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DEPARTMENT OF HEALTH AND SOCIAL SERVICES)

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I, Linda Reivitz, Secretary of the Department of Health and Social Services and custodian of the official records of the Department, do hereby certify that the annexed rules relating to rights of patients who receive treatment for mental disabilities were duly approved and adopted by this Department on December 2, 1986.

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

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the State Office Building, 1 W. Wilson Street, in the city of Madison, this 2nd day of December, 1986.



Linda Reivitz, Secretary
Department of Health and Social Services

SEAL:

2-187

ORDER OF THE
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
ADOPTING RULES

To create HSS 94, relating to the rights of patients who receive treatment for mental illness or a developmental disability or for alcohol or other drug dependency.

Analysis prepared by the Department of Health and Social Services

Wisconsin has a well-developed statute, s.51.61, Stats., which grants very specific rights to persons receiving treatment for mental illness, a developmental disability, alcohol abuse or drug abuse. These rules spell out what the statute means for treatment facilities and establish procedures designed to ensure compliance with the statute.

Chapter HSS 94 defines certain terms found in s.51.61, Stats., and new terms used in the chapter; specifies conditions for a humane psychological and physical environment for patients; specifies the department's authority to investigate alleged violations of patient rights and requires establishment of county department, private hospital and public general hospital patient rights grievance procedures; and requires establishment of a research and human rights committee in each treatment facility to protect patients involved in research projects.

Pursuant to authority vested in the Department of Health and Social Services by s.51.61(9), Stats., the Department of Health and Social Services hereby adopts rules interpreting s.51.61, Stats., as follows:

SECTION 1. HSS 94 is created to read:

CHAPTER HSS 94
PATIENT RIGHTS

HSS 94.01 Authority, Purpose and Applicability	HSS 94.14 Research
HSS 94.02 Definitions	HSS 94.15 Labor Performed by Patients
HSS 94.03 Informed Consent	HSS 94.16 Religious Worship
HSS 94.04 Notification of Rights	HSS 94.17 Confidentiality of Records
HSS 94.05 Denial of Rights	HSS 94.18 Filming and Taping
HSS 94.06 Assistance in the Exercise of Rights	HSS 94.19 Mail
HSS 94.07 Least Restrictive Treatment	HSS 94.20 Telephone Calls
HSS 94.08 Prompt and Adequate Treatment	HSS 94.21 Visitors
HSS 94.09 Medications and other Treatment	HSS 94.22 Voting
HSS 94.10 Freedom from Isolation, Seclusion and Physical Restraint	HSS 94.23 Discharge of Voluntary Patients
HSS 94.11 Electroconvulsive Therapy	HSS 94.24 Humane Psychological and Physical Environment
HSS 94.12 Drastic Treatment Procedures	HSS 94.25 Clothing and Laundry
HSS 94.13 Research and Human Rights Committee	HSS 94.26 Storage Space
	HSS 94.27 Grievance Procedures
	HSS 94.28 Compliance Assurance
	HSS 94.29 Application of Other Rules and Regulations

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

(2) TO WHOM THE RULES APPLY. This chapter applies to the department, to county departments established under s.46.23, 51.42 or 51.437, Stats., and to all treatment facilities and other service providers, whether or not under contract to a county department, including the state-operated mental health institutes and centers for the developmentally disabled, habilitation or rehabilitation programs, programs certified under ch. HSS 61 and facilities licensed under ch. H 24 [HSS 124] which also provide treatment for alcoholic, drug dependent, mentally ill or developmentally disabled persons. This chapter also applies to correctional institutions in which inmates receive treatment for mental disorders, but only in relation to patient rights specified in s. 51.61(1)(a),(d),(f),(g),(h),(j) and (k), Stats. This chapter does not apply to a hospital emergency room or a hospital outpatient service except when the patient is a county department client.

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

HSS 94.02 DEFINITIONS. In this chapter:

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

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

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

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

(5) "Department" means the department of health and social services.

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

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

(8) "Emergency" means that the patient presents imminent physical danger to self or others.

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

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

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

(12) "Informed consent" or "consent" means written consent voluntarily signed by a patient who is competent and who understands the terms of the consent, or by the patient's legal guardian or the parent of a minor, as permitted under s. 51.61(6) and (8), Stats., without any form of coercion.

(13) "Inpatient" means a person who is receiving treatment, care or services in a inpatient treatment facility, a residential treatment facility or a special living arrangement.

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

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

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

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

(18) "Outpatient" means a person receiving treatment, care or services from an outpatient treatment facility.

(19) "Outpatient treatment facility" means any treatment facility other than an inpatient treatment facility, a residential treatment facility, a special living arrangement or a hospital emergency room.

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

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

(22) "Physical restraint" means any method of limiting the movement of a person's limbs and body, including mechanical restraints or the use of force, but does not include medications or devices used to protect a patient from injury due to physical weakness or neurologic deficit.

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

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

Note: For research involving treatment records, see s.51.30(4)(b)3., Stats.

(25) "Residential treatment facility" means a treatment facility that provides a 24-hour residential program for inpatients, including a center for the developmentally disabled as defined in s.51.01(3), Stats.

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

(27) "Special living arrangement" means a treatment facility that provides a 24-hour residential living arrangement but is not an inpatient treatment facility or a residential treatment facility.

(28) "Strip search" means a search in which the patient is required to remove all of his or her clothing. Permissible inspection includes

examination of the patient's clothing and body and visual inspection of his or her body cavities.

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

(30) "Treatment facility" means any publicly or privately operated facility, unit in a facility or agency providing treatment, habilitation or rehabilitation for alcoholic, drug dependent, mentally ill or developmentally disabled persons. A "treatment facility" may be an inpatient treatment facility, a residential treatment facility, a special living arrangement or an outpatient treatment facility.

HSS 94.03 INFORMED CONSENT. (1) Any informed consent document required under this chapter shall declare that the patient or the person acting on the patient's behalf has been provided with specific, complete and accurate information and time to study the information or to seek additional information concerning:

- (a) The benefits of the proposed treatment;
- (b) The way the treatment is to be administered;
- (c) The expected treatment side effects or risks of side effects which are a reasonable possibility, including side effects or risks of side effects from medications;
- (d) Alternative treatment modes;
- (e) The probable consequences of not receiving the proposed treatment;
- (f) The time period for which the informed consent is effective; and
- (g) The right to withdraw informed consent at any time, in writing.

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

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

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

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

HSS 94.04 NOTIFICATION OF RIGHTS. (1) At the time of admission or, in the case of an outpatient, before treatment is begun, the patient shall be

notified both orally and in writing of his or her rights in accordance with s.51.61(1)(a), Stats., and this section. The guardian of a patient who is incompetent and the parent of a minor patient shall also be notified, if they are available. Notification is not required before admission or treatment when there is an emergency.

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

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

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

Note: A simplified version of patients rights in poster form is available from the Coordinator of Client Advocacy, Division of Care and Treatment Facilities, P.O. Box 7851, Madison, WI, 53707.

HSS 94.05 DENIAL OF RIGHTS. (1) No patient right may be denied except as provided under s.51.61(2), Stats., and as otherwise specified in this chapter.

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

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

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

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

(a) Inform the patient and the guardian, if any, of the right to an informal hearing;

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

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

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

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

(a) If the patient is a county department patient, to the county department's complaint investigator and, in addition, if the patient is in a department-operated facility, to the department's division of care and treatment facilities; and

(b) If the patient is not a county department patient, to the treatment facility's complaint investigator and, in addition, if the patient is in a department-operated facility, to the department's division of care and treatment facilities.

Note: Treatment facilities other than state-operated facilities should request copies of the rights-denial form from the area administrator in the Division of Community Services regional office serving the area in which the treatment facility is located. Information regarding the areas served by each regional office and addresses of the regional offices are available from the Division of Community Services, P.O. Box 7851, Madison, WI 53707. Department-operated facilities should request copies of the rights-denial form from the Division of Care and Treatment Facilities, P.O. Box 7851, Madison, WI 53707.

(5) The treatment facility director or that person's designee shall hold an informal hearing within 3 days after receiving a hearing request from a patient whose rights have been denied or limited, and shall consider all relevant information submitted by or on behalf of the patient prior to rendering a decision.

(6) No patient may be required to waive any of his or her rights under this chapter as a condition of admission, receipt of services or receipt of benefits and privileges.

HSS 94.06 ASSISTANCE IN THE EXERCISE OF RIGHTS. Each county department and treatment facility shall assist patients in the exercise of all rights specified under ch. 51, Stats., and this chapter.

HSS 94.07 LEAST RESTRICTIVE TREATMENT. (1) Each patient shall be provided the least restrictive treatment which allows the maximum amount of personal and physical freedom in accordance with s.51.61(1)(e), Stats., and this section.

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

Note: Refer to ss.51.35(1) and 55.06(9), Stats., for transfer requirements in cases that are different from those covered under s.51.61(1)(e), Stats.

(3) Inpatient and residential treatment facilities shall identify all patients ready for placement in less restrictive settings and shall, for each of these patients, notify the county department or social services department that placed the patient that the patient is ready for placement in a less restrictive setting. The county department or social services department then shall act in accordance with s.51.61(1)(e), Stats., to place the patient in a less restrictive setting.

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

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

HSS 94.08 PROMPT AND ADEQUATE TREATMENT. All patients shall be provided prompt and adequate treatment, habilitation or rehabilitation and educational services as required under s.51.61(1)(f), Stats., and applicable licensing and certification rules.

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

HSS 94.09 MEDICATIONS AND OTHER TREATMENT. (1) A patient may refuse medications and any other treatment except as provided under s.51.61(1)(g) and (h), Stats., and this section.

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

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

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

(3) No treatment may be performed against an involuntary patient's will unless the treatment is reasonably related to the reason for commitment.

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

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

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

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

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

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

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

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

(7) A physician ordering or changing a patient's medication shall routinely review the patient's prescription medication, including the beneficial or adverse effects of the medication and the need to continue or discontinue the medication, and shall document that review in the patient's treatment record.

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

HSS 94.10 FREEDOM FROM ISOLATION, SECLUSION AND PHYSICAL RESTRAINT. No patient may be placed in isolation, seclusion or physical restraint except in an inpatient or residential treatment facility that has written policies that meet all requirements specified under s.51.61(1)(i), Stats.

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

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

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

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

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

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

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

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

Note: Reports required under sub.(4) should be sent to the area administrator in the appropriate Division of Community Services regional office. The addresses of all regional offices are available from the Division of Community Services, P.O. Box 7851, Madison, WI, 53707.

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

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

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

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

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

- (a) Protect the privacy of the patient;
- (b) Protect the confidentiality of treatment records in accordance with s.51.30, Stats., and ch. HSS 92;
- (c) Ensure that no patient may be approached to participate in the research unless the patient's participation is approved by the person who is responsible for the treatment plan of the patient; and
- (d) Ensure that the conditions of this section and other requirements under this chapter are met.

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

(2) Patients may only be required to perform tasks that are equivalent to personal housekeeping chores performed in common or private living areas of an ordinary home.

(3) Plans for payment for therapeutic labor authorized under s. 51.61(1)(b), Stats., shall be approved by the department prior to implementation.

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

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

Note: Guidelines for plans and approval of plans for payment for therapeutic labor may be obtained from the area administrator in the Division of Community Services regional office serving the area in which the treatment facility is located. Information regarding the areas served by each regional office and addresses of the regional offices are available from the Division of Community Services, P.O. Box 7851, Madison, WI 53707. Guidelines for engaging patients in voluntary non-compensated therapeutic labor which is of financial benefit to a treatment facility are also available from the area administrator in that regional office.

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

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

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

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

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

HSS 94.17 CONFIDENTIALITY OF RECORDS. All treatment records are confidential. A patient or guardian may inspect, copy and challenge the patient's records as authorized under s.51.30, Stats., and ch. HSS 92.

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

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

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

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

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

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

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

HSS 94.20 TELEPHONE CALLS. (1) Patients shall be allowed to make and receive a reasonable number of telephone calls as authorized by s.51.61(1)(p). Stats., and this section.

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

(3) Each inpatient shall be permitted to make at least one private telephone call a day.

(4) Inpatients who have been determined indigent under the facility's operating policies shall be permitted to make telephone calls under subs. (2) and (3) free of charge.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) All patients shall be treated as individuals and addressed with respect.

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

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

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

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

b. Before a patient is placed in seclusion;

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

d. If, for security reasons, the facility routinely conducts personal searches of patients committed under ch. 971 or 975, Stats., and persons transferred under s.51.35(3) or 51.37, Stats.;

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

- a. Only in a clean and private place;
- b. Except in a emergency, only by a person of the same sex;
- c. Only when all less intrusive search procedures are deemed inadequate; and

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

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

- a. Only in a clean and private place;
- b. Only by a physician and, whenever possible, by a physician of the same sex;

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

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

(e) The room and personal belongings of an inpatient may be searched only when there is documented reason to believe that security rules have been violated, except in forensic units where routine searches may be conducted in accordance with written facility policies.

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

- 1. Toilet articles;
- 2. Toothbrush and dentifrice;
- 3. A shower or tub bath at least once every 2 days, unless medically contraindicated;
- 4. Services of a barber or beautician on a regular basis; and
- 5. Shaving equipment and facilities.

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

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

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

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

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

(j) Inpatients shall be allowed to provide their own room decorations except when restricted for documented security or safety reasons.

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

(b) All inpatients shall be allowed individual expression through a choice of music, art, reading materials and media access.

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

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

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

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

(f) Each inpatient shall have an opportunity for reasonable and regular access to facilities for physical exercise and shall have an opportunity for access to a variety of appropriate recreational facilities away from the living unit to the extent possible.

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

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

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

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

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

HSS 94.25 CLOTHING AND LAUNDRY. (1) Inpatients shall be permitted to wear their own clothing as authorized under s.51.61(1)(q), Stats., and this section.

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

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

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

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

HSS 94.26 STORAGE SPACE. (1) Each inpatient shall be provided sufficient and convenient space for clothing, toilet articles and other personal belongings, as required under s.51.61(1)(r), Stats., and this section.

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

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

HSS 94.27 GRIEVANCE PROCEDURES. (1) Failure of a treatment facility to comply with any provision of rights under s.51.61, Stats., or this chapter may be processed as a grievance under s.51.61(5), Stats.

(2) The department may investigate any alleged violations of this chapter and shall, in accordance with ch. HSS 92, have access to treatment records and other materials and individuals having information relating to the alleged violations.

(3) Each county department shall establish a written patient rights grievance procedure which shall include an appeal stage beyond the program director and shall send a copy of it and of any change in it to the department for review and approval.

(4) All treatment facilities under contract to a county department shall send a copy of any complaint, investigation report, finding and decision concerning a violation of s.51.61, Stats., or this chapter to the county department and the county department shall maintain them in a file and make them available to the department upon request.

(5) Except for state-operated facilities, each treatment facility serving patients who are not reviewed or approved by county departments shall establish written grievance procedures to ensure protection of patients' rights under s.51.61, Stats., and this chapter and shall send a copy of the grievance procedures to the department.

(6) Except for state-operated facilities, any treatment facility providing services to a patient on the basis of a contract with a county department shall follow the county department's grievance procedure or a county department-approved grievance procedure to resolve any patient rights grievances, as required under s.51.61(5)(a), Stats.

Note: Under sub. (5) a copy of the grievance procedures should be sent to the area administrator in the Division of Community Services regional office serving the area in which the treatment facility is located. Information regarding the areas served by each regional office and addresses of the regional offices are available from the Division of Community Services, P.O. Box 7851, Madison, WI 53707.

HSS 94.28 COMPLIANCE ASSURANCE. (1) Each treatment facility director and program director shall ensure that all of his or her employees who have any patient contact are aware of the requirements of this chapter and of the criminal and civil liabilities for violation of s.51.61, Stats.


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

HSS 94.29 APPLICATION OF OTHER RULES AND REGULATIONS. In applying the requirements of this chapter, when a different state rule or federal regulation also applies to the protection of a particular right of patients, the different state rule or federal regulation shall be controlling if it does more to promote patient rights than the counterpart requirement in this chapter.

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

Wisconsin Department of Health and Social Services

Date: December 2, 1986



Linda Reivitz
Secretary

Seal:



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

December 2, 1986

Anthony S. Earl
Governor

Linda Reivitz
Secretary

Mr. Orlan Prestegard
Revisor of Statutes
9th Floor - 30 on the Square
Madison, Wisconsin 53702

Mailing Address:
Post Office Box 7850
Madison, WI 53707

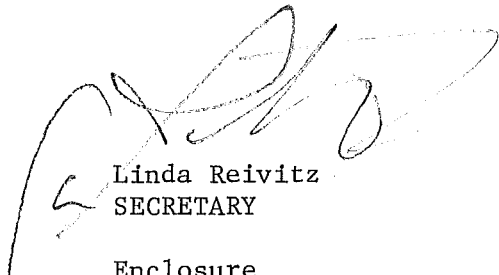
Dear Mr. Prestegard:

As provided in s. 227.20, Stats., there is hereby submitted a certified copy of HSS 94, administrative rules relating to rights of patients who receive treatment for mental disabilities.

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

These rules will not have a substantial impact on a significant number of small businesses as defined in s. 227.114(1)(a), Stats. Although many providers of treatment are small businesses, the statute being implemented by the rules, s. 51.61, Stats., is very detailed and the rules add few requirements to those included in it. The few requirements that the rules add are necessary for the protection of patients irrespective of the size or business character of the treatment provider. Following a legislative public hearing called by the Assembly Health Committee, proposed ch. HSS 94 was amended to drop nursing homes, community-based residential facilities, and child care institutions from being covered by the rules with the understanding that these residential facilities, most of which are small businesses, will be subject to comparable resident rights provisions in facility-specific licensing rules.

Sincerely,



Linda Reivitz
SECRETARY

Enclosure