

ORDER OF THE
DEPARTMENT OF HEALTH AND FAMILY SERVICES
AMENDING RULES

Analysis Prepared by the Department of Health and Family Services

To amend HFS 94.20 (3), relating to the rights of patients to make telephone calls.

The Department operates secure mental health facilities for the evaluation, treatment and detention of ch. 980, Stats., sexually violent patients. Departmental investigations have indicated that a portion of the ch. 980 inpatient population has routinely abused their s. HFS 94.20 telephone rights by making inappropriate calls to members of the public, by fraudulently placing numerous long distance calls that are billed to innocent third-parties or by operating fraudulent schemes. Since the Department has previously had no means of monitoring patient telephone use, the extent of this activity is unknown, but given the experience of investigations triggered by citizen complaints, it is clear that these sorts of activities are not infrequent among this population. In addition, experience with telephone monitoring in other secure institutions indicates that call monitoring can and does help staff detect contraband and other security-related issues and activities. These abuses are clearly contrary to the therapeutic activities conducted at the secure mental health facilities.

Until recently, the Department has been unable to stop these abuses because the Department's facilities lacked secure telephone systems. Previous DHFS efforts to obtain secure telephone systems from the telephone system's vendor used by the Department of Corrections were not successful because the call volume at DHFS's secure mental health facilities were viewed as insufficient to support the telephone system.

In late 2000, the Department of Corrections selected a new vendor for its secure telephone system. In May, 2001, the new vendor agreed to also install the system in DHFS's secure mental health facilities. On June 22, 2001, the Department issued these proposed permanent rules as emergency rules that became effective as of that date. The telephone systems allow the Department to establish and enforce calling lists for each inpatient and monitor inpatients' calls for counter-therapeutic activity. An inpatient's calling list is a finite number of telephone numbers associated with persons the inpatient is approved to contact by telephone. Use of calling lists alone, however, is insufficient to discourage and minimize inpatient attempts to subvert the system. The Department must monitor phone calls made by ch. 980 inpatients to discourage and minimize the occurrence of inpatients calling persons on their calling list who, in turn, subvert the secure system by forwarding the inpatient's call for the prohibited purposes and activities previously described. The Department must be able to monitor the phone calls of ch. 980 inpatients both to protect the public and promote therapeutic activities at the secure mental health facilities.

The Department is proposing these rules to protect the public's safety by minimizing the recurring fraudulent activity associated with telephone use. Pursuant to an earlier emergency rule promulgated by the Department, the Sand Ridge Secure Treatment Center and the

Wisconsin Resource Center have been operating with the secure telephone system since late June and early July, 2001.

The Department's authority to amend these rules is found in s. 51.61 (9), Stats. The rules interpret s. 51.61 (1) (p), Stats.

SECTION 1. Section HFS 94.20 (3) is amended to read:

HFS 94.20 (3) (a) Except as provided in par. (b), Each inpatient shall be permitted to make a reasonable number of private, personal calls. The number and duration of the calls may be limited for legitimate management reasons, but the facility shall provide every patient the opportunity to make at least one private, personal call per day.

(b) This subsection does not prohibit a facility under s. 980.065, Stats., from recording patients' personal telephone calls or monitoring the resulting recordings.

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

Wisconsin Department of Health and
Family Services

Dated: December 4, 2001

By:

Phyllis J. Dubé
Secretary

SEAL: