, in part, the protective custody functions of a law enforcement officer under sub. (11), operates under an agreement between a county department and an appropriate law enforcement agency under sub. (11), and whose qualifications are established by the county department.

(d) "Incapacitated by alcohol" means that a person, as a result of the use of or withdrawal from alcohol, is unconscious or has his or her judgment otherwise so impaired that he or she is incapable of making a rational decision, as evidenced objectively by such indicators as extreme physical debilitation, physical harm or threats of harm to himself or herself or to any other person, or to property.

(e) "Incompetent person" means a person who has been adjudged incompetent by the court, as defined in s. 54.01 (4).

(f) "Intoxicated person" means a person whose mental or physical functioning is substantially impaired as a result of the use of alcohol.

(g) "Treatment" means the broad range of emergency, outpatient, intermediate, and inpatient services and care, including diagnostic evaluation, medical, surgical, psychiatric, psychological, and social service care, vocational rehabilitation and career counseling, which may be extended to alcoholics and intoxicated persons, and psychiatric, psychological and social service care which may be extended to their families. Treatment may also include, but shall not be replaced by, physical detention of persons, in an approved treatment facility, who are involuntarily committed or detained under sub. (12) or (13).

(2m) APPLICABILITY TO MINORS. (a) Except as otherwise stated in this section, this section shall apply equally to minors and adults.

(b) Subject to the limitations specified in s. 51.47, a minor may consent to treatment under this section.

(c) In proceedings for the commitment of a minor under sub. (12) or (13):

1. The court may appoint a guardian ad litem for the minor; and

Electronic reproduction of 2009−10 Wis. Stats. database, current through 2011 Wis. Act 286.

2. The parents or guardian of the minor, if known, shall receive notice of all proceedings.

(3) POWERS OF DEPARTMENT. To implement this section, the department may:

(a) Plan, establish and maintain treatment programs as necessary or desirable.

(b) Make contracts necessary or incidental to the performance of its duties and the execution of its powers, including contracts with public and private agencies, organizations, and individuals to pay them for services rendered or furnished to alcoholics or intoxicated persons.

(c) Keep records and engage in research and the gathering of relevant statistics.

(d) Provide information and referral services as optional elements of the comprehensive program it develops under sub. (7).

(4) DUTIES OF DEPARTMENT. The department shall:

(a) Develop, encourage and foster statewide, regional, and local plans and programs for the prevention of alcoholism and treatment of alcoholics and intoxicated persons in cooperation with public and private agencies, organizations, and individuals and provide technical assistance and consultation services for these purposes.

(b) Coordinate the efforts and enlist the assistance of all public and private agencies, organizations and individuals interested in prevention of alcoholism and treatment of alcoholics and intoxicated persons.

(c) Assure that the county department provides treatment for alcoholics and intoxicated persons in county, town and municipal institutions for the detention and incarceration of persons charged with or convicted of a violation of a state law or a county, town or municipal ordinance.

(d) Cooperate with the department of public instruction, local boards of education, schools, including tribal schools, as defined in s. 115.001 (15m), police departments, courts, and other public and private agencies, organizations, and individuals in establishing programs for the prevention of alcoholism and treatment of alcoholics and intoxicated persons, and preparing curriculum materials thereon for use at all levels of school education.

(e) Prepare, publish, evaluate and disseminate educational material dealing with the nature and effects of alcohol.

(f) Develop and implement and assure that county departments develop and implement, as an integral part of treatment programs, an educational program for use in the treatment of alcoholics and intoxicated persons, which program shall include the dissemination of information concerning the nature and effects of alcohol.

(g) Organize and foster training programs for all persons engaged in treatment of alcoholics and intoxicated persons.

(h) Sponsor and encourage research into the causes and nature of alcoholism and treatment of alcoholics and intoxicated persons, and serve as a clearinghouse for information relating to alcoholism.

(i) Specify uniform methods for keeping statistical information by public and private agencies, organizations, and individuals, and collect and make available relevant statistical information, including number of persons treated, frequency of admission and readmission, and frequency and duration of treatment.

(j) Advise the governor or the state health planning and development agency under P.L. 93−641, as amended, in the preparation of a comprehensive plan for treatment of alcoholics and intoxicated persons for inclusion in the state's comprehensive health plan.

(k) Review all state health, welfare and treatment plans to be submitted for federal funding under federal legislation, and advise the governor or the state health planning and development agency under P.L. 93−641, as amended, on provisions to be included relating to alcoholics and intoxicated persons.

(L) Develop and maintain, in cooperation with other state agencies, local governments and businesses and industries in the state, appropriate prevention, treatment and rehabilitation programs and services for alcohol abuse and alcoholism among employees thereof.

(m) Utilize the support and assistance of interested persons in the community, particularly recovered alcoholics, to encourage alcoholics voluntarily to undergo treatment.

(n) Cooperate with the department of transportation in establishing and conducting programs designed to deal with the problem of persons operating motor vehicles while intoxicated.

(o) Encourage general hospitals and other appropriate health facilities to admit without discrimination alcoholics and intoxicated persons and to provide them with adequate and appropriate treatment.

(p) Submit to the governor or the state health planning and development agency under P.L. 93−641, as amended, an annual report covering the activities of the department relating to treatment of alcoholism.

(q) Gather information relating to all federal programs concerning alcoholism, whether or not subject to approval by the department, to assure coordination and avoid duplication of efforts.

(7) COMPREHENSIVE PROGRAM FOR TREATMENT. (a) The department shall establish a comprehensive and coordinated program for the treatment of alcoholics and intoxicated persons.

(b) The program of the department shall include:

1. Emergency medical treatment provided by a facility affiliated with or part of the medical service of a general hospital.

2. Nonmedical emergency treatment provided by a facility having a written agreement with a general hospital for the provision of emergency medical treatment to patients as may be necessary.

3. Inpatient treatment.

4. Intermediate treatment as a part−time resident of a treatment facility.

5. Outpatient and follow−up treatment.

6. Extended care in a sheltered living environment with minimal staffing providing a program emphasizing at least one of the following elements: the development of self−care, social and recreational skills or prevocational or vocational training.

7. Prevention and intervention services.

(c) The department shall provide for adequate and appropriate treatment for alcoholics and intoxicated persons admitted under subs. (10) to (13). Treatment may not be provided at a correctional institution except for inmates.

(d) The superintendent of each facility shall make an annual report of its activities to the secretary in the form and manner the secretary specifies.

(e) All appropriate public and private resources shall be coordinated with and utilized in the program if possible.

(f) The secretary shall prepare, publish and distribute annually a list of all approved public and private treatment facilities.

(g) The department may contract for the use of any facility as an approved public treatment facility if the secretary considers this to be an effective and economical course to follow.

(8) STANDARDS FOR PUBLIC AND PRIVATE TREATMENT FACILITIES; ENFORCEMENT PROCEDURES. (a) The department shall establish minimum standards for approved treatment facilities that must be met for a treatment facility to be approved as a public or private treatment facility, except as provided in s. 51.032, and fix the fees to be charged by the department for the required inspections. The standards may concern only the health standards to be met and standards of treatment to be afforded patients and shall distinguish between facilities rendering different modes of treatment. In setting standards, the department shall consider the residents' needs and abilities, the services to be provided by the facility, and the relationship between the physical structure and the objectives of the program. Nothing in this subsection shall pre-

Electronic reproduction of 2009−10 Wis. Stats. database, current through 2011 Wis. Act 286.

vent county departments from establishing reasonable higher standards.

(b) The department periodically shall make unannounced inspections of approved public and private treatment facilities at reasonable times and in a reasonable manner.

(c) Approval of a facility must be secured under this section before application for a grant−in−aid for such facility under s. 51.423 or before treatment in any facility is rendered to patients.

(d) Each approved public and private treatment facility shall file with the department on request, data, statistics, schedules and information the department reasonably requires, including any data or information specified under s. 46.973 (2m). An approved public or private treatment facility that without good cause fails to furnish any data, statistics, schedules or information as requested, or files fraudulent returns thereof, shall be removed from the list of approved treatment facilities.

(e) The department, after notice and hearing, may under this subsection suspend, revoke, limit, or restrict an approval, or refuse to grant an approval, for failure to meet its standards.

(f) The circuit court may restrain any violation of this section, review any denial, restriction or revocation of approval under this subsection, and grant other relief required to enforce its provisions.

(9) ACCEPTANCE FOR TREATMENT; RULES. The secretary shall promulgate rules for acceptance of persons into the treatment program, considering available treatment resources and facilities, for the purpose of early and effective treatment of alcoholics and intoxicated persons. In promulgating the rules the secretary shall be guided by the following standards:

(a) If possible a patient shall be treated on a voluntary rather than an involuntary basis.

(b) A patient shall be initially assigned or transferred to outpatient or intermediate treatment, unless the patient is found to require inpatient treatment.

(c) No person may be denied treatment solely because the person has withdrawn from treatment against medical advice on a prior occasion or because the person has relapsed after earlier treatment.

(d) An individualized treatment plan shall be prepared and maintained on a current basis for each patient.

(e) Provision shall be made for a continuum of coordinated treatment services, so that a person who leaves a facility or a form of treatment will have available and utilize other appropriate treatment.

(10) VOLUNTARY TREATMENT OF ALCOHOLICS. (a) An adult alcoholic may apply for voluntary treatment directly to an approved public treatment facility. If the proposed patient is an individual adjudicated incompetent in this state who has not been deprived by a court of the right to contract, the individual or his or her guardian or other legal representative may make the application. If the proposed patient is an individual adjudicated incompetent in this state who has been deprived by a court of the right to contract, the individual's guardian or other legal representative may make the application.

(am) Except as provided in s. 51.47, a minor may apply for treatment directly to an approved public treatment facility, but only for those forms of treatment specified in sub. (7) (b) 5. and 7. Section 51.13 governs admission of a minor alcoholic to an inpatient treatment facility.

(b) Subject to rules promulgated by the department, the superintendent in charge of an approved public treatment facility may determine who shall be admitted for treatment. If a person is refused admission to an approved public treatment facility, the superintendent, subject to rules promulgated by the department, shall refer the person to another approved public treatment facility for treatment if possible and appropriate.

(c) If a patient receiving inpatient care leaves an approved public treatment facility, the patient shall be encouraged to consent to appropriate outpatient or intermediate treatment. If it appears to the superintendent in charge of the treatment facility that the patient is an alcoholic or intoxicated person who requires help, the county department shall arrange for assistance in obtaining supportive services and residential facilities. If the patient is an individual who is adjudicated incompetent, the request for discharge from an inpatient facility shall be made by a legal guardian or other legal representative or by the individual who is adjudicated incompetent if he or she was the original applicant.

(d) If a patient leaves an approved public treatment facility, with or against the advice of the superintendent in charge of the facility, the county department may make reasonable provisions for the patient's transportation to another facility or to his or her home or may assist the patient in obtaining temporary shelter.

(e) This subsection applies only to admissions of alcoholics whose care and treatment is to be paid for by the department or a county department.

(11) TREATMENT AND SERVICES FOR INTOXICATED PERSONS AND OTHERS INCAPACITATED BY ALCOHOL. (a) An intoxicated person may come voluntarily to an approved public treatment facility for emergency treatment. Any law enforcement officer, or designated person upon the request of a law enforcement officer, may assist a person who appears to be intoxicated in a public place and to be in need of help to his or her home, an approved treatment facility or other health facility, if such person consents to the proffered help. Section 51.13 governs admission of an intoxicated minor to an inpatient facility under this paragraph.

(b) A person who appears to be incapacitated by alcohol shall be placed under protective custody by a law enforcement officer. The law enforcement officer shall either bring such person to an approved public treatment facility for emergency treatment or request a designated person to bring such person to the facility for emergency treatment. If no approved public treatment facility is readily available or if, in the judgment of the law enforcement officer or designated person, the person is in need of emergency medical treatment, the law enforcement officer or designated person upon the request of the law enforcement officer shall take such person to an emergency medical facility. The law enforcement officer or designated person, in detaining such person or in taking him or her to an approved public treatment facility or emergency medical facility, is holding such person under protective custody and shall make every reasonable effort to protect the person's health and safety. In placing the person under protective custody the law enforcement officer may search such person for and seize any weapons. Placement under protective custody under this subsection is not an arrest. No entry or other record shall be made to indicate that such person has been arrested or charged with a crime. A person brought to an approved public treatment facility under this paragraph shall be deemed to be under the protective custody of the facility upon arrival.

(bm) If the person who appears to be incapacitated by alcohol under par. (b) is a minor, either a law enforcement officer or a person authorized to take a child into custody under ch. 48 or to take a juvenile into custody under ch. 938 may take the minor into custody as provided in par. (b).

(c) A person who comes voluntarily or is brought to an approved treatment facility shall be examined by trained staff as soon as practicable in accordance with a procedure developed by the facility in consultation with a licensed physician. The person may then be admitted as a patient or referred to another treatment facility or to an emergency medical facility, in which case the county department shall make provision for transportation. Upon arrival, the person shall be deemed to be under the protective custody of the facility to which he or she has been referred.

(d) A person who by examination pursuant to par. (c) is found to be incapacitated by alcohol at the time of admission, or to have become incapacitated at any time after admission, shall be detained at the appropriate facility for the duration of the incapacity but may not be detained when no longer incapacitated by alco-

Electronic reproduction of 2009−10 Wis. Stats. database, current through 2011 Wis. Act 286.

hol, or if the person remains incapacitated by alcohol for more than 72 hours after admission as a patient, exclusive of Saturdays, Sundays and legal holidays, unless he or she is committed under sub. (12). A person may consent to remain in the facility as long as the physician or official in charge believes appropriate.

(e) The county department shall arrange transportation home for a person who was brought under protective custody to an approved public treatment facility or emergency medical facility and who is not admitted, if the home is within 50 miles of the facility. If the person has no home within 50 miles of the facility, the county department shall assist him or her in obtaining shelter.

(f) If a patient is admitted to an approved public treatment facility, the family or next of kin shall be notified as promptly as possible unless an adult patient who is not incapacitated requests that no notification be made.

(g) Any law enforcement officer, designated person or officer or employee of an approved treatment facility who acts in compliance with this section is acting in the course of official duty and is not criminally or civilly liable for false imprisonment.

(h) Prior to discharge, the patient shall be informed of the benefits of further diagnosis and appropriate voluntary treatment.

(i) No provision of this section may be deemed to require any emergency medical facility which is not an approved private or public treatment facility to provide to incapacitated persons nonmedical services including, but not limited to, shelter, transportation or protective custody.

(12) EMERGENCY COMMITMENT. (a) An intoxicated person who has threatened, attempted or inflicted physical harm on himself or herself or on another and is likely to inflict such physical harm unless committed, or a person who is incapacitated by alcohol, may be committed to the county department and brought to an approved public treatment facility for emergency treatment. A refusal to undergo treatment does not constitute evidence of lack of judgment as to the need for treatment.

(b) The physician, spouse, guardian, or a relative of the person sought to be committed, or any other responsible person, may petition a circuit court commissioner or the circuit court of the county in which the person sought to be committed resides or is present for commitment under this subsection. The petition shall state facts to support the need for emergency treatment and be supported by one or more affidavits that aver with particularity the factual basis for the allegations contained in the petition.

(c) Upon receipt of a petition under par. (b), the circuit court commissioner or court shall:

1. Determine whether the petition and supporting affidavits sustain the grounds for commitment and dismiss the petition if the grounds for commitment are not sustained thereby. If the grounds for commitment are sustained by the petition and supporting affidavits, the court or circuit court commissioner shall issue an order temporarily committing the person to the custody of the county department pending the outcome of the preliminary hearing under sub. (13) (d).

2. Assure that the person sought to be committed is represented by counsel by referring the person to the state public defender, who shall appoint counsel for the person without a determination of indigency, as provided in s. 51.60.

3. Issue an order directing the sheriff or other law enforcement agency to take the person into protective custody and bring him or her to an approved public treatment facility designated by the county department, if the person is not detained under sub. (11).

4. Set a time for a preliminary hearing under sub. (13) (d), such hearing to be held not later than 48 hours after receipt of a petition under par. (b), exclusive of Saturdays, Sundays and legal holidays. If at such time the person is unable to assist in the defense because he or she is incapacitated by alcohol, an extension of not more than 48 hours, exclusive of Saturdays, Sundays and legal holidays, may be had upon motion of the person or the person's attorney.

(d) Upon arrival at the approved public treatment facility, the person shall be advised both orally and in writing of the right to counsel, the right to consult with counsel before a request is made to undergo voluntary treatment under sub. (10), the right not to converse with examining physicians, psychologists or other personnel, the fact that anything said to examining physicians, psychologists or other personnel may be used as evidence against him or her at subsequent hearings under this section, the right to refuse medication under s. 51.61 (6), the exact time and place of the preliminary hearing under sub. (13) (d), and of the reasons for detention and the standards under which he or she may be committed prior to all interviews with physicians, psychologists or other personnel. Such notice of rights shall be provided to the patient's immediate family if they can be located and may be deferred until the patient's incapacitated condition, if any, has subsided to the point where the patient is capable of understanding the notice. Under no circumstances may interviews with physicians, psychologists or other personnel be conducted until such notice is given, except that the patient may be questioned to determine immediate medical needs. The patient may be detained at the facility to which he or she was admitted or, upon notice to the attorney and the court, transferred by the county department to another appropriate public or private treatment facility, until discharged under par. (e).

(e) When on the advice of the treatment staff the superintendent of the facility having custody of the patient determines that the grounds for commitment no longer exist, he or she shall discharge a person committed under this subsection. No person committed under this subsection shall be detained in any treatment facility beyond the time set for a preliminary hearing under par. (c) 4. If a petition for involuntary commitment under sub. (13) has been filed and a finding of probable cause for believing the patient is in need of commitment has been made under sub. (13) (d), the person may be detained until the petition has been heard and determined.

(f) A copy of the written application for commitment and all supporting affidavits shall be given to the patient at the time notice of rights is given under par. (d) by the superintendent, who shall provide a reasonable opportunity for the patient to consult counsel.

(13) INVOLUNTARY COMMITMENT. (a) A person may be committed to the custody of the county department by the circuit court upon the petition of 3 adults, at least one of whom has personal knowledge of the conduct and condition of the person sought to be committed. A refusal to undergo treatment shall not constitute evidence of lack of judgment as to the need for treatment. The petition for commitment shall:

1. Allege that the condition of the person is such that he or she habitually lacks self−control as to the use of alcohol beverages, and uses such beverages to the extent that health is substantially impaired or endangered and social or economic functioning is substantially disrupted;

2. Allege that such condition of the person is evidenced by a pattern of conduct which is dangerous to the person or to others;

3. State that the person is a child or state facts sufficient for a determination of indigency of the person;

4. Be supported by the affidavit of each petitioner who has personal knowledge which avers with particularity the factual basis for the allegations contained in the petition; and

5. Contain a statement of each petitioner who does not have personal knowledge which provides the basis for his or her belief.

(b) Upon receipt of a petition under par. (a), the court shall:

1. Determine whether the petition and supporting affidavits meet the requirements of par. (a) and dismiss the petition if the requirements of par. (a) are not met thereby. If the person has not

Electronic reproduction of 2009−10 Wis. Stats. database, current through 2011 Wis. Act 286.

been temporarily committed under sub. (12) (c) and the petition and supporting affidavits meet the requirements of par. (a), the court may issue an order temporarily committing the person to the custody of the county department pending the outcome of the preliminary hearing under par. (d).

2. Assure that the person is represented by counsel by referring the person to the state public defender, who shall appoint counsel for the person without a determination of indigency, as provided in s. 51.60. The person shall be represented by counsel at the preliminary hearing under par. (d). The person may, with the approval of the court, waive his or her right to representation by counsel at the full hearing under par. (f).

3. If the court orders temporary commitment, issue an order directing the sheriff or other law enforcement agency to take the person into protective custody and to bring the person to an approved public treatment facility designated by the county department, if the person is not detained under sub. (11) or (12).

4. Set a time for a preliminary hearing under par. (d). If the person is taken into protective custody, such hearing shall be held not later than 72 hours after the person arrives at the approved public treatment facility, exclusive of Saturdays, Sundays and legal holidays. If at that time the person is unable to assist in the defense because he or she is incapacitated by alcohol, an extension of not more than 48 hours, exclusive of Saturdays, Sundays and legal holidays, may be had upon motion of the person or the person's attorney.

(c) Effective and timely notice of the preliminary hearing, together with a copy of the petition and supporting affidavits under par. (a), shall be given to the person unless he or she has been taken into custody under par. (b), the legal guardian if the person is adjudicated incompetent, the person's counsel, and the petitioner. The notice shall include a written statement of the person's right to an attorney, the right to trial by jury, the right to be examined by a physician, and the standard under which he or she may be committed under this section. If the person is taken into custody under par. (b), upon arrival at the approved public treatment facility, the person shall be advised both orally and in writing of the right to counsel, the right to consult with counsel before a request is made to undergo voluntary treatment under sub. (10), the right not to converse with examining physicians, psychologists or other personnel, the fact that anything said to examining physicians, psychologists or other personnel may be used as evidence against him or her at subsequent hearings under this section, the right to refuse medication under s. 51.61 (6), the exact time and place of the preliminary hearing under par. (d), the right to trial by jury, the right to be examined by a physician and of the reasons for detention, and the standards under which he or she may be committed prior to all interviews with physicians, psychologists, or other personnel. Such notice of rights shall be provided to the person's immediate family if they can be located and may be deferred until the person's incapacitated condition, if any, has subsided to the point where the person is capable of understanding the notice. Under no circumstances may interviews with physicians, psychologists, or other personnel be conducted until such notice is given, except that the person may be questioned to determine immediate medical needs. The person may be detained at the facility to which he or she was admitted or, upon notice to the attorney and the court, transferred by the county department to another appropriate public or private treatment facility, until discharged under this subsection. A copy of the petition and all supporting affidavits shall be given to the person at the time notice of rights is given under this paragraph by the superintendent, who shall provide a reasonable opportunity for the patient to consult counsel.

(d) Whenever it is desired to involuntarily commit a person, a preliminary hearing shall be held under this paragraph. The purpose of the preliminary hearing shall be to determine if there is probable cause for believing that the allegations of the petition under par. (a) are true. The court shall assure that the person is represented by counsel at the preliminary hearing by referring the person to the state public defender, who shall appoint counsel for the person without a determination of indigency, as provided in s. 51.60. Counsel shall have access to all reports and records, psychiatric and otherwise, which have been made prior to the preliminary hearing. The person shall be present at the preliminary hearing and shall be afforded a meaningful opportunity to be heard. Upon failure to make a finding of probable cause under this paragraph, the court shall dismiss the petition and discharge the person from the custody of the county department.

(dg) The court shall proceed as if a petition were filed under s. 51.20 (1) if all of the following conditions are met:

1. The petitioner's counsel notifies all other parties and the court, within a reasonable time prior to the hearing, of his or her intent to request that the court proceed as if a petition were filed under s. 51.20 (1).

2. The court determines at the hearing that there is probable cause to believe that the subject individual is a fit subject for treatment under s. 51.20 (1).

(dm) For the purposes of this section, duties to be performed by a court shall be carried out by the judge of such court or a circuit court commissioner of such court who is designated by the chief judge to so act, in all matters prior to a final hearing under this subsection.

(e) Upon a finding of probable cause under par. (d), the court shall fix a date for a full hearing to be held within 14 days. An extension of not more than 14 days may be granted upon motion of the person sought to be committed upon a showing of cause. Effective and timely notice of the full hearing, the right to counsel, the right to jury trial, and the standards under which the person may be committed shall be given to the person, the immediate family other than a petitioner under par. (a) or sub. (12) (b) if they can be located, the legal guardian if the person is adjudicated incompetent, the superintendent in charge of the appropriate approved public treatment facility if the person has been temporarily committed under par. (b) or sub. (12), the person's counsel, unless waived, and to the petitioner under par. (a). Counsel, or the person if counsel is waived, shall have access to all reports and records, psychiatric and otherwise, which have been made prior to the full hearing on commitment, and shall be given the names of all persons who may testify in favor of commitment and a summary of their proposed testimony at least 96 hours before the full hearing, exclusive of Saturdays, Sundays and legal holidays.

(f) The hearing shall be open, unless the person sought to be committed or the person's attorney moves that it be closed, in which case only persons in interest, including representatives of the county department in all cases, and their attorneys and witnesses may be present. At the hearing the jury, or, if trial by jury is waived, the court, shall consider all relevant evidence, including, if possible, the testimony of at least one licensed physician who has examined the person whose commitment is sought. Ordinary rules of evidence shall apply to any such proceeding. The person whose commitment is sought shall be present and shall be given an opportunity to be examined by a court−appointed licensed physician. If the person refuses and there is sufficient evidence to believe that the allegations of the petition are true, or if the court believes that more medical evidence is necessary, the court may make a temporary order committing the person to the county department for a period of not more than 5 days for purposes of diagnostic examination.

(g) 1. The court shall make an order of commitment to the county department if, after hearing all relevant evidence, including the results of any diagnostic examination, the trier of fact finds all of the following:

a. That the allegations of the petition under par. (a) have been established by clear and convincing evidence.

b. That there is a relationship between the alcoholic condition and the pattern of conduct during the 12−month period immedi-

Electronic reproduction of 2009−10 Wis. Stats. database, current through 2011 Wis. Act 286.

ately preceding the time of petition which is dangerous to the person or others and that this relationship has been established to a reasonable medical certainty.

c. That there is an extreme likelihood that the pattern of conduct will continue or repeat itself without the intervention of involuntary treatment or institutionalization.

2. The court may not order commitment of a person unless it is shown by clear and convincing evidence that there is no suitable alternative available for the person and that the county department is able to provide appropriate and effective treatment for the individual.

(h) A person committed under this subsection shall remain in the custody of the county department for treatment for a period set by the court, but not to exceed 90 days. During this period of commitment the county department may transfer the person from one approved public treatment facility or program to another as provided in par. (k). If the person has served in the U.S. armed forces or forces incorporated as part of the U.S. armed forces, the county department shall contact the U.S. department of veterans affairs to determine if the person is eligible for treatment at a U.S. department of veterans affairs facility. If the person is eligible for that treatment, the county department may transfer the person to that facility if the U.S. department of veterans affairs approves that transfer. At the end of the period set by the court, the person shall be discharged automatically unless the county department before expiration of the period obtains a court order for recommitment upon the grounds set forth in par. (a) for a further period not to exceed 6 months. If after examination it is determined that the person is likely to inflict physical harm on himself or herself or on another, the county department shall apply for recommitment. Only one recommitment order under this paragraph is permitted.

(i) 1. If a court orders commitment of a person under this subsection, the court shall determine if, under 18 USC 922 (g) (4), the person is prohibited from possessing a firearm. If the person is prohibited, the court shall order the person not to possess a firearm, order the seizure of any firearm owned by the person, and inform the person of the requirements and penalties under s. 941.29.

2. a. If a court orders a person under subd. 1. not to possess a firearm, the person may petition that court or the court in the county where the person resides to cancel the order.

b. The court considering the petition under subd. 2. a. shall grant the petition if the court determines that the circumstances regarding the commitment under this subsection and the person's record and reputation indicate that the person is not likely to act in a manner dangerous to public safety and that the granting of the petition would not be contrary to public interest.

c. If the court grants the petition under subd. 2. b., the court shall cancel the order under subd. 1. and order the return of any firearm ordered seized under subd. 1.

3. In lieu of ordering the seizure under subd. 1., the court may designate a person to store the firearm until the order under subd. 1. is canceled under subd. 2. c.

4. If the court orders under subd. 1. a person not to possess a firearm or cancels under subd. 2. c. an order issued under subd. 1., the court clerk shall notify the department of justice of the order or cancellation and provide any information identifying the person that is necessary to permit an accurate firearms restrictions record search under s. 175.35 (2g) (c). No other information from the person's court records may be disclosed to the department of justice except by order of the court. The department of justice may disclose information provided under this subdivision only as part of a firearms restrictions record search under s. 175.35 (2g) (c) or under rules the department of justice promulgates under s. 175.35 (2g) (d).

(j) Upon the filing of a petition for recommitment under par. (h), the court shall fix a date for a recommitment hearing within 10 days and assure that the person sought to be recommitted is represented by counsel by referring the person to the state public defender, who shall appoint counsel for the person without a determination of indigency, as provided in s. 51.60. The provisions of par. (e) relating to notice and to access to records, names of witnesses, and summaries of their testimony shall apply to recommitment hearings under this paragraph. At the recommitment hearing, the court shall proceed as provided under pars. (f) and (g).

(k) The county department shall provide for adequate and appropriate treatment of a person committed to its custody. Any person committed or recommitted to custody may be transferred by the county department from one approved public treatment facility or program to another upon the written application to the county department from the facility or program treating the person. Such application shall state the reasons why transfer to another facility or program is necessary to meet the treatment needs of the person. Notice of such transfer and the reasons therefor shall be given to the court, the person's attorney and the person's immediate family, if they can be located.

(L) If an approved private treatment facility agrees with the request of a competent patient or a parent, sibling, adult child, or guardian to accept the patient for treatment, the county department may transfer the person to the private treatment facility.

(m) A person committed under this section may at any time seek to be discharged from commitment by habeas corpus proceedings.

(n) The venue for proceedings under this subsection is the place in which the person to be committed resides or is present.

(o) All fees and expenses incurred under this section which are required to be assumed by the county shall be governed by s. 51.20 (19).

(p) A record shall be made of all proceedings held under this subsection. Transcripts shall be made available under SCR 71.04. The county department may in any case request a transcript.

(14) CONFIDENTIALITY OF RECORDS OF PATIENTS. (a) Except as otherwise provided in s. 51.30, the registration and treatment records of alcoholism treatment programs and facilities shall remain confidential and are privileged to the patient. The application of s. 51.30 is limited by any rule promulgated under s. 51.30 (4) (c) for the purpose of protecting the confidentiality of alcoholism treatment records in conformity with federal requirements.

(b) Any person who violates this subsection shall forfeit not more than $5,000.

(15) CIVIL RIGHTS AND LIBERTIES. (a) Except as provided in s. 51.61 (2), a person being treated under this section does not thereby lose any legal rights.

(b) No provisions of this section may be deemed to contradict any rules or regulations governing the conduct of any inmate of a state or county correctional institution who is being treated in an alcoholic treatment program within the institution.

(c) A private or public general hospital may not refuse admission or treatment to a person in need of medical services solely because that person is an "alcoholic", "incapacitated by alcohol" or is an "intoxicated person" as defined in sub. (2). This paragraph does not require a hospital to admit or treat the person if the hospital does not ordinarily provide the services required by the person. A private or public general hospital which violates this paragraph shall forfeit not more than $500.

(16) PAYMENT FOR TREATMENT. (a) Liability for payment for care, services and supplies provided under this section, the collection and enforcement of such payments, and the adjustment and settlement with the several counties for their proper share of all moneys collected under s. 46.10, shall be governed exclusively by s. 46.10.

(b) Payment for treatment of persons treated under s. 302.38 shall be made under that section.

(17) APPLICABILITY OF OTHER LAWS; PROCEDURE. (a) Nothing in this section affects any law, ordinance or rule the violation of which is punishable by fine, forfeiture or imprisonment.

Electronic reproduction of 2009−10 Wis. Stats. database, current through 2011 Wis. Act 286.

(b) All administrative procedure followed by the secretary in the implementation of this section shall be in accordance with ch. 227.

(18) CONSTRUCTION. This section shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this section insofar as possible among states which enact similar laws.

(19) SHORT TITLE. This section may be cited as the "Alcoholism and Intoxication Treatment Act".

History: 1973 c. 198; 1975 c. 200, 428; 1975 c. 430 s. 80; 1977 c. 29; 1977 c. 187 ss. 44, 134, 135; 1977 c. 203 s. 106; 1977 c. 428; 1977 c. 449 s. 497; Sup. Ct. Order, 83 Wis. 2d xiii (1987); 1979 c. 32 s. 92 (11); Sup. Ct. Order, eff. 1−1−80; 1979 c. 221 ss. 417, 2200 (20); 1979 c. 300, 331, 356; 1981 c. 20; 1981 c. 79 s. 17; 1981 c. 289, 314; 1983 a. 27 ss. 1116 to 1121, 2202 (20); 1985 a. 29 s. 3202 (56); 1985 a. 139; 1985 a. 176 ss. 533 to 556, 615; 1985 a. 265; 1985 a. 332 s. 251 (1); 1987 a. 339, 366; 1989 a. 31, 336, 359; 1991 a. 39; 1993 a. 16, 27, 213, 451, 490; 1995 a. 27 ss. 3268, 3269, 9145 (1); 1995 a. 77, 225; 1997 a. 27, 35, 237; 1999 a. 9; 2001 a. 61; 2005 a. 22, 387, 444; 2007 a. 20; 2009 a. 180, 258, 302.

Cross−reference: See also ch. DHS 75, Wis. adm. code.

Judicial Council Note, 1981: Reference to a "writ" of habeas corpus in sub. (13) (m) has been removed because that remedy is now available in an ordinary action. See s. 781.01, stats., and the note thereto. [Bill 613−A]

A one−person petition under sub. (12) is sufficient for commitment only until the preliminary hearing; a 3−person petition under sub. (13) is required for commitment beyond that time period. In Matter of B.A.S.: State v. B.A.S. 134 Wis. 2d 291, 397 N.W.2d 114 (Ct. App. 1986).

Criminal charges of bail jumping based solely on the consumption of alcohol do not violate this section. Sub. (1) is intended only to prevent prosecutions for public drunkenness. State ex rel. Jacobus v. State, 208 Wis. 2d 39, 559 N.W.2d 900 (1997), 94−2895.

The requirement under sub. (13) (e) that a person sought to be committed have access to records and reports does not require the county to file the specified records with the trial court prior to a final hearing. County of Dodge v. Michael J.K. 209 Wis. 2d 499, 564 N.W.2d 350 (Ct. App. 1997), 96−2250.

Persons incapacitated by alcohol who engage in disorderly conduct in a treatment facility may be so charged, but not merely for the purpose of arranging for their confinement in jail for security during detoxification. 64 Atty. Gen. 161.

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

Electronic reproduction of 2009−10 Wis. Stats. database, current through 2011 Wis. Act 286.

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.

Electronic reproduction of 2009−10 Wis. Stats. database, current through 2011 Wis. Act 286.

(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.

Electronic reproduction of 2009−10 Wis. Stats. database, current through 2011 Wis. Act 286.

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 treat-

Electronic reproduction of 2009−10 Wis. Stats. database, current through 2011 Wis. Act 286.

ment 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.

Electronic reproduction of 2009−10 Wis. Stats. database, current through 2011 Wis. Act 286.

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

Electronic reproduction of 2009−10 Wis. Stats. database, current through 2011 Wis. Act 286.

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.

Electronic reproduction of 2009−10 Wis. Stats. database, current through 2011 Wis. Act 286.

(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.

2. A device or garment that interferes with an individual's freedom of movement and that the individual is unable to remove easily.

3. Restraint by a treatment facility staff member of a person admitted or committed to the treatment facility, by use of physical force.

(b) "Psychotropic medication" means an antipsychotic, antidepressant, lithium carbonate or a tranquilizer.

(2) (a) No later than 24 hours after the death of a person admitted or committed to a treatment facility, the treatment facility shall report the death to the department if one of the following applies:

1. There is reasonable cause to believe that the death was related to the use of physical restraint or a psychotropic medication.

3. There is reasonable cause to believe that the death was a suicide.

History: 1989 a. 336.

51.65 Segregation of tuberculosis patients. The department shall make provision for the segregation of tuberculosis patients in the state−operated and community−operated facilities, and for that purpose may set apart facilities and equip facilities for the care and treatment of such patients.

History: 1975 c. 430.

51.67 Alternate procedure; protective services. If, after a hearing under s. 51.13 (4) or 51.20, the court finds that commitment under this chapter is not warranted and that the subject individual is a fit subject for guardianship and protective placement or services, the court may, without further notice, appoint a temporary guardian for the subject individual and order temporary protective placement or services under ch. 55 for a period not to exceed 30 days. Temporary protective placement for an individual in a center for the developmentally disabled is subject to s. 51.06 (3). Any interested party may then file a petition for permanent guardianship or protective placement or services, including medication, under ch. 55. If the individual is in a treatment facility, the individual may remain in the facility during the period of temporary protective placement if no other appropriate facility is available. The court may order psychotropic medication as a temporary protective service under this section if it finds that there is probable cause to believe the individual is not competent to refuse psychotropic medication and that the medication ordered will have therapeutic value and will not unreasonably impair the ability of the individual to prepare for and participate in subsequent legal proceedings. An individual is not competent to refuse psychotropic medication if, because of serious and persistent mental illness, and after the advantages and disadvantages of and alternatives to accepting the particular psychotropic medication have been explained to the individual, one of the following is true:

(1) The individual is incapable of expressing an understanding of the advantages and disadvantages of accepting treatment and the alternatives.

(2) The individual is substantially incapable of applying an understanding of the advantages, disadvantages and alternatives to his or her serious and persistent mental illness in order to make an informed choice as to whether to accept or refuse psychotropic medication.

History: 1975 c. 430; 1977 c. 187, 428; 1979 c. 89, 336; 1985 a. 29; 1987 a. 366; 1995 a. 268; 2003 a. 33; 2005 a. 264.

51.75 Interstate compact on mental health. The interstate compact on mental health is enacted into law and entered into by this state with all other states legally joining therein substantially in the following form:

THE INTERSTATE COMPACT ON
MENTAL HEALTH.

The contracting states solemnly agree that:

(1) ARTICLE I. The party states find that the proper and expeditious treatment of the mentally ill and mentally deficient can be facilitated by cooperative action, to the benefit of the patients, their families and society as a whole. Further, the party states find that the necessity of and desirability for furnishing such care and treatment bears no primary relation to the residence or citizenship of the patient but that, on the contrary, the controlling factors of community safety and humanitarianism require that facilities and services be made available for all who are in need of them. Consequently, it is the purpose of this compact and of the party states to provide the necessary legal basis for the institutionalization or other appropriate care and treatment of the mentally ill and mentally deficient under a system that recognizes the paramount importance of patient welfare and to establish the responsibilities of the party states in terms of such welfare.

(2) ARTICLE II. As used in this compact:

(a) "Aftercare" means care, treatment and services provided a patient, as defined herein, on convalescent status or conditional release.

(b) "Institution" means any hospital or other facility maintained by a party state or political subdivision thereof for the care and treatment of mental illness or mental deficiency.

(c) "Mental deficiency" means mental deficiency as defined by appropriate clinical authorities to such extent that a person so afflicted is incapable of managing himself or herself and his or her affairs, but shall not include mental illness as defined herein.

(d) "Mental illness" means mental disease to such extent that a person so afflicted requires care and treatment for the person's welfare, or the welfare of others, or of the community.

(e) "Patient" means any person subject to or eligible as determined by the laws of the sending state, for institutionalization or other care, treatment or supervision pursuant to the provisions of this compact.

(f) "Receiving state" means a party state to which a patient is transported pursuant to the provisions of the compact or to which it is contemplated that a patient may be so sent.

Electronic reproduction of 2009−10 Wis. Stats. database, current through 2011 Wis. Act 286.

(g) "Sending state" means a party state from which a patient is transported pursuant to the provisions of the compact or from which it is contemplated that a patient may be so sent.

(h) "State" means any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(3) ARTICLE III. (a) Whenever a person physically present in any party state is in need of institutionalization by reason of mental illness or mental deficiency, the person shall be eligible for care and treatment in an institution in that state irrespective of the person's residence, settlement or citizenship, qualifications.

(b) The provisions of par. (a) to the contrary notwithstanding any patient may be transferred to an institution in another state whenever there are factors based upon clinical determinations indicating that the care and treatment of said patient would be facilitated or improved thereby. Any such institutionalization may be for the entire period of care and treatment or for any portion thereof. The factors referred to in this paragraph include the patient's full record with due regard for the location of the patient's family, character of the illness and probable duration thereof, and such other factors as are considered appropriate.

(c) No state is obliged to receive any patient under par. (b) unless the sending state has given advance notice of its intention to send the patient, furnished all available medical and other pertinent records concerning the patient and given the qualified medical or other appropriate clinical authorities of the receiving state an opportunity to examine the patient if said authorities so wish, and unless the receiving state agrees to accept the patient.

(d) If the laws of the receiving state establish a system of priorities for the admission of patients, an interstate patient under this compact shall receive the same priority as a local patient and shall be taken in the same order and at the same time that the interstate patient would be taken if the interstate patient were a local patient.

(e) Pursuant to this compact, the determination as to the suitable place of institutionalization for a patient may be reviewed at any time and such further transfer of the patient may be made as seems likely to be in the best interest of the patient.

(4) ARTICLE IV. (a) Whenever, pursuant to the laws of the state in which a patient is physically present, it is determined that the patient should receive aftercare or supervision, such care or supervision may be provided in a receiving state. If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state have reason to believe that aftercare in another state would be in the best interest of the patient and would not jeopardize the public safety, they shall request the appropriate authorities in the receiving state to investigate the desirability of affording the patient such aftercare in said receiving state, and such investigation shall be made with all reasonable speed. The request for investigation shall be accompanied by complete information concerning the patient's intended place of residence and the identity of the person in whose charge it is proposed to place the patient, the complete medical history of the patient and such other documents as are pertinent.

(b) If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state and the appropriate authorities in the receiving state find that the best interest of the patient would be served thereby, and if the public safety would not be jeopardized thereby, the patient may receive aftercare or supervision in the receiving state.

(c) In supervising, treating or caring for a patient on aftercare pursuant to the terms of this subsection, a receiving state shall employ the same standards of visitation, examination, care and treatment that it employs for similar local patients.

(5) ARTICLE V. Whenever a dangerous or potentially dangerous patient escapes from an institution in any party state, that state shall promptly notify all appropriate authorities within and without the jurisdiction of the escape, in a manner reasonably calculated to facilitate the speedy apprehension of the escapee. Immediately upon the apprehension and identification of any such dangerous or potentially dangerous patient, the patient shall be detained in the state where found, pending disposition in accordance with law.

(6) ARTICLE VI. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the patient, shall be permitted to transport any patient being moved pursuant to this compact through any state party to this compact, without interference.

(7) ARTICLE VII. (a) No person shall be deemed a patient of more than one institution at any given time. Completion of transfer of any patient to an institution in a receiving state shall have the effect of making the person a patient of the institution in the receiving state.

(b) The sending state shall pay all costs of and incidental to the transportation of any patient pursuant to this compact, but any 2 or more party states may, by making a specific agreement for that purpose, arrange for a different allocation of costs as among themselves.

(c) No provision of this compact shall be construed to alter or affect any internal relationships among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs or responsibilities therefor.

(d) Nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person in regard to costs for which such party state or subdivision thereof may be responsible pursuant to any provision of this compact.

(e) Nothing in this compact shall be construed to invalidate any reciprocal agreement between a party state and a nonparty state relating to institutionalization, care or treatment of the mentally ill or mentally deficient or any statutory authority pursuant to which such agreements may be made.

(8) ARTICLE VIII. (a) Nothing in this compact shall be construed to abridge, diminish or in any way impair the rights, duties and responsibilities of any patient's guardian on the guardian's own behalf or in respect of any patient for whom the guardian may serve, except that where the transfer of any patient to another jurisdiction makes advisable the appointment of a supplemental or substitute guardian, any court of competent jurisdiction in the receiving state may make such supplemental or substitute appointment and the court which appointed the previous guardian shall, upon being duly advised of the new appointment, and upon the satisfactory completion of such accounting and other acts as such court by law requires, relieve the previous guardian of power and responsibility to whatever extent is appropriate in the circumstances. In the case of any patient having settlement in the sending state, the court of competent jurisdiction in the sending state has the sole discretion to relieve a guardian appointed by it or continue the guardian's power and responsibility, whichever it deems advisable. The court in the receiving state may, in its discretion, confirm or reappoint the person previously serving as guardian in the sending state in lieu of making a supplemental or substitute appointment.

(b) The term "guardian" as used in par. (a) includes any guardian, trustee, legal committee, conservator or other person or agency however denominated who is charged by law with power to act for or responsibility for the person or property of a patient.

(9) ARTICLE IX. (a) No provision of this compact except sub. (5) applies to any person institutionalized while under sentence in a penal or correctional institution or while subject to trial on a criminal charge, or whose institutionalization is due to the commission of an offense for which, in the absence of mental illness or mental deficiency, said person would be subject to incarceration in a penal or correctional institution.

(b) To every extent possible, it is the policy of states party to this compact that no patient shall be placed or detained in any prison, jail or lockup, but such patient shall, with all expedition,

Electronic reproduction of 2009−10 Wis. Stats. database, current through 2011 Wis. Act 286.

be taken to a suitable institutional facility for mental illness or mental deficiency.

(10) ARTICLE X. (a) Each party state shall appoint a "compact administrator" who, on behalf of that state, shall act as general coordinator of activities under the compact in that state and who shall receive copies of all reports, correspondence and other documents relating to any patient processed under the compact by that state either in the capacity of sending or receiving state. The compact administrator or the duly designated representative of the compact administrator shall be the official with whom other party states shall deal in any matter relating to the compact or any patient processed thereunder.

(b) The compact administrators of the respective party states shall have power to promulgate reasonable rules and regulations to carry out more effectively the terms and provisions of this compact.

(11) ARTICLE XI. The duly constituted administrative authorities of any 2 or more party states may enter into supplementary agreements for the provision of any service or facility or for the maintenance of any institution on a joint or cooperative basis whenever the states concerned find that such agreements will improve services, facilities or institutional care and treatment in the fields of mental illness or mental deficiency. No such supplementary agreement shall be construed so as to relieve any party state of any obligation which it otherwise would have under other provisions of this compact.

(12) ARTICLE XII. This compact enters into full force and effect as to any state when enacted by it into law and such state shall thereafter be a party thereto with all states legally joining therein.

(13) ARTICLE XIII. (a) A state party to this compact may withdraw therefrom by enacting a statute repealing the same. Such withdrawal takes effect one year after notice thereof has been communicated officially and in writing to the governors and compact administrators of all other party states. However, the withdrawal of any state shall not change the status of any patient who has been sent to said state or sent out of said state pursuant to the provisions of the compact.

(b) Withdrawal from any agreement permitted by sub. (7) (b) as to costs or from any supplementary agreement made pursuant to sub. (11) shall be in accordance with the terms of such agreement.

(14) ARTICLE XIV. This compact shall be liberally construed so as to effectuate the purpose thereof. The provisions of this compact are severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state, or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact is held contrary to the constitution of any party state thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History: 1981 c. 390; 1983 a. 189; 1991 a. 316.

This section does not apply to individuals found not guilty of criminal charges by reason of mental disease or defect under s. 971.17. State v. Devore, 2004 WI App 86, 272 Wis. 2d 383, 679 N.W.2d 885, 03−2323.

While s. 51.15 (7) does not authorize contractual agreements with counties outside of Wisconsin, ss. 51.75 (11), 51.87 (3), and 66.30 (5) [now 66.0303] each contain legal mechanisms through which financial or other responsibility for care and treatment of individuals from such counties may be shared under certain specified circumstances. 78 Atty. Gen. 59.

51.76 Compact administrator. Pursuant to the interstate compact on mental health, the secretary shall be the compact administrator and, acting jointly with like officers of other party states, may promulgate rules to carry out more effectively the terms of the compact. The compact administrator shall cooperate with all departments, agencies and officers of and in the government of this state and its subdivisions in facilitating the proper administration of the compact or any supplementary agreement entered into by this state thereunder.

51.77 Transfer of patients. (1) In this section "relatives" means the patient's spouse, parents, grandparents, adult children, adult siblings, adult aunts, adult uncles and adult cousins, and any other relative with whom the patient has resided in the previous 10 years.

(2) Transfer of patients out of Wisconsin to another state under the interstate compact on mental health shall be upon recommendation of no less than 3 physicians licensed under ch. 448 appointed by the court of competent jurisdiction and shall be only in accord with the following requirements:

(a) That the transfer be requested by the patient's relatives or guardian or a person with whom the patient has resided for a substantial period on other than a commercial basis. This requirement does not preclude the compact administrator or the institution in which the patient is in residence from suggesting that relatives or the guardian request such transfer.

(b) That the compact administrator determine that the transfer of the patient is in the patient's best interest.

(c) That the patient have either interested relatives in the receiving state or a determinable interest in the receiving state.

(d) That the patient, guardian and relatives, as determined by the patient's records, whose addresses are known or can with reasonable diligence be ascertained, be notified.

(e) That none of the persons given notice under par. (d) object to the transfer of said patient within 30 days of receipt of such notice.

(f) That records of the intended transfer, including proof of service of notice under par. (d) be reviewed by the court assigned to exercise probate jurisdiction for the county in which the patient is confined or by any other court which a relative or guardian requests to do so.

(3) If the request for transfer of a patient is rejected for any of the reasons enumerated under sub. (2), the compact administrator shall notify all persons making the request as to why the request was rejected and of the patient's right to appeal the decision to a competent court.

(4) If the patient, guardian or any relative feels that the objections of other relatives or of the compact administrator raised under sub. (2) are not well−founded in preventing transfer, such person may appeal the decision not to transfer to a competent court having jurisdiction which shall determine, on the basis of evidence by the interested parties and psychiatrists, psychologists and social workers who are acquainted with the case, whether transfer is in the best interests of the patient. The requirements of sub. (2) (c) shall apply to this subsection.

(5) The determination of mental illness or developmental disability in proceedings in this state requires a finding of a court in accordance with the procedure contained in s. 51.20.

History: 1975 c. 430; 1977 c. 449; 1991 a. 316.

51.78 Supplementary agreements. The compact administrator may enter into supplementary agreements with appropriate officials of other states under s. 51.75 (7) and (11). If such supplementary agreements require or contemplate the use of any institution or facility of this state or county or require or contemplate the provision of any service by this state or county, no such agreement shall take effect until approved by the head of the department or agency under whose jurisdiction said institution or facility is operated or whose department or agency will be charged with the rendering of such service.

History: 1981 c. 390.

51.79 Transmittal of copies. Duly authorized copies of ss. 51.75 to 51.80 shall, upon its approval, be transmitted by the secretary of state to the governor of each state, the attorney general

Electronic reproduction of 2009−10 Wis. Stats. database, current through 2011 Wis. Act 286.

and the administrator of general services of the United States and the council of state governments.

History: 1979 c. 89.

51.80 Patients' rights. Nothing in the interstate compact on mental health shall be construed to abridge, diminish or in any way impair the rights or liberties of any patient affected by the compact.

51.81 Uniform extradition of persons of unsound mind act; definitions. The terms "flight" and "fled" as used in ss. 51.81 to 51.85 shall be construed to mean any voluntary or involuntary departure from the jurisdiction of the court where the proceedings hereinafter mentioned may have been instituted and are still pending with the effect of avoiding, impeding or delaying the action of the court in which such proceedings may have been instituted or be pending, or any such departure from the state where the person demanded then was, if the person then was under detention by law as a person of unsound mind and subject to detention. The word "state" wherever used in ss. 51.81 to 51.85 shall include states, territories, districts and insular and other possessions of the United States. As applied to a request to return any person within the purview of ss. 51.81 to 51.85 to or from the District of Columbia, the words, "executive authority," "governor" and "chief magistrate," respectively, shall include a justice of the supreme court of the District of Columbia and other authority.

History: 1971 c. 40 s. 93; 1991 a. 316.

51.82 Delivery of certain nonresidents. A person alleged to be of unsound mind found in this state, who has fled from another state, in which at the time of the flight: (a) The person was under detention by law in a hospital, asylum or other institution for the insane as a person of unsound mind; or (b) the person had been theretofore determined by legal proceedings to be of unsound mind, the finding being unreversed and in full force and effect, and the control of his or her person having been acquired by a court of competent jurisdiction of the state from which the person fled; or (c) the person was subject to detention in that state, being then the person's legal domicile (personal service of process having been made) based on legal proceedings pending there to have the person declared of unsound mind, shall on demand of the executive authority of the state from which the person fled, be delivered for removal thereto.

History: 1975 c. 430; 1991 a. 316.

51.83 Authentication of demand; discharge; costs. (1) Whenever the executive authority of any state demands of the executive authority of this state, any fugitive within the purview of s. 51.82 and produces a copy of the commitment, decree or other judicial process and proceedings, certified as authentic by the governor or chief magistrate of the state whence the person so charged has fled with an affidavit made before a proper officer showing the person to be such a fugitive, it is the duty of the executive authority of this state to cause the fugitive to be apprehended and secured, if found in this state, and to cause immediate notice of the apprehension to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to the agent when the agent appears.

(2) If no such agent appears within 30 days from the time of the apprehension, the fugitive may be discharged. All costs and expenses incurred in the apprehending, securing, maintaining and transmitting such fugitive to the state making such demand, shall be paid by such state. Any agent so appointed who receives custody of the fugitive shall be empowered to transmit the fugitive to the state from which the fugitive has fled. The executive authority of this state is hereby vested with the power, on the application of any person interested, to demand the return to this state of any fugitive within the purview of ss. 51.81 to 51.85.

History: 1971 c. 40 s. 93; 1991 a. 316.

51.84 Limitation of time to commence proceeding. Any proceedings under ss. 51.81 to 51.85 shall be begun within one year after the flight referred to in ss. 51.81 to 51.85.

History: 1971 c. 40 s. 93; 1981 c. 314 s. 146.

The limitation period commences on the date the committing state discovers the patient in the asylum state. State ex rel. Melentowich v. Klink, 108 Wis. 2d 374, 321 N.W.2d 272 (1982).

51.85 Interpretation. Sections 51.81 to 51.85 shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: 1971 c. 40 s. 93.

51.87 Interstate contracts for services under this chapter. (1) PURPOSE AND POLICY. The purpose of this section is to enable appropriate treatment to be provided to individuals, across state lines from the individuals' state of residence, in qualified facilities that are closer to the homes of the individuals than are facilities available in their home states.

(2) DEFINITIONS. In this section:

(a) "Receiving agency" means a public or private agency or county department which, under this section, provides treatment to individuals from a state other than the state in which the agency or county department is located.

(b) "Receiving state" means the state in which a receiving agency is located.

(c) "Sending agency" means a public or private agency located in a state which sends an individual to another state for treatment under this section.

(d) "Sending state" means the state in which a sending agency is located.

(3) PURCHASE OF SERVICES. A county department under s. 46.23, 51.42 or 51.437 may contract as provided under this section with public or private agencies in states bordering on Wisconsin to secure services under this chapter for persons who receive services through the county department, except that services may not be secured for persons committed under s. 971.14 or 971.17. Section 46.036 (1) to (6) applies to contracts entered into under this section by county departments under s. 46.23, 51.42 or 51.437.

(4) PROVISION OF SERVICES. A county department under s. 46.23, 51.42 or 51.437 may contract as provided under this section with public or private agencies in a state bordering on Wisconsin to provide services under this chapter for residents of the bordering state in approved treatment facilities in this state, except that services may not be provided for residents of the bordering state who are involved in criminal proceedings.

(5) CONTRACT APPROVAL. A contract under this section may not be validly executed until the department has reviewed and approved the provisions of the contract, determined that the receiving agency provides services in accordance with the standards of this state and the secretary has certified that the receiving state's laws governing patient rights are substantially similar to those of this state.

(6) RESIDENCE NOT ESTABLISHED. No person establishes legal residence in the state where the receiving agency is located while the person is receiving services pursuant to a contract under this section.

(7) TREATMENT RECORDS. Section 51.30 applies to treatment records of an individual receiving services pursuant to a contract under this section through a receiving agency in this state, except that the sending agency has the same right of access to the treatment records of the individual as provided under s. 51.30 for a county department under s. 51.42 or 51.437.

(8) INVOLUNTARY COMMITMENTS. An individual who is detained, committed or placed on an involuntary basis under s. 51.15, 51.20 or 51.45 or ch. 55 may be confined and treated in another state pursuant to a contract under this section. An individual who is detained, committed or placed under the civil law of a state bordering on Wisconsin may be confined and treated in this

Electronic reproduction of 2009−10 Wis. Stats. database, current through 2011 Wis. Act 286.

state pursuant to a contract under this section. Court orders valid under the law of the sending state are granted recognition and reciprocity in the receiving state for individuals covered by a contract under this section to the extent that the court orders relate to confinement for treatment or care of a mental disability. Such court orders are not subject to legal challenge in the courts of the receiving state. Persons who are detained, committed or placed under the law of a sending state and who are transferred to a receiving state under this section continue to be in the legal custody of the authority responsible for them under the law of the sending state. Except in emergencies, those persons may not be transferred, removed or furloughed from a facility of the receiving agency without the specific approval of the authority responsible for them under the law of the sending state.

(9) APPLICABLE LAWS. While in the receiving state pursuant to a contract under this section, an individual shall be subject to all of the provisions of law and regulations applicable to persons detained, committed or placed pursuant to the corresponding laws of the receiving state, except those laws and regulations of the receiving state relating to length of confinement, reexaminations and extensions of confinement and except as otherwise provided by this section. The laws and regulations of the sending state relating to length of confinement, reexaminations and extensions of confinement shall apply. No person may be sent to another state pursuant to a contract under this section until the receiving state has enacted a law recognizing the validity and applicability of this state's laws as provided in this section.

(10) VOLUNTARY PLACEMENTS. If an individual receiving treatment on a voluntary basis pursuant to a contract under this section requests discharge, the receiving agency shall immediately notify the sending agency and shall return the individual to the sending state as directed by the sending agency within 48 hours after the request, excluding Saturdays, Sundays and legal holidays. The sending agency shall immediately upon return of the individual either arrange for the discharge of the individual or detain the individual pursuant to the emergency detention laws of the sending state.

(11) ESCAPED INDIVIDUALS. If an individual receiving services pursuant to a contract under this section escapes from the receiving agency and the individual at the time of the escape is subject to involuntary confinement under the law of the sending state, the receiving agency shall use all reasonable means to recapture the escapee. The receiving agency shall immediately report the escape to the sending agency. The receiving state has the primary responsibility for, and the authority to direct, the pursuit, retaking and prosecution of escaped persons within its borders and is liable for the cost of such action to the extent that it would be liable for costs if its own resident escaped.

(12) TRANSFERS BETWEEN FACILITIES. An individual may be transferred between facilities of the receiving state if transfers are permitted by the contract under this section providing for the individual's care.

(13) REQUIRED CONTRACT PROVISIONS. All contracts under this section shall do all of the following:

(a) Establish the responsibility for the costs of all services to be provided under the contract.

(b) Establish the responsibility for the transportation of clients to and from receiving facilities.

(c) Provide for reports by the receiving agency to the sending agency on the condition of each client covered by the contract.

(d) Provide for arbitration of disputes arising out of the provisions of the contract which cannot be settled through discussion between the contracting parties and specify how arbitrators will be chosen.

(e) Include provisions ensuring the nondiscriminatory treatment, as required by law, of employees, clients and applicants for employment and services.

(f) Establish the responsibility for providing legal representation for clients in legal proceedings involving the legality of confinement and the conditions of confinement.

(g) Establish the responsibility for providing legal representation for employees of the contracting parties in legal proceedings initiated by persons receiving treatment pursuant to the contract.

(h) Include provisions concerning the length of the contract and the means by which the contract can be terminated.

(i) Establish the right of qualified employees and representatives of the sending agency and sending state to inspect, at all reasonable times, the records of the receiving agency and its treatment facilities to determine if appropriate standards of care are met for clients receiving services under the contract.

(j) Require the sending agency to provide the receiving agency with copies of all relevant legal documents authorizing confinement of persons who are confined pursuant to law of the sending state and receiving services pursuant to a contract under this section.

(k) Require individuals who are seeking treatment on a voluntary basis to agree in writing to be returned to the sending state upon making a request for discharge as provided in sub. (10) and require an agent or employee of the sending agency to certify that the individual understands that agreement.

(L) Establish the responsibility for securing a reexamination for an individual and for extending an individual's period of confinement.

(m) Include provisions specifying when a receiving facility can refuse to admit or retain an individual.

(n) Specify the circumstances under which individuals will be permitted home visits and granted passes to leave the facility.

History: 1983 a. 365; 1985 a. 176, 332.

While s. 51.15 (7) does not authorize contractual agreements with counties outside of Wisconsin, ss. 51.75 (11), 51.87 (3), and 66.30 (5) [now 66.0303] each contain legal mechanisms through which financial or other responsibility for care and treatment of individuals from such counties may be shared under certain specified circumstances. 78 Atty. Gen. 59.

51.90 Antidiscrimination. No employee, prospective employee, patient or resident of an approved treatment facility, or consumer of services provided under this chapter may be discriminated against because of age, race, creed, color, sex or handicap.

History: 1975 c. 430.

51.91 Supplemental aid. (1) DECLARATION OF POLICY. The legislature recognizes that mental health is a matter of statewide and county concern and that the protection and improvement of health are governmental functions. It is the intent of the legislature, therefore, to encourage and assist counties in the construction of community mental health facilities, and public medical institutions as defined by rule of the department.

(2) ELIGIBILITY. (a) Any county which qualifies for additional state aid under s. 51.26, 1971 stats., and has obtained approval for the construction of mental health facilities pursuant to s. 46.17 may apply for the financial assistance authorized by this section if such county has, at the time of application for assistance, an existing obligation to pay interest on loans for the construction of mental health facilities approved pursuant to s. 46.17.

(b) Any county may apply for the financial assistance authorized by this section if such county has, at the time of application for assistance, an existing obligation to pay interest on loans for the construction of public medical institutions as defined by rule of the department.

(c) Any county may apply for the financial assistance authorized by this section if such county has, at the time of application for assistance, an existing obligation to pay interest on loans for the construction of mental health facilities as defined by rule of the department.

(d) No county may claim aid under this section on any single obligation for more than 20 years.

Electronic reproduction of 2009−10 Wis. Stats. database, current through 2011 Wis. Act 286.

(e) Termination of eligibility for aid under s. 51.26, 1971 stats., shall terminate eligibility for aid for the construction of mental health facilities, and failure to meet the requirements established for public medical institutions by rule of the department shall terminate eligibility for aid for the construction of public medical institutions. Failure to meet the requirements for mental health facilities established by rule of the department shall terminate eligibility for aid for the construction of mental health facilities.

(f) Mental health facilities shall include services required for the prevention, diagnosis, treatment and rehabilitation of the mentally ill, as established by rule of the department.

(3) LIMITATION OF AID. (a) Aid under this section shall be paid only on interest accruing after January 1, 1967, or after the date construction begins, whichever is later.

(b) Until June 30, 1970, such aid shall be at the rate of 60% of the interest obligations eligible under this section or that amount of such obligation as is equal to the percentage rate of participation of the state set forth in s. 49.52 (2), 1971 stats., whichever is higher. The contribution of the state for such interest accruing in each fiscal year shall be controlled by the percentage rate of participation under s. 49.52 (2), 1971 stats., on January 1 of that fiscal year. Beginning July 1, 1970, such aid shall be at the rate of 100%.

(c) This section applies only to construction projects approved for state interest aid by the department of health services prior to June 30, 1973.

(4) APPLICATION FOR AID. Application for aid under this section shall be filed with the department as prescribed by it. Such application shall include evidence of the existence of the indebtedness on which the county is obligated to pay interest. The department may by audit or investigation satisfy itself as to the amount and validity of the claim and, if satisfied, shall grant the aid provided by this section. Payment of aid shall be made to the county treasurer.

History: 1971 c. 125, 164, 211, 215; 1975 c. 430 s. 23; Stats. 1975 s. 51.91; 1993 a. 213; 1995 a. 27 s. 9126 (19); 2007 a. 20 s. 9121 (6) (a).

51.95 Short title. This chapter shall be known as the "State Alcohol, Drug Abuse, Developmental Disabilities and Mental Health Act".

History: 1975 c. 430 s. 59; Stats. 1975 s. 51.95; 1985 a. 264.

2009−10 Wis. Stats. database current through 2011 Wis. Act 286. Includes all Legislative Acts and all Supreme Court Orders enacted before Oct. 1, 2012. Statutory changes effective on or prior to Oct. 1, 2012 are printed as currently in effect. Changes effective after Oct. 1, 2012 are designated by NOTES. See Are the Statutes on this Website Official? (10−3−12)