



2019 SENATE BILL 418

September 17, 2019 - Introduced by Senators KOOYENGA, CRAIG, NASS and OLSEN, cosponsored by Representatives HUTTON, SINICKI, ALLEN, BROOKS, BRANDTJEN, DITTRICH, KUGLITSCH, MURSAU, NOVAK, SKOWRONSKI, STEFFEN, TITTL and WICHGERS. Referred to Committee on Health and Human Services.

1 **AN ACT** *to amend* 51.61 (2); and *to create* 51.61 (1m) of the statutes; **relating**
2 **to:** right to specific staffing arrangements for certain patients in an intensive
3 treatment program.

Analysis by the Legislative Reference Bureau

This bill establishes a right for certain patients in an intensive treatment program at one of the centers for the developmentally disabled operated by the Department of Health Services to have, upon request, staff of a requested sex present for certain interactions. Specifically, under the bill, a patient in an intensive treatment program has, if the patient or the patient's parent or guardian requests, a right to a staffing arrangement under which at least one person of the sex requested by the patient or the patient's parent or guardian be present for certain interactions, including 1) assistance with bathing, toileting, or any activity that requires removal of clothing other than outerwear, footwear, or accessories; 2) movement within the center or other transfer that involves transport through an isolated area such as a stairwell or elevator or in a vehicle; or 3) any interaction in a private room, bathroom, changing room, exam room, or any other isolated area.

Under the bill, this right, like certain other existing statutory patient rights, may be denied for cause after review by the director of the facility, and may be denied when medically or therapeutically contraindicated as documented by the patient's physician, licensed psychologist, or licensed mental health professional in the patient's treatment record. The individual must be informed in writing of the grounds for withdrawal of the right, and there must be documentation of the grounds

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in the patient's treatment record. The decision is subject to a review and grievance process established by DHS for patient rights issues. The bill also limits the amount DHS may expend in accommodating these staffing arrangement requests to no more than \$3,000,000 per fiscal year.

For further information see the *state* 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.** 51.61 (1m) of the statutes is created to read:

2 51.61 **(1m)** (a) A patient who is in an intensive treatment program at one of the
3 centers for the developmentally disabled operated by the department has, if
4 requested by the patient or the patient's parent or guardian, a right to a staffing
5 arrangement under which at least one person of the sex requested by the patient or
6 the patient's parent or guardian be present for certain interactions, including any of
7 the following:

8 1. Assistance with bathing, toileting, or any activity that requires removal of
9 clothing other than outerwear, footwear, or accessories.

10 2. Movement within the center or other transfer that involves transport
11 through an isolated area such as a stairwell or elevator or in a vehicle.

12 3. Any interaction in a private room, bathroom, changing room, exam room, or
13 any other isolated area.

14 (b) The department may expend no more than \$3,000,000 per fiscal year to
15 accommodate requests made under this subsection.

16 **SECTION 2.** 51.61 (2) of the statutes is amended to read:

17 51.61 **(2)** A patient's rights guaranteed under ~~sub. subs.~~ (1) (p) to (t) and (1m)
18 may be denied for cause after review by the director of the facility, and may be denied
19 when medically or therapeutically contraindicated as documented by the patient's

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1 physician, licensed psychologist, or licensed mental health professional in the
2 patient's treatment record. The individual shall be informed in writing of the
3 grounds for withdrawal of the right and shall have the opportunity for a review of
4 the withdrawal of the right in an informal hearing before the director of the facility
5 or his or her designee. There shall be documentation of the grounds for withdrawal
6 of rights in the patient's treatment record. After an informal hearing is held, a
7 patient or his or her representative may petition for review of the denial of any right
8 under this subsection through the use of the grievance procedure provided in sub. (5)
9 or, for review of the denial of a right by a licensed mental health professional who is
10 not affiliated with a county department or treatment facility, through the use of one
11 of the grievance resolution procedure options required under s. 457.04 (8).
12 Alternatively, or in addition to the use of the appropriate grievance procedure, a
13 patient or his or her representative may bring an action under sub. (7).

14

(END)