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CERTIFICATE

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

I, Gerald Whitburn, 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 transfers and discharges of nursing home residents were duly approved and adopted by this Department on April 24, 1991.

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 24th day of April, 1991.



SEAL:

Gerald Whitburn, Secretary
Department of Health and Social Services

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ORDER OF THE
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
REPEALING AND CREATING RULES

To repeal and recreate HSS 132.53 (title) and (1) to (3) and to create HSS 132.53(4)(d) and (6), relating to nursing homes.

Analysis Prepared by the Department of Health and Social Services

The Department's rules for nursing homes, ch. HSS 132, are revised by this order to implement requirements added to chs. 49 and 50, Stats., by 1989 Wisconsin Act 31.

Specifically, the order repeals and recreates HSS 132.53(1) to (3) which specifies the conditions under which a nursing home resident may be involuntarily discharged or transferred from a nursing home. This order also creates s. HSS 132.53(4)(d), which specifies notice requirements for residents being transferred from a nursing home for hospitalization or a therapeutic leave, and s. HSS 132.53(6), which establishes a mechanism for appeal of a decision to transfer or discharge a resident from a nursing home.

The Department's authority to create these rules is found in ss. 49.498(14)(a), 50.02 and 50.098, Stats. These rules interpret ss. 49.498(4), (14)(a) and 50.098, Stats.

SECTION 1. HSS 132.53 (title) and (1) to (3) are repealed and recreated to read:

HSS 132.53 TRANSFERS AND DISCHARGES. (1) SCOPE. This section shall apply to all resident transfers and discharges, except that in the event of conflict with s. 49.45(6c)(c) and (d) 49.498(4) or 50.03(5m) or (14), Stats., the relevant statutory requirement shall apply.

(2) CONDITIONS. (a) Prohibition and exceptions. No resident may be discharged or transferred from a facility, except:

1. Upon the request or with the informed consent of the resident or guardian;

2. For nonpayment of charges, following reasonable opportunity to pay any deficiency;

3. If the resident requires care other than that which the facility is licensed to provide;

4. If the resident requires care which the facility does not provide and is not required to provide under this chapter;

5. For medical reasons as ordered by a physician;

6. In case of a medical emergency or disaster;
7. If the health, safety or welfare of the resident or other residents is endangered, as documented in the resident's clinical record;
8. If the resident does not need nursing home care;
9. If the short-term care period for which the resident was admitted has expired; or
10. As otherwise permitted by law.

(b) Alternate placement. 1. Except for transfers or discharges under par.(a) 2 and 6, no resident may be involuntarily transferred or discharged unless an alternative placement is arranged for the resident pursuant to s. HSS 132.31(1)(j).

2. No resident may be involuntarily transferred or discharged under par.(a)2 for nonpayment of charges if the resident meets both of the following conditions:

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

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

(3) PROCEDURES. (a) Notice. The facility shall provide a resident, the resident's physician, and if known, an immediate family member or legal counsel, guardian, relative, or other responsible person, at least 30 days notice of transfer or discharge under sub.(2)(a) 2 to 10, and the reasons for the transfer or discharge unless the continued presence of the resident endangers the health, safety, or welfare of the resident or other residents. The notice shall also contain the name, address and telephone number of the board on aging and long-term care. For a resident with developmental disability or mental illness, the notice shall contain the mailing address and telephone number of the protection and advocacy agency designated under s. 51.62(2)(a), Stats.

(b) Planning conference. 1. Unless circumstances posing a danger to the health, safety, or welfare of a resident require otherwise, at least 7 days before the planning conference required by subd.2., the resident, guardian, if any, any appropriate county agency, and others designated by the resident, including the resident's physician, shall be given a notice containing the time

and place of the conference, a statement informing the resident that any persons of the resident's choice may attend the conference, and the procedure for submitting a complaint to the department.

2. Unless the resident is receiving respite care or unless precluded by circumstances posing a danger to the health, safety, or welfare of a resident, prior to any involuntary transfer or discharge under sub.(2)(a) 2 to 10, a planning conference shall be held at least 14 days before transfer or discharge with the resident, guardian, if any, any appropriate county agency, and others designated by the resident, including the resident's physician, to review the need for relocation, assess the effect of relocation on the resident, discuss alternative placements and develop a relocation plan which includes at least those activities listed in subd.3.

3. Transfer and discharge activities shall include:

- a. Counseling regarding the impending transfer or discharge;
- b. The opportunity for the resident to make at least one visit to the potential alternative placement, if any, including a meeting with that facility's admissions staff, unless medically contraindicated or waived by the resident;
- c. Assistance in moving the resident and the resident's belongings and funds to the new facility or quarters; and
- d. Provisions for needed medications and treatments during relocation.

4. A resident who is transferred or discharged at the resident's request shall be advised of the assistance required under subd. 3 and shall be provided with that assistance upon request.

(c) Records. Upon transfer or discharge of a resident, the documents required by s. HSS 132.45(5)(1) and (6)(h) shall be prepared and provided to the facility admitting the resident, along with any other information about the resident needed by the admitting facility.

SECTION 2. HSS 132.53(4)(d) and (6) are created to read:

HSS 132.53(4)(d) Notice requirements. 1. Before a resident of a facility is transferred to a hospital or for therapeutic leave, the facility shall provide written information to the resident and an immediate family member or legal counsel concerning the provisions of the approved state medicaid plan about the period of time, if any, during which the resident is permitted to return

and resume residence in the nursing facility.

2. At the time of a resident's transfer to a hospital or for therapeutic leave, the facility shall provide written notice to the resident and an immediate family member or legal counsel of the duration of the period, if any, specified under subd. 1.

Note: The "approved state medicaid plan" referred to s. 49.498(4)(d)1a, Stats., and subd. 1 above states that the Department shall have a bedhold policy. The bedhold policy is found in s. HSS 107.09(4)j.

(6) APPEALS ON TRANSFERS AND DISCHARGES. (a) Right to appeal. 1. A resident may appeal an involuntary transfer or discharge decision.

2. Every facility shall post in a prominent place a notice that a resident has a right to appeal a transfer or discharge decision. The notice shall explain how to appeal that decision and shall contain the address and telephone number of the nearest bureau of quality compliance regional office. The notice shall also contain the name, address and telephone number of the state board on aging and long-term care or, if the resident is developmentally disabled or has a mental illness, the mailing address and telephone number of the protection and advocacy agency designated under s. 51.62(2)(a), Stats.

3. A copy of the notice of a resident's right to appeal a transfer or discharge decision shall be placed in each resident's admission folder.

4. Every notice of transfer or discharge under sub.(3)(a) to a resident, relative, guardian or other responsible party shall include a notice of the resident's right to appeal that decision.

(b) Appeal procedures. 1. If a resident wishes to appeal a transfer or discharge decision, the resident shall send a letter to the nearest regional office of the department's bureau of quality compliance within 7 days after receiving a notice of transfer or discharge from the facility, with a copy to the facility administrator, asking for a review of the decision.

2. The resident's written appeal shall indicate why the transfer or discharge should not take place.

3. Within 5 days after receiving a copy of the resident's written appeal, the facility shall provide written justification to the department's bureau of quality compliance for the transfer or discharge of the resident from the facility.

4. If the resident files a written appeal within 7 days after receiving notice of transfer or of discharge from the

facility, the resident may not be transferred or discharged from the facility until the department's bureau of quality compliance has completed its review of the decision and notified both the resident and the facility of its decision.

5. The department's bureau of quality compliance shall complete its review of the facility's decision and notify both the resident and the facility in writing of its decision within 14 days after receiving written justification for the transfer or discharge of the resident from the facility.

6. A resident or a facility may appeal the decision of the department's bureau of quality compliance in writing to the department's office of administrative hearings within 5 days after receipt of the decision.

Note: The mailing address of the Department's Office of Administrative Hearings is P.O. Box 7875, Madison, Wisconsin 53707.

7. The appeal procedures in this paragraph do not apply if the continued presence of the resident poses a danger to the health, safety, or welfare of the resident or other residents.

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

Wisconsin Department of Health and
Social Services

Dated: April 24, 1991

By: 
Gerald Whitburn
Secretary

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Tommy G. Thompson
Governor
Gerald Whitburn
Secretary



Mailing Address:
1 West Wilson Street
Post Office Box 7850
Madison, WI 53707-7850
Telephone (608) 266-3681

State of Wisconsin
Department of Health and Social Services

April 24, 1991

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Revisor of Statutes
Bureau

Mr. Bruce E. Munson
Revisor of Statutes
119 Martin Luther King, Jr., Blvd.
Madison, WI 53703

Dear Mr. Munson:

As provided in s. 227.20, Stats., there is hereby submitted a certified copy of HSS 132.53, administrative rules relating to transfers and discharges of nursing home residents.

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Gerald Whitburn".

Gerald Whitburn
Secretary

Enclosure