

1975 Assembly Bill 75

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CHAPTER 119, Laws of 1975

AN ACT to amend 146.30 (2) and (10) (a) and (c), 146.305 (2) and (9) (a) and (c) and 146.32 (2) and (5) (a) and (c); and to create 146.309 and 940.29 (8) and (9) of the statutes, relating to rights of residents in nursing homes, adult group foster homes and residential care institutions, and prohibiting abuse of residents in certain facilities.

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

SECTION 1. Intent. The legislature finds that individuals have basic human rights which they do not forfeit when they enter a nursing home, residential care facility or adult group foster home. The legislature also finds that residents in such institutions are entitled to be treated with respect and dignity and to the full exercise of

their civil and religious liberties, and that these liberties can be protected without adversely affecting the quality of care administered. It is the intent of this legislation to secure the exercise of these rights, to promote self-determination, and a feeling of familiarity within these facilities. The legislature further intends to establish these rights in law, to provide information to residents, to establish effective mechanisms to resolve complaints and to hold licensed professionals and institutions accountable for violations of these rights.

SECTION 2. 146.30 (2) and (10) (a) and (c) of the statutes are amended to read:

146.30 (2) STANDARDS. The department may develop, establish and enforce standards for the care, treatment, health, safety, rights, welfare and comfort of ~~patients~~ residents in nursing homes and for the construction, general hygiene, maintenance and operation of nursing homes, which, in the light of advancing knowledge, will promote safe and adequate accommodation, care and treatment of such ~~patients~~ residents in nursing homes; and promulgate and enforce rules consistent with this section. Such standards and rules shall provide that intermediate care facilities, as defined under volume 45, Code of Federal Regulations, part 249, which have 15 or fewer beds shall, if exempted from meeting certain physical plant, staffing and other requirements of the federal regulations, be exempted from meeting the corresponding provisions of the state's standards and rules. The standards and rules shall provide that if such an intermediate care facility meets the sanitation and safety requirements of the federal regulations, the facility shall be deemed to have met the sanitation and safety requirements of the state's nursing home regulations.

(10) (a) *Licensed nursing homes*. Notwithstanding the existence or pursuit of any other remedy, the department may, upon the advice of the attorney general, who shall represent the department in all proceedings, maintain an action in the name of the state in the circuit court for injunction or other process against any licensee, owner, operator, administrator or representative of any owner of a nursing home to restrain and enjoin the repeated violation of any of the provisions of this section or administrative rules adopted by the department under this section where the violation affects the health, safety, rights or welfare of the ~~patients~~ residents.

(c) *Enforcement by counties maintaining inspection programs*. The county board of any county conducting inspections under sub. (3) (b) may, upon notifying the department that a nursing home is in violation of this section or the rules established hereunder, authorize the district attorney to maintain an action in the name of the state in circuit court for injunction or other process against such nursing home, its owner, operator, administrator or representative, to restrain and enjoin repeated violations where such violations affect the health, safety, rights or welfare of the ~~patients~~ residents.

SECTION 3. 146.305 (2) and (9) (a) and (c) of the statutes are amended to read:

146.305 (2) STANDARDS. The department shall develop, establish and enforce standards for the health, safety, rights and welfare of persons in adult group foster homes and promulgate and enforce rules consistent with this section. These rules shall include standards relating to the admission, evaluation and dismissal of these persons. These standards shall be developed by program specialists in the department knowledgeable about the needs of prospective residents of these facilities. The department of industry, labor and human relations shall assist the department in promulgation of the rules under this section. The department shall also request information and assistance from the Wisconsin state medical society and the Wisconsin fire chiefs association. The senate committee on health, education and welfare and the

assembly health and social services committee may suspend rules issued under this section within 60 days after their publication.

(9) (a) *Licensed adult group foster homes.* Notwithstanding the existence or pursuit of any other remedy, the department may, upon the advice of the attorney general, who shall represent the department in all proceedings, maintain an action in the name of the state in the circuit court for injunction or other process against any licensee, owner, operator, administrator or representative of any owner of an adult group foster home to restrain and enjoin the repeated violation of any of the provisions of this section or rules adopted by the department under this section where the violation affects the health, safety, rights or welfare of the residents.

(c) *Enforcement by counties maintaining inspection programs.* The county board of any county conducting inspections under sub. (3) (b) may, upon notifying the department that an adult group foster home is in violation of this section or the rules established hereunder, authorize the district attorney to maintain an action in the name of the state in circuit court for injunction or other process against such adult group foster home, its owner, operator, administrator or representative, to restrain and enjoin repeated violations where such violations affect the health, safety, rights or welfare of the residents.

SECTION 4. 146.309 of the statutes is created to read:

146.309 Rights of residents in certain facilities. (1) **RESIDENTS' RIGHTS.** Every resident in a nursing home, adult group foster home or residential care institution shall, except as provided in sub. (5), have the right to:

(a) Private and unrestricted communications with his family, physician, attorney and any other person, unless medically contraindicated as documented by his physician in his medical record, except that communications with public officials or with his attorney shall not be restricted in any event. The right to private and unrestricted communications shall include, but is not limited to, the right to:

1. Receive, send and mail sealed, unopened correspondence, and no resident's incoming or outgoing correspondence shall be opened, delayed, held or censored.
2. Reasonable access to a telephone for private communications.
3. Opportunity for private visits.

(b) Present grievances on behalf of himself or others to the facility's staff or administrator, to public officials or to any other person without justifiable fear of reprisal, and to join with other residents or individuals within or outside of the facility to work for improvements in resident care.

(c) Manage his own financial affairs, including any personal allowances under federal or state programs, unless he delegates, in writing, such responsibility to the facility and the facility accepts the responsibility or unless he delegates to someone else of his choosing and that person accepts the responsibility. He shall receive, upon written request by the resident or his guardian, a written monthly account of any financial transactions made by the facility under such a delegation of responsibility.

(d) Be fully informed, in writing, prior to or at the time of admission of all services included in the per diem rate, other services available, the charges for such services, and be informed, in writing, during his stay of any changes in services available or in charges for services.

(e) Be treated with courtesy, respect and full recognition of his dignity and individuality, by all employees of the facility and licensed, certified or registered providers of health care and pharmacists with whom he comes in contact.

(f) Physical and emotional privacy in treatment, living arrangements and in caring for personal needs, including, but not limited to:

1. Privacy for visits by his spouse. If both he and his spouse are residents of the same facility, they shall be permitted to share a room unless medically contraindicated as documented by his physician in his medical record.

2. Privacy concerning his health care. Case discussion, consultation, examination and treatment are confidential and shall be conducted discreetly. Persons not directly involved in his care shall require his permission to authorize their presence.

3. Confidentiality of his health and personal records, and the right to approve or refuse their release to any individual outside the facility, except in the case of his transfer to another facility or as required by law or third-party payment contracts.

(g) Not to be required to perform services for the facility that are not included for therapeutic purposes in his plan of care.

(h) Meet with, and participate in activities of social, religious and community groups at his discretion, unless medically contraindicated as documented by his physician in his medical record.

(i) Retain and use his personal clothing and effects and to retain, as space permits, other personal possessions in a reasonably secure manner.

(j) Be transferred or discharged, and be given reasonable advance notice of any planned transfer or discharge, and an explanation of the need for and alternatives to such transfer or discharge. The facility to which the resident is to be transferred must have accepted the resident for transfer, except in a medical emergency.

(k) Be free from mental and physical abuse, and be free from chemical and physical restraints except as authorized in writing by a physician for a specified and limited period of time and documented in his medical record. Physical restraints may be used in an emergency when necessary to protect the resident from injury to himself or others or to property. However, authorization for continuing use of the physical restraints shall be secured from a physician within 12 hours. Any use of physical restraints shall be noted in his medical records. "Physical restraints" includes, but is not limited to, any article, device or garment which interferes with the free movement of the resident and which the resident is unable to remove easily, and confinement in a locked room.

(L) Receive adequate and appropriate care within the capacity of the facility.

(m) Use the licensed, certified or registered provider of health care and pharmacist of his choice.

(n) Be fully informed of his treatment and care and participate in the planning of his treatment and care.

(2) The department, in establishing standards for nursing homes under s. 146.30 (2), adult group foster homes under s. 146.305 (2) and residential care institutions under s. 146.32 (2), may establish, by rule, rights in addition to those specified in sub. (1) for residents in such facilities. Such rules shall not be effective until approved by the senate and assembly health committees.

(3) If the resident is adjudged to be incompetent under ch. 51 or 880 and not restored to legal capacity, the rights and responsibilities established under this section which the resident is not competent to exercise shall devolve upon his guardian.

(4) Each facility shall make available a copy of the rights and responsibilities established under this section and the facility's rules to each resident and to each resident's guardian at or prior to the time of admission to the facility, to each person who is a resident of the facility on the effective date of this act (1975) and to each member of the facility's staff. The rights, responsibilities and rules shall be posted in a prominent place in each facility. Each facility shall prepare a written plan and provide

appropriate staff training to implement each resident's rights established under this section.

(5) Rights established under this section shall not, except as determined by the department, be applicable to residents in such facilities, if the resident is in the legal custody of the department and is a correctional client in such facility.

(6) (a) Each facility shall establish a system of reviewing complaints and allegations of violations of residents' rights established under this section. The facility shall designate a specific individual who, for the purposes of effectuating this section, shall report to the administrator.

(b) Allegations of violations of such rights by persons licensed, certified or registered under chs. 441, 446 to 450, 455 and 456 of the statutes shall be promptly reported by the facility to the appropriate licensing or examining board and to the person against whom the allegation has been made. Any employe of the facility and any person licensed, certified or registered under chs. 441, 446 to 450, 455 and 456 of the statutes may also report such allegations to the board. Such board may make further investigation and take such disciplinary action, within the board's statutory authority, as the case requires.

(c) No person who files a report as required in par. (b) or who participates, in good faith, in the review system established under par. (a) shall be liable for civil damages for such acts.

(d) The facility shall attach a statement, which summarizes complaints or allegations of violations of rights established under this section, to an application for a new license or a renewal of its license. Such statement shall contain the date of the complaint or allegation, the name of the persons involved, the disposition of the matter and the date of disposition. The department shall consider such statement in reviewing the application.

SECTION 5. 146.32 (2) and (5) (a) and (c) of the statutes are amended to read:

146.32 (2) LICENSING AND STANDARD SETTING AUTHORITY. The department of health and social services shall license, develop, establish and enforce standards for the care, treatment, health, safety, rights, welfare and comfort of persons in residential care institutions, and for the construction, general hygiene, maintenance and operation of such institutions, and shall ~~adopt~~ promulgate and enforce rules for such purposes. These standards shall be developed by program specialists in the department knowledgeable about the needs of prospective residents of residential care institutions. Such standards and rules shall provide that intermediate care facilities, as defined under volume 45, Code of Federal Regulations, part 249, which have 15 or fewer beds shall, if exempted from meeting certain physical plant, staffing and other requirements of the federal regulations, be exempted from meeting the corresponding provisions of the state's standards and rules.

(5) (a) *Licensed residential care institutions.* Notwithstanding the existence or pursuit of any other remedy, the department may, upon the advice of the attorney general, who shall represent the department in all proceedings, maintain an action in the name of the state in the circuit court for injunction or other process against any licensee, owner, operator, administrator or representative of any owner of a residential care institution to restrain and enjoin the repeated violation of any of the provisions of this section or administrative rules adopted by the department under this section where the violation affects the health, safety, rights or welfare of the ~~patients~~ residents.

(c) *Enforcement by counties maintaining inspection programs.* The county board of any county conducting inspections under sub. (3) (b) may, upon notifying the department that a residential care institution is in violation of this section or the rules

established hereunder, authorize the district attorney to maintain an action in the name of the state in circuit court for injunction or other process against such residential care institution, its owner, operator, administrator or representative, to restrain and enjoin repeated violations where such violations affect the health, safety, rights or welfare of the ~~patients~~ residents.

SECTION 6. 940.29 (8) and (9) of the statutes are created to read:

940.29 (8) An adult group foster home under s. 146.305 (2).

(9) A residential care institution under s. 146.32 (2).
