

**2003 DRAFTING REQUEST**

**Bill**

Received: **09/20/2002**

Received By: **dkennedy**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget 267-9546**

By/Representing: **Jablonsky**

This file may be shown to any legislator: **NO**

Drafter: **dkennedy**

May Contact:

Addl. Drafters:

Subject: **Mental Health - protect place**

Extra Copies:

Submit via email: **NO**

**Pre Topic:**

DOA:.....Jablonsky - BB0035

**Topic:**

Transfer of residents among centers for the developmentally disabled

**Instructions:**

See Attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?				_____			S&L
/1	dkennedy 10/08/2002	csicilia 10/08/2002	pgreensl 10/08/2002	_____	lkunkel 10/08/2002		S&L
/2	dkennedy 01/23/2003	csicilia 01/23/2003	pgreensl 01/23/2003	_____	lemery 01/23/2003		S&L
/3	dkennedy 02/06/2003	kfollett 02/06/2003	pgreensl 02/06/2003	_____	lemery 02/06/2003		

FE Sent For:

**<END>**

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13 kjf  
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See Attached

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/1	dkennedy 10/08/2002	csicilia 10/08/2002	pgreensl 10/08/2002		lkunkel 10/08/2002		

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Handwritten notes and signatures in the Drafting History table, including dates like 10/8 and 10/5, and the word <ENDS>.

# DHFS

# DRAFT

*Department of Health and Family Services*  
**2003-2005 Biennial Budget Statutory Language Request**  
July 30, 2002

## Transfer of Residents Among Centers

### Current Language

s.51.35(1)(b)

### Proposed Change

Amend s.51.35 (1)(b) to allow the Department to transfer residents among the Centers for the Developmentally Disabled without county approval. (See attached.)

### Effect of the Change

The Department will be able to transfer individuals who are currently residing in a DD Center to another Center when it is determined that the transfer is appropriate.

### Rationale for the Change

The Department administers three Centers for the Developmentally Disabled: Northern, Southern and Central Centers. Transfer of residents among the Centers is prohibited by state statute unless the resident's county of residency approves the transfer. The Department has been downsizing the Centers for the last 20 years and, as a result, the populations at the facilities are declining. As residents are placed in the community, the daily rate at a Center increases, because a smaller number of residents must still support certain fixed costs. As units get smaller, it may become more difficult to provide appropriate services to residents with special needs.

To achieve some economies of scale and to ensure that residents are receiving appropriate treatment, it may become necessary to transfer patients among Centers. The decision to transfer a patient should be made by the Department, since it is responsible for the administration of the Centers.

**Desired Effective Date:** Upon Passage of the Budget Bill  
**Agency:** DHFS  
**Agency Contact:** Ellen Hadidian  
**Phone:** 266-8155

# DRAFT

Section 51.35(1)(b) is amended to read:

In addition to the requirements in par.(a), a transfer of a patient in a mental health institute ~~or~~ ~~center for the developmentally disabled~~ 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 facility, if any. County department approval is not required for the transfer of a resident from one center for the developmentally disabled to another.



SOON - 2nd edit 10/08  
State of Wisconsin  
2003 - 2004 LEGISLATURE

LRB-0196/1

DAK: f:...

cjs

D-NOTE

DOA:.....Jablonsky – BB0035 Transfer of residents among centers for the developmentally disabled

FOR 2003-05 BUDGET — NOT READY FOR INTRODUCTION

Do NOT GEN

1 AN ACT ...; relating to: transfer of residents among centers for the  
2 developmentally disabled.

**Analysis by the Legislative Reference Bureau**  
**HEALTH AND HUMAN SERVICES**

**MENTAL ILLNESS AND DEVELOPMENTAL DISABILITIES**

Under current law, ~~the Department of Health and Family Services (DHFS)~~ or a county department of community programs or developmental disabilities services may transfer any patient or resident of a treatment facility under departmental or county supervision to another treatment facility or into the community if the transfer is consistent with reasonable medical and clinical judgment. However, such a DHFS transfer of a patient in a mental health institute or center for the developmentally disabled is subject to approval of the appropriate county department to which the patient was committed or through which the patient was admitted. In addition, a county department may transfer a patient under the age of 22 years only to the Central Center for the Developmentally Disabled unless a transfer to the Northern Center for the Developmentally Disabled or the Southern Center for the Developmentally Disabled is authorized by DHFS.

This bill eliminates the restrictions on transfer of patients in one state center for the developmentally disabled to another state center for the developmentally disabled.



For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. 51.35 (1) (a) of the statutes is amended to read:

51.35 (1) (a) ~~The~~ <sup>✓</sup> Subject to pars. (b) and (d), <sup>✓</sup> 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 such the transfer is consistent with reasonable medical and clinical judgment and, consistent with s. 51.22 (5). ~~The transfer shall be made, and~~ in accordance with par. (e). Terms and conditions ~~which 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 such terms and conditions of the transfer, including possible transfer back to a ~~facility which treatment facility that~~ imposes a greater restriction on personal freedom of the patient or resident.

the

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.

SECTION 2. 51.35 (1) (b) of the statutes is amended to read:

1           51.35 (1) (b) ~~In addition to the requirements in par. (a), a~~ Except as provided  
 2           ~~in par. (c) and (d), a transfer of a patient in a mental health institute or center for the~~  
 3           ~~developmentally disabled~~ by the department is subject to the approval of the  
 4           appropriate county department under ss. 51.42 and 51.437 to which the patient was  
 5           committed or through which the resident or patient was admitted to the facility, if  
 6           any mental health institute.

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.

7           **SECTION 3.** 51.35 (1) (bm) of the statutes is repealed.

8           **SECTION 4.** 51.35 (1) (c) of the statutes is amended to read:

9           51.35 (1) (c) The department may, without approval of and without first  
 10          notifying the county department under s. 51.42 or 51.437 ~~and notwithstanding par.~~  
 11          ~~(d) 3.~~, transfer any patient from a treatment facility to another treatment facility  
 12          when the condition of the patient requires such transfer without delay. The  
 13          department shall notify the appropriate county department under s. 51.42 or 51.437  
 14          that the transfer has been made. Any patient so transferred may be returned to the  
 15          treatment facility from which the transfer was made, upon orders from the  
 16          department or the county department under s. 51.42 or 51.437, when such return  
 17          would be in the best interests of the patient.

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.

18          **SECTION 5.** 51.35 (1) (d) of the statutes is amended to read:

19          51.35 (1) (d) 1. The Subject to subds. 2. and 3., the department may, without  
 20          approval of the appropriate county department under s. 51.42 or 51.437, transfer any  
 21          patient from a state treatment facility or other inpatient facility to an approved  
 22          treatment facility which is less restrictive of the patient's personal freedom.

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

8           3. A transfer of a patient, made under authority of this subsection ~~subsection~~ paragraph,  
 9 may be made only after the department has notified the county department under  
 10 s. 51.42 or 51.437 of its intent to transfer a patient in accordance with this subsection.  
 11 The patient's guardian, if any, or if a minor his or her parent or person in the place  
 12 of a parent shall be notified.

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.

(END)

D-NOTE

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0196/1dn

DAK: /.....

gjs

To Sue Jablonsky:

In this draft, I have made the following fairly extensive changes to s. 51.35 (1), to accommodate the DHFS request and to make the subsection more logical:

1. I specifically limited s. 51.35 (1) (a) by s. 51.35 (1) (b) and (d). Under current law, reading s. 51.35 (1) (a) alone gives no indication that these limitations exist. ✓

2. I also amended s. 51.35 (1) (a) to modify "facility," wherever used, by "treatment." The term "facility," by itself, is not defined for the purpose of ch. 51, whereas "treatment facility" is defined in s. 51.01 (19) in extremely broad terms, which I assumed would be the goal for this statute. ✓

3. For s. 51.35 (1) (b), I struck the requirement that DHFS receive county departmental approval before transferring a resident of a state center for the developmentally disabled, in accordance with your request. However, I did not add the proposed language that affirmatively states that county approval is not required for such transfers; it is unnecessary. As amended, then, the paragraph requires approval by a county department for the department to transfer a patient in a mental health institute; therefore, I limited s. 51.35 (1) (b) by s. 51.35 (1) (c) and (d), which specify circumstances under which county departmental approval for such a transfer of a mental health institute patient is *not* required. In addition, would it be important to specify to what kind of a facility the mental health institute patient is being transferred? Would the patient be being transferred to the community? The statute is unclear on both these points. ✓

4. I repealed s. 51.35 (1) (bm), since the DHFS rationale for its request indicates that the intent is to be able freely to transfer patients among centers for the developmentally disabled; also, s. 51.35 (1) (bm) seems to make little sense; it appears, among other things, to limit departmental transfers unless the department authorizes the transfer. ✓

5. In s. 51.35 (1) (c), I struck the language referring to s. 51.35 (1) (d) 3., because I do not believe that the language of s. 51.35 (1) (d) is intended to apply outside of that paragraph (see Drafter's Note #6., below); instead, I substituted "and without first notifying". Should the last sentence of s. 51.35 (1) (d) also be amended into the second sentence of s. 51.35 (1) (d)? (3.) ← close paren

6. Because s. 51.35 (1) (d) addresses only a specialized circumstance, I believe that the language of s. 51.35 (1) (d) 2. ("under this subsection") and s. 51.35 (1) (d) 3. ("under

LPS: fix quotation mark

LPS: fix quotation mark

authority of this subsection”) is incorrect and have amended the language to refer to “this paragraph” instead, in both instances. I also limited s. 51.35 (1) (d) 1. by the language in s. 51.35 (1) (d) 2. and 3., for the same reason specified in Drafter’s Note #1. Please review these changes carefully and let me know if they are acceptable. I would suggest that a review by Paul Harris of DHFS would also be useful.

Debora A. Kennedy  
Managing Attorney  
Phone: (608) 266-0137  
E-mail: debora.kennedy@legis.state.wi.us

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0196/1dn  
DAK:cjs:pg

October 8, 2002

To Sue Jablonsky:

In this draft, I have made the following fairly extensive changes to s. 51.35 (1), to accommodate the DHFS request and to make the subsection more logical:

1. I specifically limited s. 51.35 (1) (a) by s. 51.35 (1) (b) and (d). Under current law, reading s. 51.35 (1) (a) alone gives no indication that these limitations exist.

2. I also amended s. 51.35 (1) (a) to modify "facility," wherever used, by "treatment." The term "facility," by itself, is not defined for the purpose of ch. 51, whereas "treatment facility" is defined in s. 51.01 (19) in extremely broad terms, which I assumed would be the goal for this statute.

3. For s. 51.35 (1) (b), I struck the requirement that DHFS receive county departmental approval before transferring a resident of a state center for the developmentally disabled, in accordance with your request. However, I did not add the proposed language that affirmatively states that county approval is not required for such transfers; it is unnecessary. As amended, then, the paragraph requires approval by a county department for the department to transfer a patient in a mental health institute; therefore, I limited s. 51.35 (1) (b) by s. 51.35 (1) (c) and (d), which specify circumstances under which county departmental approval for such a transfer of a mental health institute patient is *not* required. In addition, would it be important to specify to what kind of a facility the mental health institute patient is being transferred? Would the patient be being transferred to the community? The statute is unclear on both these points.

4. I repealed s. 51.35 (1) (bm), since the DHFS rationale for its request indicates that the intent is to be able freely to transfer patients among centers for the developmentally disabled; also, s. 51.35 (1) (bm) seems to make little sense; it appears, among other things, to limit departmental transfers unless the department authorizes the transfer.

5. In s. 51.35 (1) (c), I struck the language referring to s. 51.35 (1) (d) 3., because I do not believe that the language of s. 51.35 (1) (d) is intended to apply outside of that paragraph (see Drafter's Note #6., below); instead, I substituted "and without first notifying." Should the last sentence of s. 51.35 (1) (d) 3. also be amended into the second sentence of s. 51.35 (1) (c)?

6. Because s. 51.35 (1) (d) addresses only a specialized circumstance, I believe that the language of s. 51.35 (1) (d) 2. ("under this subsection") and s. 51.35 (1) (d) 3. ("under

authority of this subsection”) is incorrect and have amended the language to refer to “this paragraph” instead, in both instances. I also limited s. 51.35 (1) (d) 1. by the language in s. 51.35 (1) (d) 2. and 3., for the same reason specified in Drafter’s Note #1. Please review these changes carefully and let me know if they are acceptable. I would suggest that a review by Paul Harris of DHFS would also be useful.

Debora A. Kennedy  
Managing Attorney  
Phone: (608) 266-0137  
E-mail: [debora.kennedy@legis.state.wi.us](mailto:debora.kennedy@legis.state.wi.us)

**Kennedy, Debora**

---

**From:** Jablonsky, Sue  
**Sent:** Thursday, January 23, 2003 9:29 AM  
**To:** Kennedy, Debora  
**Subject:** RE: Proposed language for change to s. 51.35

LRB 0196/1-yes please. I apologize for being so late on stat language but it is insane over here. I took the health stuff home last night and I'll call you later today with some changes and an update on what's in or not.

-----Original Message-----

**From:** Kennedy, Debora  
**Sent:** Thursday, January 23, 2003 8:57 AM  
**To:** Jablonsky, Sue  
**Subject:** RE: Proposed language for change to s. 51.35

What draft is this? Do you want me to draft these changes?

-----Original Message-----

**From:** Jablonsky, Sue  
**Sent:** Thursday, January 23, 2003 8:51 AM  
**To:** Kennedy, Debora  
**Subject:** FW: Proposed language for change to s. 51.35

-----Original Message-----

**From:** Bailey, Kevin  
**Sent:** Wednesday, January 22, 2003 4:15 PM  
**To:** Jablonsky, Sue  
**Cc:** Flood, Laura; Green, Mary; Hadidian, Ellen; Stier, Dan  
**Subject:** Proposed language for change to s. 51.35

Sue,

Laura Flood asked that I review the draft from the LRB for the amendments to Wis. Stats. s. 51.35, concerning DHFS's ability to transfer residents between our Centers for the Developmentally Disabled. I have the following comments:

1. Section 1. Starting at line 6,

treatment facility into the community if such the transfer is consistent with reasonable medical and clinical judgment and , consistent with s. 51.22 (5). The transfer shall be made, and in accordance with par. (e).

The addition of "treatment" to qualify facility, and the change from "such" to "the" are both acceptable changes, but I recommend leaving the sentence as it otherwise is currently in the statute. I would then recommend deleting the entire next sentence, rather than just the first portion.

The transfer shall be made in accordance with par. (e).

The reference to paragraph (e) is mis-placed, and now would be a good time to remove it. Paragraph (a), the subject paragraph, deals with transfers between facilities or into the community; paragraph (e) is only applicable to transfers from a less restrictive setting to a more restrictive setting. The placement of this reference to paragraph (e) within paragraph (a) has led to confusion and is not otherwise necessary.



- ✓ An alternative to deleting the sentence would be to add ", where applicable." to the end of the sentence to help clarify that the provisions of paragraph (e) only apply to transfers into a more restrictive setting.
- ✓ 2. Section 2. In the last sentence, it is proposed to add "resident or" to the sentence. With the deletion of the reference to centers for the developmentally disabled from the paragraph, the addition of "resident" is inaccurate; all admittees in the mental health institutes are "patients", not residents, and therefore the additional language is not necessary.
- ✓ 3. Section 3. The proposed language recommends deleting s. 51.35 (1)(bm). The paragraph should not be deleted, but only slightly changed, with the additional change of patient to "resident".

(bm) Notwithstanding par. (b), t Transfer of a patient resident under the age of 22 years to a center for the developmentally disabled may be made only to the central center for the developmentally disabled unless the department authorizes the transfer of the patient resident to the northern or southern center for the developmentally disabled.

This paragraph remains necessary, as county departments have authority under s. 51.35 to make transfers between treatment facilities for persons under the county's care and control, pursuant to par. (a). This paragraph (bm) makes it clear that the department decides the appropriate facility for the placement of a developmentally disabled person age 21 or younger, and this is necessary because of the educational requirements that this population has.

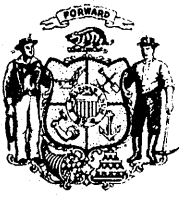
*I added  
"by a  
co dept"  
to make  
(bm) make  
sense*

The amendment of par. (b), in removing the reference to the centers for the developmentally disabled, makes the "Notwithstanding" clause in this paragraph unnecessary, and therefore it should be deleted. The change from "patient" to "resident" is for consistency, as people admitted to our centers are usually referred to as residents rather than patients.

- ✓ *file as  
draft* 4. Section 5. Just a comment/question: If the term "subsection" is changed to "paragraph" in 2. and 3., should the abbreviation in the first sentence of the first paragraph be "subds." or "subpar."?

I have discussed this with Paul Harris from this office, and he is in agreement with my comments.

Please let me know if I can be of any further assistance.



D-NOTE

DOA:.....Jablonsky - BB0035 Transfer of residents among centers for the developmentally disabled

FOR 2003-05 BUDGET -- NOT READY FOR INTRODUCTION

Do NOT Gen

1 AN ACT ...; relating to: ~~transfer of residents among centers for the~~  
2 ~~developmentally disabled.~~ the budget

**Analysis by the Legislative Reference Bureau**  
**HEALTH AND HUMAN SERVICES**  
**MENTAL ILLNESS AND DEVELOPMENTAL DISABILITIES**

(county department)

Under current law, DHFS or a county department of community programs or developmental disabilities services, may transfer any patient or resident of a treatment facility under departmental or county supervision to another treatment facility or into the community if the transfer is consistent with reasonable medical and clinical judgment. However, such a DHFS transfer of a patient in a mental health institute or center for the developmentally disabled is subject to approval of the appropriate county department to which the patient was committed or through which the patient was admitted. In addition, a county department may transfer a patient under the age of 22 years only to the Central Center for the Developmentally Disabled unless a transfer to the Northern Center for the Developmentally Disabled or the Southern Center for the Developmentally Disabled is authorized by DHFS.

a resident in a

This bill eliminates the ~~restrictions on~~ transfer of ~~patients~~ in one state center for the developmentally disabled to another state center for the developmentally disabled. or to the community by DHFS

requirement for county departmental approval of

residents

if the transfer results in a greater restriction of personal freedom for the patient or residents ✓

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           **SECTION 1.** 51.35 (1) (a) of the statutes is amended to read:

2           51.35 (1) (a) ~~The Subject to pars. (b) and (d), the~~ department or the county  
3 department under s. 51.42 or 51.437 may transfer any patient or resident who is  
4 committed to it, or who is admitted to a treatment facility under its supervision or  
5 operating under an agreement with it, between treatment facilities or from a  
6 treatment facility into the community if such the transfer is consistent with  
7 reasonable medical and clinical judgment ~~and~~, consistent with s. 51.22 (5). ~~The~~  
8 ~~transfer shall be made, and~~ in accordance with par. (e). Terms and conditions ~~which~~  
9 that will benefit the patient or resident may be imposed as part of a transfer to a less  
10 restrictive treatment alternative. A patient or resident who is committed to the  
11 department or a county department under s. 51.42 or 51.437 may be required to take  
12 medications and receive treatment, subject to the right of the patient or resident to  
13 refuse medication and treatment under s. 51.61 (1) (g) and (h), through a community  
14 support program as a term or condition of a transfer. The patient or resident shall  
15 be informed at the time of transfer of the consequences of violating ~~such the~~ terms  
16 and conditions of the transfer, including possible transfer back to a ~~facility which~~  
17 treatment facility that imposes a greater restriction on personal freedom of the  
18 patient or resident.

19           **SECTION 2.** 51.35 (1) (b) of the statutes is amended to read:

20           51.35 (1) (b) ~~In addition to the requirements in par. (a), a~~ Except as provided  
21 in pars. (c) and (d), a transfer of a patient in a mental health institute ~~or center for~~

1 the developmentally disabled by the department is subject to the approval of the  
2 appropriate county department under ss. 51.42 and 51.437 to which the patient was  
3 committed or through which the ~~patient~~ patient was admitted to the facility, if  
4 any mental health institute.

INSERT  
3-5

~~SECTION 3. 51.35 (1) (b) of the statutes is repeated.~~

SECTION 4. 51.35 (1) (c) of the statutes is amended to read:

51.35 (1) (c) The department may, without approval of and without first  
notifying the county department under s. 51.42 or 51.437 and notwithstanding par.  
(d) 3., 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 such return  
would be in the best interests of the patient.

the

SECTION 5. 51.35 (1) (d) of the statutes is amended to read:

51.35 (1) (d) 1. The Subject to subds. 2. and 3., 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 ~~subsection~~ 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 such the county department  
has acted in an arbitrary or capricious manner to prevent the transfer of the patient

1 out of the state treatment facility or other inpatient facility contrary to medical and  
2 clinical judgment.

3 3. A transfer of a patient, made under authority of this ~~subsection~~ paragraph,  
4 may be made only after the department has notified the county department under  
5 s. 51.42 or 51.437 of its intent to transfer a patient in accordance with this subsection.  
6 The patient's guardian, if any, or if a minor his or her parent or person in the place  
7 of a parent shall be notified.

8 (END)

2003-2004 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-0196/2ins  
DAK:cjs:pg

INSERT 3-5 ✓

1           **SECTION 1.** 51.35 (1) (bm) of the statutes is amended to read:  
2           51.35 (1) (bm) ~~Notwithstanding par. (b), transfer~~ Transfer of a patient resident  
3           under the age of 22 years by a county department to a center for the developmentally  
4           disabled may be made only to the central center for the developmentally disabled  
5           unless the department authorizes the transfer of the ~~patient resident~~ patient resident to the northern  
6           or southern center for the developmentally disabled.

**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.

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0196/2dn  
DAK:cjs:pg

To Sue Jablonsky:

In response to Kevin Bailey's comments:

1. In s. 51.35 (1) (a), stats., I retained reference to s. 51.35 (1) (e), but added that that paragraph only be considered if the transfer results in a greater restriction of personal freedom for the patient or resident. ✓
2. I restored s. 51.35 (1) (bm), stats., and referred to a "resident," as requested; however, if there are instances in which a county department would transfer a patient of a treatment facility who is under the age of 22 years to a center for the developmentally disabled, the term "patient" should be restored. ✓
3. With respect to Comment #5, s. 52.35 (1) (d) 1., 2., and 3., stats., are correctly drafted; s. 51.35 (1) (d), stats., as a whole, is a paragraph, whereas s. 51.35 (1) (d) 1., 2., or 3., stats., is a subdivision—I hope that answers his question. ✓

Note that the overall effect of this draft, because of the use of the term "treatment facility" in s. 51.35 (1) (a), stats., and the changes to s. 51.35 (1) (b), stats., is to allow DHFS to transfer residents from a state center for the developmentally disabled to another state center or to the community, without county departmental approval. ✓

# Note also that the change in s. 51.35 (1) (d) 3., stats., from "subsection" to "paragraph" means that DHFS need only just notify a

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county department of intent to transfer under s. 51.35 (1) (d), stats. Thus, if, for instance, DHFS intends to transfer a person under the authority of s. 51.35 (1) (a), stats., DHFS would not need to get the county department's approval or to notify the county department. Is that what you want? ✓

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0196/2dn  
DAK:cjs:pg

January 23, 2003

To Sue Jablonsky:

In response to Kevin Bailey's comments:

1. In s. 51.35 (1) (a), stats., I retained reference to s. 51.35 (1) (e), stats., but added that that paragraph only be considered if the transfer results in a greater restriction of personal freedom for the patient or resident.
2. I restored s. 51.35 (1) (bm), stats., and referred to a "resident," as requested; however, if there are instances in which a county department would transfer a patient of a treatment facility who is under the age of 22 years to a center for the developmentally disabled, the term "patient" should be restored.
3. With respect to Comment #5, s. 52.35 (1) (d) 1., 2., and 3., stats., are correctly drafted; s. 51.35 (1) (d), stats., as a whole, is a paragraph, whereas s. 51.35 (1) (d) 1., 2., or 3., stats., is a subdivision — I hope that answers his question.

Note that the overall effect of this draft, because of the use of the term "treatment facility" in s. 51.35 (1) (a), stats., and the changes to s. 51.35 (1) (b), stats., is to allow DHFS to transfer residents from a state center for the developmentally disabled to another state center *or* to the community, without county departmental approval.

Note also that the change in s. 51.35 (1) (d) 3., stats., from "subsection" to "paragraph" means that DHFS need only first notify a county department of intent to transfer under s. 51.35 (1) (d), stats. Thus, if, for instance, DHFS intends to transfer a person under the authority of s. 51.35 (1) (a), stats., DHFS would not need to get the county department's approval *or* to notify the county department. Is that what you want?

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State of Wisconsin  
2003 - 2004 LEGISLATURE

LRB-0196/3

DAK:cjs:es

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D-NOTE

DOA:.....Jablonsky - BB0035 Transfer of residents among centers for the developmentally disabled

FOR 2003-05 BUDGET — NOT READY FOR INTRODUCTION

Page + line nos ?

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AN ACT ...; relating to: the budget.

*Analysis by the Legislative Reference Bureau*

**HEALTH AND HUMAN SERVICES**

**MENTAL ILLNESS AND DEVELOPMENTAL DISABILITIES**

Under current law, DHFS or a county department of community programs or developmental disabilities services (county department) may transfer any patient or resident of a treatment facility under departmental or county supervision to another treatment facility or into the community if the transfer is consistent with reasonable medical and clinical judgment. However, such a DHFS transfer of a patient in a mental health institute or a resident in a center for the developmentally disabled is subject to approval of the appropriate county department to which the patient was committed or through which the patient was admitted. In addition, a county department may transfer a patient under the age of 22 years only to the Central Center for the Developmentally Disabled unless a transfer to the Northern Center for the Developmentally Disabled or the Southern Center for the Developmentally Disabled is authorized by DHFS.

This bill eliminates the requirement for county departmental approval of transfer by DHFS of residents in one state center for the developmentally disabled to another state center for the developmentally disabled or to the community.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

---

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**SECTION 1.** 51.35 (1) (a) of the statutes is amended to read:

51.35 (1) (a) The Subject to pars. (b) and (d), 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 such the transfer is consistent with reasonable medical and clinical judgment and, consistent with s. 51.22 (5). ~~The transfer shall be made, 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 ~~which~~ 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 ~~such~~ the terms and conditions of the transfer, including possible transfer back to a ~~facility which~~ treatment facility that imposes a greater restriction on personal freedom of the patient or resident.

**SECTION 2.** 51.35 (1) (b) of the statutes is amended to read:

51.35 (1) (b) ~~In addition to the requirements in par. (a), a~~ Except as provided in pars. (c) and (d), a transfer of a patient in a mental health institute ~~or center for the developmentally disabled~~ 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 ~~facility, if any~~ mental health institute.

~~SECTION 3. 51.35 (1) (bm) of the statutes is amended to read:~~

~~51.35 (1) (bm) ~~Notwithstanding par. (b),~~ transfer Transfer of a patient resident under the age of 22 years by a county department to a center for the developmentally disabled may be made only to the central center for the developmentally disabled unless the department authorizes the transfer of the ~~patient resident~~ to the northern or southern center for the developmentally disabled.~~

SECTION 4. 51.35 (1) (c) of the statutes is amended to read:

51.35 (1) (c) The department may, without approval of and without first notifying the county department under s. 51.42 or 51.437 ~~and notwithstanding par. (d) 3.,~~ 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 ~~such~~ the return would be in the best interests of the patient.

SECTION 5. 51.35 (1) (d) of the statutes is amended to read:

51.35 (1) (d) 1. ~~The~~ Subject to subds. 2. and 3., 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 ~~subsection~~ 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 ~~such~~ 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.

3. A transfer of a patient, made under authority of this ~~subsection~~ paragraph, may be made only after the department has notified the county department under s. 51.42 or 51.437 of its intent to transfer a patient in accordance with this subsection. 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.

(END)

D-NOTE

D-NOTE DAK

To Sue Jablonsky:

This draft reconciles LRB-0196/2 and

LRB-0211/4. Both LRB-0196 and LRB-0211

should continue to appear in the compiled

bill.

DAK

It removes the treatment of s. 51.35(1)(bm);

that treatment is placed in LRB-0211.

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0196/3dn  
DAK:kjf:pg

February 6, 2003

To: Sue Jablonsky:

This draft reconciles LRB-0196/2 and LRB-0211/4. It removes the treatment of s. 51.35 (1) (bm); that treatment is placed in LRB-0211. Both LRB-0196 and LRB-0211 should continue to appear in the compiled draft.

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State of Wisconsin  
2003 - 2004 LEGISLATURE

LRB-0196/3  
DAK:cjs&kjf:pg

DOA:.....Jablonsky – BB0035 Transfer of residents among centers for the developmentally disabled

FOR 2003-05 BUDGET — NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: the budget.

---

*Analysis by the Legislative Reference Bureau*

**HEALTH AND HUMAN SERVICES**

**MENTAL ILLNESS AND DEVELOPMENTAL DISABILITIES**

Under current law, DHFS or a county department of community programs or developmental disabilities services (county department) may transfer any patient or resident of a treatment facility under departmental or county supervision to another treatment facility or into the community if the transfer is consistent with reasonable medical and clinical judgment. However, such a DHFS transfer of a patient in a mental health institute or a resident in a center for the developmentally disabled is subject to approval of the appropriate county department to which the patient was committed or through which the patient was admitted. In addition, a county department may transfer a patient under the age of 22 years only to the Central Center for the Developmentally Disabled unless a transfer to the Northern Center for the Developmentally Disabled or the Southern Center for the Developmentally Disabled is authorized by DHFS.

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4           committed to it, or who is admitted to a treatment facility under its supervision or  
5           operating under an agreement with it, between treatment facilities or from a  
6           treatment facility into the community if ~~such~~ the transfer is consistent with  
7           reasonable medical and clinical judgment ~~and, consistent with s. 51.22 (5).—The~~  
8           ~~transfer shall be made, and, if the transfer results in a greater restriction of personal~~  
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10          which ~~that~~ will benefit the patient or resident may be imposed as part of a transfer  
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16          resident shall be informed at the time of transfer of the consequences of violating  
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5 committed or through which the patient was admitted to the ~~facility, if any~~ mental  
6 health institute.

7           **SECTION 3.** 51.35 (1) (c) of the statutes is amended to read:

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11 when the condition of the patient requires such transfer without delay. The  
12 department shall notify the appropriate county department under s. 51.42 or 51.437  
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14 treatment facility from which the transfer was made, upon orders from the  
15 department or the county department under s. 51.42 or 51.437, when ~~such~~ the return  
16 would be in the best interests of the patient.

17           **SECTION 4.** 51.35 (1) (d) of the statutes is amended to read:

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20 patient from a state treatment facility or other inpatient facility to an approved  
21 treatment facility which is less restrictive of the patient's personal freedom.

22           2. Transfer under this ~~subsection~~ paragraph may be made only if the transfer  
23 is consistent with the requirements of par. (a), and the department finds that the  
24 appropriate county department under s. 51.42 or 51.437 is unable to locate an  
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8 of a parent shall be notified.

9 (END)