# CHAPTER 51

## STATE MENTAL HEALTH ACT



**51.001 Legislative policy.** (1) It is the policy of the state to assure the provision of a full range of treatment and rehabilitation services in the state for all mental disorders and developmental disabilities and for mental illness, alcoholism and other drug abuse. There shall be a unified system of prevention of such conditions and provision of services which will assure all people in need of care access to the least restrictive treatment alternative appropriate to their needs, and movement through all treatment components to assure continuity of care.

**(2)** To protect personal liberties, no person who can be treated adequately outside of a hospital, institution or other inpatient facility may be involuntarily treated in such a facility.

**History:** 1975 c. 430.

**51.01 Definitions.** As used in this chapter, except where otherwise expressly provided:

**(1)** "Alcoholic" means a person who habitually lacks self-control as to the use of alcoholic beverages and uses alcoholic beverages to the extent that his or her health is substantially impaired or by reason of such use is deprived of his or her ability to support or care for himself or herself, or such person's family. This definition does not apply to s. 51.45.

**(2)** "Approved treatment facility" means any publicly or privately operated facility or unit thereof approved by the department for treatment of alcoholic, drug dependent, mentally ill or developmentally disabled persons.

**(3)** "Center for the developmentally disabled" means any facility which is operated by the department and which provides services including, but not limited to, 24-hour treatment, consultation, training and education for developmentally disabled persons.

**(4)** "Conditional transfer" means a transfer of a patient or resident to a less restrictive environment for treatment which is made subject to conditions imposed for the benefit of the patient or resident.

**(5)** "Developmental disability" means a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or another neurological condition closely related to mental retardation or requiring treatment similar to that required for mental retardation, which has continued or can be expected to continue indefinitely and constitutes a substantial handicap to the afflicted individual. "Developmental disability" does not include senility which is primarily caused by the process of aging or the infirmities of aging.

**(6)** "Director" means the person in charge of a state treatment facility, state or local treatment center, or approved private facility.

**(7)** "Discharge" of a patient who is under involuntary commitment orders means a termination of custody and treatment obligations of the patient to the authority to which the patient was committed by court action. The "discharge" of a patient who is voluntarily admitted to a treatment program or facility means a termination of treatment obligations

between the patient and the treatment program or facility.

**(8)** "Drug dependent" means a person who use one or more drugs to the extent that the person's health is substantially impaired or his or her social or economic functioning is substantially disrupted.

**(9)** "Hospital" has the meaning given under s. 140.24.

**(10)** "Inpatient facility" means a hospital which is operated by an organization having as its primary concern the diagnosis, treatment and rehabilitation of persons and which provides 24-hour care.

**(11)** "Mental health institute" means any institution operated by the department for specialized psychiatric services, research, education, and which is responsible for consultation with community programs for education and quality of care.

**(12)** (a) "Mental illness" means mental disease to such extent that a person so afflicted requires care and treatment for his or her own welfare, or the welfare of others, or of the community.

(b) "Mental illness", for purposes of involuntary commitment, means a substantial disorder of thought, mood, perception, orientation, or memory which grossly impairs judgment, behavior, capacity to recognize reality, or ability to meet the ordinary demands of life, but does not include alcoholism.

**(13)** "Residence", "legal residency" or "county of residence" has the meaning given under s. 49.10 (12) (c).

**(14)** "State treatment facility" means any of the institutions operated by the department for the purpose of providing diagnosis, care or treatment for mental or emotional disturbance, developmental disability, alcoholism or drug dependency and includes but is not limited to mental health institutes.

**(15)** "Transfer" means the movement of a patient or resident between approved treatment facilities or to or from an approved treatment facility and the community.

**(16)** "Treatment" means those psychological, educational, social, chemical, medical or somatic techniques designed to bring about rehabilitation of a mentally ill, alcoholic, drug dependent or developmentally disabled person.

**(17)** "Treatment director" means the person who has primary responsibility for the treatment provided by a treatment facility. The term includes the medical director of a facility.

**History:** 1975 c. 430 ss. 11, 81.

**51.03 Authority of department.** The department through its authorized agents may visit or investigate any treatment facility to which persons are admitted or committed under this chapter.

**History:** 1975 c. 430.

**51.04 Outpatient treatment facility determination.** Any facility may apply to the department for determination of whether such facility is an outpatient treatment facility, as defined in s. 632.89 (1) (a). The department shall charge a fee of $25 for each such determination.

**History:** 1975 c. 224; 1975 c. 430 s. 53m.

**51.05 Mental health institutes.** (1) The mental health institute located at Mendota is known as the "Mental Health Institute-Mendota" and the mental health institute located at Winnebago is known as the "Mental Health Institute-Winnebago". The department shall divide the state by counties into 2 districts, and may change the boundaries of these districts, arranging them with reference to the number of patients residing in them at a given time, the capacity of the institutes and the convenience of access to them.

**(2)** The department may not accept for admission to a mental health institute any resident person, except in an emergency, unless the board established under s. 51.42 in the county where the person has legal residency authorizes such care, as provided in s. 51.42 (9). Patients who are committed to the department under ss. 971.14, 971.17, 975.01, 975.02 and 975.06 or are admitted by the department under s. 975.17 are not subject to this section.

**(3)** Any person who is without a county responsible for his or her care and any person entering this state through the compact established under s. 51.75 may be accepted by the department and temporarily admitted to an institute. Such person shall be transferred to the community board established under s. 51.42 for the community where the best interests of the person can best be served, as soon as practicable.

**(4)** The transfer or discharge of any person who is placed in a mental health institute shall be made subject to s. 51.35.

**History:** 1975 c. 430.

**51.06 Centers for the developmentally disabled.** (1) PURPOSE. The purpose of the northern center for developmentally disabled, central center for developmentally disabled and southern center for developmentally disabled is to provide services needed by developmentally disabled citizens of this state which are otherwise unavailable to them, and to return such persons to the community when their needs can be met at the local level. Services to be provided by the department at such centers shall include:

(a) Education, training, habilitative and rehabilitative services to those persons placed in its custody.

(b) Development-evaluation services to citizens through community boards established under ss. 51.42 and 51.437.

(c) Assistance to such community boards in meeting the needs of developmentally disabled citizens.

(d) Conduct of biological and behavioral research with respect to developmental disabilities.

**(2)** SCHOOL ACTIVITIES. Each center shall maintain a school department and shall have enrolled all those children who are eligible for schooling under state law. The school program shall be under the supervision of the department of public instruction and shall meet standards prescribed by that agency. If the welfare of the residents so requires, the department shall endeavor to make outside school facilities which are approved by the department of public instruction available for instructional purposes.

**(3)** TRANSFER OR DISCHARGE. The transfer or discharge of any person who is placed in a center for the developmentally disabled shall be made subject to s. 51.35.

**History:** 1975 c. 430.

**51.07 Outpatient services.** (1) The department may establish a system of outpatient clinic services in any institution operated by the department.

**(2)** It is the purpose of this section to:

(a) Provide outpatient diagnostic and treatment services for patients and their families.

(b) Offer precommitment and preadmission evaluations and studies.

**(3)** The department may provide outpatient services only to patients contracted for with s. 51.42 and s. 51.437 boards in accordance with s. 46.03 (18), except for those patients whom the department finds to be nonresidents of this state. The full and actual cost less applicable collections of such services contracted for shall be charged to the respective s. 51.42 or s. 51.437 board. The state shall provide the services required for patient care only if no such services are funded by the department in the county or combination of counties served by the respective board.

**History:** 1973 c. 90, 333; 1975 c. 430 s. 19.

**51.08 Milwaukee county mental health center.** Any county having a population of 500,000 or more may, pursuant to s. 46.17, establish and maintain a county mental health center. The county mental health center, north division (hereafter in this section referred to as "north division"), shall be a hospital devoted to the detention and care of drug addicts, alcoholics and mentally ill persons whose mental illness is acute. Such hospital shall be governed pursuant to s. 46.21. Treatment of alcoholics at the north division is subject to approval by the department under s. 51.45 (8). The county mental health center, south division, shall be a hospital for the treatment of chronic patients and shall be governed pursuant to s. 46.21. The county mental health center established pursuant to this section is subject to rules adopted by the department concerning hospital standards.

**History:** 1971 c. 108 ss. 5, 6; 1971 c. 125 ss. 350 To 352, 523; 1971 c. 211; 1973 c. 90, 198; 1975 c. 41; 1975 c. 430 s. 15.

**51.09 County hospitals.** Any county having a population of less than 500,000 may establish a hospital or facilities for the detention and care of mentally ill persons, alcoholics and drug addicts; and in connection therewith a hospital or facility for the care of cases afflicted with pulmonary tuberculosis. County hospitals established pursuant to this section are subject to rules adopted by the department concerning hospital standards, including standards for alcoholic treatment facilities under s. 51.45 (8).

**History:** 1971 c. 211; 1973 c. 198; 1975 c. 430 s. 16.

**51.10 Voluntary admission.** (1) APPLICATION PROCEDURE. (a) With the approval of the treatment director of the facility, or in the case of a center for the developmentally disabled, the director of the center, and the approval of the director of the appropriate community board established under ss. 51.42 and 51.437, a person desiring admission to an approved inpatient treatment facility may be admitted upon application.

(b) With the approval of the director of the treatment facility and the director of the appropriate community board established under s. 51.42 or 51.437, a person may be voluntarily admitted to a state inpatient treatment facility.

(c) Voluntary admission of alcoholics shall be in accordance with s. 51.45 (10).

(d) The criteria for voluntary admission to an inpatient treatment facility shall be based on an evaluation that the applicant is mentally ill or developmentally disabled, or is an alcoholic or drug dependent and that the person has the potential to benefit from inpatient care, treatment or therapy. An applicant is not required to meet standards of dangerousness as established in s. 51.20 (1) (a) to be eligible for the benefits of voluntary treatment programs. An applicant may be admitted for the purpose of making a diagnostic evaluation.

(e) 1. At the time of admission to an inpatient treatment facility the individual being admitted shall be informed orally and in writing of his or

her right to leave no later than 48 hours after submission of a written request to the staff of the facility except when the director or such person's designee notifies the individual within 48 hours that an affidavit of emergency detention pursuant to s. 51.15 will be filed and such affidavit is filed with the court by the end of the next day in which the court transacts business.

2. Writing materials for use in requesting discharge shall be available at all times to any voluntarily admitted individual, and shall be given to the individual upon request. A copy of the patient's and resident's rights shall be given to the individual at the time of admission.

3. Whenever a patient or resident who is voluntarily admitted to an inpatient facility under this section requests discharge, the patient or resident shall be discharged within 48 hours as provided in subd. 1, unless the treatment director has reason to believe that the patient or resident is dangerous pursuant to the standards provided under s. 51.20 (1) (a) 2. Where the treatment director has reason to believe that the patient or resident is dangerous, an affidavit shall be executed by the treatment director pursuant to s. 51.15 (7).

(f) A person against whom a petition for involuntary commitment has been filed under s. 51.15 or 51.20 may agree to be admitted under this section. The court may permit the person to become a voluntary patient or resident pursuant to this section upon signing an application for voluntary admission, and the judge shall then dismiss the proceedings under s. 51.20.

(g) The treatment director of a facility may temporarily admit an individual to an inpatient facility when there is reason to question the competency of such individual. The treatment director shall then apply to the court for appointment of a guardian within 48 hours of the time of admission, exclusive of Saturdays, Sundays and legal holidays. The individual may remain at the facility pending appointment of a guardian.

(h) An adult for whom a guardian of the person has been appointed under ch. 880 because of the subject's incompetency may be voluntarily admitted to an inpatient treatment facility under this section only if the guardian and the ward consent to such admission.

**(2)** ADMISSION OF MINORS. (a) The application for voluntary admission of a minor who is under 14 years of age to an inpatient facility shall be executed by a minor's parent or guardian.

(b) The application for voluntary admission of a minor who is 14 years of age or over to an inpatient facility shall be executed by the minor and the minor's parent or guardian.

(c) A minor may be admitted immediately upon the filing of an application under this section. The procedures for admission specified in sub. (1) shall apply in treatment of an application for admission under this subsection.

(d) Within 3 days of the filing of an application under par. (a) or (b), the director of the facility shall file a petition for review in the juvenile court in the county in which the facility is located. If hardship would otherwise occur and if the best interests of the minor would not be harmed thereby, the court may on its own motion remove the petition to the juvenile court in the county of residence of the parent or guardian. A copy of the petition shall be served on any minor over 13 years of age and his or her parents, guardian or person in loco parentis. Within 5 days, exclusive of Saturdays, Sundays and holidays, of the application for admission, the juvenile court shall determine whether the minor is mentally ill, developmentally disabled or drug dependent, whether the admission is to the least restrictive appropriate treatment facility and, in the case of a minor 14 years of age or over, whether the application is voluntary. The court may base its findings on information provided by the application and the medical admission report. If the court determines that there is reason to believe additional information is necessary, the juvenile court may order a hearing, or order such additional information as it deems necessary. The juvenile court may appoint legal counsel or a guardian ad litem for the child and shall order a hearing to review the application if requested by the child, the appointed counsel or guardian ad litem, parent or guardian. After conclusion of the review or hearing held under this paragraph, the court may:

1. Permit voluntary admission;

2. Order the petition to be treated as a petition for involuntary commitment and refer it to the court in the subject individual's county of legal residence for a hearing under s. 51.20;

3. If the subject individual is aged 14 years or more and is found to be developmentally disabled, appoint a temporary guardian and proceed under s. 51.67 to determine whether the subject individual should receive protective placement;

4. Dismiss the application;

5. If the child is neglected or dependent, provide for disposition under s. 48.35; or

6. Order less restrictive alternative care.

(e) A minor may be admitted to an inpatient treatment facility without review of the application under par. (d) for diagnosis and evaluation, or for dental, medical and psychiatric services for a period not to exceed 12 days. If admission is made of a minor aged 14 or more for psychiatric services, the application shall be approved by the minor and his or her parent or guardian. The

application shall be reviewed by the treatment director of the facility to determine if the child is appropriate for admission under this paragraph. In the case of a center for the developmentally disabled, the application shall be reviewed by the director of the center.

(f) If a minor is admitted while he or she is under 14 years of age and if upon reaching age 14 is in need of further care and treatment, the director shall request the minor and the minor's parent or guardian to apply for voluntary admission, which shall be referred to the court for review in accordance with par. (d) and (e).

(g) The parent of any minor who is not more than 13 years of age, or a minor who is at least 14 years of age and his or her parent may request discharge in accordance with sub. (1) (e) 3. Any minor who is at least 14 years of age and who is voluntarily admitted under this section may petition for discharge. Upon receipt of such petition, the director of the facility shall immediately notify the minor's parent or guardian. If neither the parent nor guardian nor the treatment director petitions for emergency detention or involuntary commitment within 48 hours of receipt of the petition made by the minor, the minor shall be discharged.

History: 1975 c. 430.

**51.15 Emergency detention.** (1) A law enforcement officer may take an individual into custody for up to 48 hours, exclusive of Saturdays, Sundays and legal holidays, if he or she has cause to believe that such individual is mentally ill, is a drug dependent, or is developmentally disabled, and the individual exhibits conduct which constitutes a substantial risk of physical harm to the individual or to others. The officer's belief shall be based on specific and recent acts, attempts or threats to act made by the subject individual as observed by the officer or by other persons.

**(2)** The law enforcement officer shall execute an affidavit of emergency detention which shall include identification of the person or persons who observed the dangerous conduct or behavior, and the specific and recent dangerous acts, attempts or threats to act made by the subject individual. Such affidavit of emergency detention shall be filed by the officer with the detention facility at the time of admission, and with the court immediately thereafter. If the affidavit requests that proceedings for involuntary commitment be commenced, the court shall accept such affidavit of detention as a petition for commitment under s. 51.20 (1) and shall begin commitment proceedings. If the affidavit requests that proceedings for protective placement be commenced, the court shall accept such affidavit of detention as a petition for protective placement under s. 55.06 and shall proceed as under s. 55.06 (11) (b).

**(3)** An individual who is taken into custody under this section may be detained in the following places:

(a) In a hospital or approved public treatment facility.

(b) In a center for the developmentally disabled.

(c) In a state treatment facility.

(d) In an approved private treatment facility, if the facility agrees to detain the individual.

**(4)** When upon the advice of the treatment staff the director of a facility specified in sub. (3) determines that the grounds for detention no longer exist, he or she shall discharge the individual detained under this section. No individual may be detained for more than 48 hours, exclusive of Saturdays, Sundays and legal holidays, without a hearing to determine probable cause for commitment under s. 51.20 (8).

**(5)** When a individual is temporarily detained in a suitable approved treatment facility, the director of such facility may treat the individual during the detention period, if the individual consents. The individual has the right to refuse all medication and treatment except when there is a life threatening situation or when such medication or treatment is necessary to prevent serious physical harm to the individual or others. The individual may refuse medications and treatment in a life threatening situation if he or she is a member of a recognized religious organization and the religious tenets of such organization prohibit such medication and treatment. The individual shall be advised of such rights by the director of the facility. A report of all treatment provided shall be filed with the court.

**(6)** At the time of detention the individual shall be informed both orally and in writing of the right to contact an attorney and a member of his or her immediate family, the right to have an attorney provided at county expense if the individual is indigent, and shall be informed that he or she has the right to remain silent and that the examiner is required to make a report to the court even if the subject individual remains silent, and that his or her statements can be used as a basis for commitment. The individual shall also be provided with a copy of the petition under s. 51.20 (1) if a petition is filed or with a copy of the affidavit of emergency detention if such affidavit is accepted as a petition by the court.

**(7)** If a person has been voluntarily admitted to an approved treatment facility pursuant to s. 51.10, the treatment director may execute the affidavit required by sub. (2) and authorize the taking of the individual into custody. In such

case, the treatment director shall undertake all responsibilities which are required of a law enforcement officer under this section.

History: 1975 c. 430.

**51.20 Involuntary commitment for treatment.** (1) PETITION FOR EXAMINATION. (a) Every written petition for examination shall allege that the subject individual to be examined:

1. Is mentally ill, drug dependent, or developmentally disabled and is a proper subject for treatment; and either

2. Is dangerous because of:

a. A substantial risk of physical harm to the subject individual as manifested by evidence of recent threats of or attempts at suicide or serious bodily harm; or

b. A substantial risk of physical harm to other persons as manifested by evidence of recent homicidal or other violent behavior, or by evidence that others are placed in reasonable fear of violent behavior and serious physical harm to them, as evidenced by a recent overt act, attempt or threat to do such physical harm; or

3. Evidences a very substantial risk of physical impairment or injury to the subject individual, as manifested by evidence that his or her judgment is so affected that he or she is unable to protect himself or herself in the community and that reasonable provision for his or her protection is not available in the community and the individual is not appropriate for placement under s. 55.06. The subject individual's status as a minor does not automatically establish dangerousness under this subparagraph.

(b) Each petition for examination shall be signed by 3 adult persons, at least one of whom has personal knowledge of the conduct of the subject individual.

(c) The petition shall contain the names and mailing addresses of the petitioners and their relation to the subject individual, and shall also contain the names and mailing addresses of the individual's spouse, adult children, parents or guardian, custodian, brothers, sisters, person in loco parentis and person with whom the individual resides or lives. If this information is unknown to the petitioners or inapplicable, the petition shall so state. The petition may be filed in the branch of the county court which handles probate matters in the county where the subject individual is present or the county of the individual's legal residence. If the judge of such county court or a court commissioner who handles probate matters is not available, the petition may be filed and the hearing under sub. (8) may be held before a judge of any court of record of the county. The petition shall contain a clear and concise statement of the facts which constitute probable cause to believe the allegations of the petition. The petition shall be sworn to be true. If a petitioner is not a petitioner having personal knowledge as provided in par. (b), the petition shall contain a statement providing the basis for his or her belief.

**(2)** NOTICE OF HEARING AND DETENTION. Upon filing of a petition for examination, the court shall review the petition to determine whether an order of detention should be issued. The subject individual shall be detained only if the individual presents a substantial risk of serious physical harm to himself or herself or to others based on information regarding recent overt acts, attempts, or threats to inflict such harm to the subject individual or to others; or if the individual presents a very substantial risk of physical impairment or injury to the person himself or herself, as manifested by evidence that his or her judgment is so affected that he or she is unable to protect himself or herself in the community and that reasonable provision for his or her protection is not available in the community and the individual is not appropriate for placement under s. 55.06. The sheriff or any other person authorized by the court shall serve the subject individual with a notice of hearing, a copy of the petition and a written statement of the individual's right to an attorney, a jury trial, the standard upon which he or she may be committed under this section and the right to a hearing to determine probable cause for commitment within 48 hours, exclusive of Saturdays, Sundays and legal holidays, if detained. The person making service shall also orally inform the subject individual of these rights. The individual who is the subject of the petition and his or her counsel shall receive notice of all proceedings under this section. The court may also designate other persons to receive notice of hearings. The notice of time and place of a hearing shall be served personally on the subject of the petition, at least 12 hours in advance of the hearing to determine probable cause for commitment. If the sheriff has a detention order issued by a court, or if it appears to the sheriff that the subject individual presents a substantial risk of serious physical harm to himself or herself or to others, based on information regarding recent overt acts, attempts or threats to inflict such harm; or the individual presents a very substantial risk of physical impairment or injury to the person himself or herself, as manifested by evidence that his or her judgment is so affected that he or she is unable to protect himself or herself in the community and that reasonable provision for his or her protection is not available in the community and the individual is not appropriate for placement under s. 55.06, the sheriff shall

take the subject individual into custody. Placement shall be made in a hospital, approved public treatment facility, mental health institute, center for the developmentally disabled, state treatment facility, or in an approved private treatment facility if the facility agrees to detain the subject individual.

**(4)** LEGAL COUNSEL. At the time of the filing of the petition the court shall appoint adversary counsel unless the subject individual chooses to retain his or her own attorney. If the individual is indigent, the court shall provide counsel at county expense.

**(5)** PUBLIC REPRESENTATION. The district attorney or, if designated by the county board of supervisors, the corporation counsel or other counsel shall represent the interests of the public in the conduct of all proceedings under this chapter, including the drafting of all necessary papers related to the action.

**(6)** HEARING REQUIREMENTS. The hearings which are required to be held under this chapter shall conform to the essentials of due process and fair treatment including the right to an open hearing, the right to request a closed hearing, the right to counsel, the right to present and cross-examine witnesses, the right to remain silent and the right to a jury trial if requested under sub. (12). The parent or guardian of a minor who is the subject of a hearing shall have the right to participate in the hearing and to be represented by counsel. All proceedings under this chapter shall be reported as provided in s. 256.55. The court may determine to hold a hearing under this section at the institution at which the individual is detained unless the individual or his or her attorney objects.

**(7)** JUVENILES. For minors, the hearings held under this section shall be before the juvenile court.

**(8)** PROBABLE-CAUSE HEARING. (a) After the filing of the petition under sub. (1), if the subject individual is detained under s. 51.15 or this section, within 48 hours of the detention, exclusive of Saturdays, Sundays and legal holidays, the court shall hold a hearing to determine whether there is probable cause to believe the allegations made under sub. (1) (a). At the request of the subject individual or his or her counsel the hearing may be postponed, but in no case may the postponement exceed 7 days from the date of detention.

(b) If the subject individual is not detained, the court shall hold a hearing within a reasonable time of the filing of the petition, to determine whether there is probable cause to believe the allegations made under sub. (1) (a).

(c) If the court determines that there is probable cause to believe such allegations, it shall schedule the matter for a hearing within 14 days from the time that the subject individual is taken into custody, except as provided in sub. (12) (a). If a postponement has been granted under par. (a), the matter shall be scheduled for hearing within 21 days from the time that the subject individual is taken into custody. If the subject individual is not detained under s. 51.15 or this section, the hearing shall be scheduled within 30 days of the hearing to determine probable cause for commitment.

(d) If the court determines after hearing that there is probable cause to believe that the subject individual is a fit subject for guardianship and protective placement or services, the court may order emergency protective placement or services under ch. 55, and shall proceed as if petition had been made for guardianship and protective placement or services.

**(9)** DISPOSITION PENDING HEARING. (a) If it is shown that there is probable cause to believe the allegations under sub. (1), the court may release the subject individual pending the full hearing and the individual has the right to receive treatment services, on a voluntary basis, from the community board established under s. 51.42 or 51.437, or from the department. The court may issue an order stating the conditions under which the subject individual may be released from detention pending the final hearing. If acceptance of treatment is made a condition of such release, the subject individual may elect to accept the conditions or choose detention pending the hearing. The court order may state the action to be taken upon information of breach of such conditions. A final hearing must be held within 30 days of such order, if the subject individual is released. Any detention under this paragraph invokes time limitations specified in sub. (8) (c), beginning with the time of such detention.

(b) If the court finds the services provided under par. (a) are not available, suitable, or desirable based on the condition of the individual, it may issue a detention order and the subject individual may be detained pending the hearing as provided in sub. (8) (c). Detention may be in a hospital, approved public treatment facility, mental health institute, center for the developmentally disabled, state treatment facility, or in an approved private treatment facility if the facility agrees to detain the subject individual.

(c) During detention a physician may administer such medications and therapies as are required to sustain life or to protect the person or others from serious physical harm unless the patient refuses treatment under s. 51.61 (1) (h). The subject individual may consent to other treatment but only after he or she has been informed of his or her right to refuse treatment

and has signed a written consent to such treatment. A report of all treatment which is provided, along with any written consent, shall be filed with the court.

**(10)** EXAMINATION. (a) If the court finds after the hearing that there is probable cause to believe the allegations under sub. (1), it shall appoint 2 licensed physicians specializing in psychiatry, or one licensed physician and one licensed psychologist, or 2 licensed physicians one of whom shall have specialized training in psychiatry, if available, to personally examine the subject individual. Such examiners shall have the specialized knowledge determined by the court to be appropriate to the needs of the subject individual. One of the examiners may be selected by the subject individual if such person makes his or her selection known to the court within 24 hours after completion of the hearing to determine probable cause for commitment. The court may deny the subject individual's selection if the examiner does not meet the requirements of this paragraph or such person is not available. If requested by the subject individual, the individual's attorney or any other interested party with court permission, the individual has a right at his or her own expense or if indigent with approval of the court hearing the petition, at the reasonable expense of the individual's county of legal residence, to secure an additional medical or psychological examination, and to offer the evaluator's personal testimony, as evidence at the hearing. The examiners may not be related to the subject individual by blood or marriage, and may have no interest in his or her property. Prior to the examination the subject individual shall be informed that his or her statements can be used as a basis for commitment and that he or she has the right to remain silent, and that the examiner is required to make a report to the court even if the subject individual remains silent. A written report shall be made of all such examinations and filed with the court. The issuance of such a warning to the subject individual prior to each examination establishes a presumption that the individual understands that he or she need not speak to the examiner. The examiners shall personally observe and examine the subject individual at any suitable place and satisfy themselves, if reasonably possible, as to the individual's mental condition, and shall make independent reports to the court. If the subject individual is not detained pending the hearing, the court may designate the time and place where the examination is to be held and may require the individual's apperance.

(b) If the examiner determines that the subject individual is a proper subject for treatment, the examiner shall make a recommendation concerning the appropriate level of treatment. Such recommendation shall include the level of inpatient facility which provides the least restrictive environment consistent with the needs of the individual, if any, and the name of the facility where the subject individual should be received into the mental health system. The court may, prior to disposition, order additional information concerning such recommended level of treatment to be provided by the staff of the appropriate community board under s. 51.42 or 51.437, or by the staff of a public treatment facility if the subject individual is detained there pending the final hearing.

(c) On motion of either party, all parties shall produce at a reasonable time and place designated by the court all physical evidence which each party intends to introduce in evidence. Thereupon, any party shall be permitted to inspect, copy, or transcribe such physical evidence in the presence of a person designated by the court. The order shall specify the time, place and manner of making the inspection, copies, photographs, or transcriptions, and may prescribe such terms and conditions as are just. The court may, if the motion is made by the subject individual, delay the hearing for such period as may be necessary for completion of discovery.

**(11)** HEARING. (a) Within a reasonable time after the hearing to determine probable cause for commitment under sub. (8), the petitioner's counsel shall notify the subject individual and his or her attorney of persons who may testify in favor of his or her commitment, and of the time and place of final hearing.

(b) Counsel for the person to be committed shall have access to all psychiatric and other reports 48 hours in advance of the final hearing.

(c) The court shall hold a final hearing to determine if the allegations specified in sub. (1) (a) are true. Except as otherwise provided in this chapter, the rules of evidence in civil actions shall apply to such hearing.

**(12)** JURY TRIAL. (a) If before involuntary commitment a jury is demanded by the individual against whom a petition has been filed under sub. (1) or by the individual's counsel, the court shall direct that a jury of 6 people be drawn to determine if beyond a reasonable doubt the allegations specified in sub. (1) (a) are true. If a jury trial demand is filed within 5 days of detention, the final hearing shall be held within 14 days of detention. If a jury trial demand is filed later than 5 days after detention, the final hearing shall be held within 14 days of the date of demand.

(b) No verdict shall be valid or received unless agreed to by at least 5 of the jurors.

**(13)** OPEN HEARINGS; EXCEPTION. Every hearing which is held under this section shall be open, unless the subject individual or the individual's attorney moves that it be closed. If the hearing is closed, only persons in interest, including representatives of providers of service and their attorneys and witnesses may be present.

**(14)** DISPOSITION. (a) At the conclusion of the proceedings the court shall:

1. Dismiss the petition; or

2. If the subject individual is an adult, or is a minor aged 14 years or more who is developmentally disabled, appoint a temporary guardian and proceed under s. 51.67 to determine whether the subject individual should receive protective placement; or

3. If the allegations specified in sub. (1) (a) are proven, order commitment to the care and custody of the appropriate board under s. 51.42 or 51.437, or if inpatient care is not required order commitment to outpatient treatment under care of such board; or

4. If the allegations specified in sub. (1) (a) are proven, order commitment to the department if the person was or is to be transferred from a prison or jail under s. 51.37; or

5. If the allegations specified in sub. (1) (a) are proven and the subject individual is a nonresident, order commitment to the department.

(b) If the petition has been dismissed under par. (a), the subject individual may agree to remain in any facility in which he or she was detained pending the hearing for the period of time necessary for alternative plans to be made for his or her care.

(c) If disposition is made under par. (a) 3:

1. The court shall designate the facility or service which is to receive the subject individual into the mental health system;

2. The community board under s. 51.42 or 51.437 shall arrange for treatment in the least restrictive manner consistent with the requirements of the subject individual in accordance with a court order designating the maximum level of inpatient facility, if any, which may be used for treatment; and

3. The community board under s. 51.42 or 51.437 shall report to the court as to the initial plan of treatment for the subject individual.

(d) A disposition under par. (a) 3, 4 or 5 may be modified as provided in s. 51.35.

(e) All findings of mental illness, need for treatment and dangerousness under this subsection shall be made based on evidence proven beyond a reasonable doubt.

(f) The board established pursuant to s. 51.42 or 51.437 which receives an individual who is committed by a court under this section is authorized to place such individual in an approved treatment facility subject to any limitations which are specified by the court under par. (c) 2. The board shall place the subject individual in the treatment program and treatment facility which is least restrictive of the individual's personal liberty, consistent with the treatment requirements of the individual. The board shall have ongoing responsibility to review the individual's needs, in accordance with sub. (18), and transfer the person to the least restrictive program consistent with the individual's needs.

(g) The first order of commitment of a subject individual under this section may be for a period not to exceed 6 months, and all subsequent consecutive orders of commitment of such individual may be for a period not to exceed one year. The board under s. 51.42 or 51.437 to whom the individual is committed may discharge the individual at any time, and shall place a committed individual in accordance with par. (f). Upon application for extension of a commitment by the department or the board having custody of the subject, the court shall proceed under subs. (11) to (14). If the court determines that the individual is a proper subject for commitment as prescribed in sub. (1) (a), or there is a substantial likelihood, based on the individual's treatment record, that the individual would be a proper subject for commitment under sub. (1) (a) if treatment were withdrawn, it shall order judgment to that effect and continue the commitment. The burden of proof is upon the board or other person seeking commitment to establish evidence that the subject individual is in need of continued commitment.

**(15)** TRANSPORTATION; EXPENSES. The sheriff or any law enforcement officer shall transport an individual who is the subject of a petition and execute the commitment, or any competent relative, friend or member of the staff of a treatment facility may assume responsibility for the individual and transport him or her to the inpatient facility. The director of the board established under s. 51.42 or 51.437 may request the sheriff to provide transportation for a subject individual or may arrange any other method of transportation which is feasible. The board may provide reimbursement for the transportation costs from its budgeted operating funds.

**(16)** APPEAL. (a) *To circuit court.* Within 10 days after disposition under sub. (14), an appeal may be taken from any final order or judgment to the circuit court for the county by the subject of the petition or such individual's guardian, by any petitioner or by the representative of the public. Such appeal is taken by filing with the clerk of the court rendering such order or judgment a notice a appeal, signed by the appellant or the

appellant's attorney, a copy of which shall be served by appellant upon each person to whom notice of the proceeding was required to be given, upon the appropriate community board under s. 51.42 or 51.437, and upon the director of the treatment facility, if any.

(b) *Stay of order or judgment.* Application for stay of any final order or judgment pending appeal shall first be made to the court which rendered the order or judgment. If such application is denied, or is granted upon conditions, a transcript of the ruling, stating specific reasons therefor, shall be immediately prepared and delivered to the party requesting the stay. Application for stay may then be made to the circuit court, accompanied by such transcript. The circuit court may stay the order or judgment, either unconditionally or upon such conditions as may be imposed under sub. (10) (a).

(c) *Transcript and return.* As soon as possible, but in no event later than 30 days after final hearing, the appellant shall file with the clerk of court a transcript of the reporter's notes. The appellant shall pay the costs of preparing the transcript, except that the county shall pay the costs of preparing the transcript in any case where the U.S. or Wisconsin constitution so requires if the appellant is financially unable to pay the costs. Within 5 days after the transcript is filed, the clerk shall return the case file and transcript to the circuit court and shall notify the parties of such filing.

(d) *Motions in appellate court.* At any time after the filing of the case file and transcript in circuit court, any party authorized to appeal may, upon notice, move that the final order or judgment appealed from be affirmed, modified and affirmed as modified, or reversed, move that the appeal be dismissed, or move for a new hearing. The motion shall state concisely the grounds upon which it is made and shall be heard on the record.

(e) *Circuit court power on appeal.* On appeal, the circuit court has power to review and to affirm, reverse, or modify the final order or judgment appealed from, or to order a new hearing, in whole or in part, which shall be in the county court. The circuit court shall render a decision within 30 days after receipt of the case file and transcript.

(f) *Appeal to supreme court.* A final decision by the circuit court may be appealed to the supreme court under ch. 817, except that application for stay of execution shall first be made to the circuit court. If such application is denied, or is granted upon conditions, a transcript of the ruling, stating the specific reasons therefor, shall be immediately prepared and delivered to the party requesting the stay. Application may then be made to the supreme court or a justice thereof, accompanied by such transcript. Such application may be granted unconditionally, or upon such conditions as may be imposed pending final hearing under sub. (10) (a).

**(17)** REEXAMINATION OF PATIENTS. (a) Except in the case of alcoholic commitments under s. 51.45 (13), any patient who is involuntarily committed for treatment under this chapter, may on the patient's own verified petition, except in the case of a minor who is under 14 years of age, or on the verified petition of the patient's guardian, relative, friend, or any person providing treatment under the order of commitment, request a reexamination or request the court to modify or cancel an order of commitment.

(b) A petition under this subsection may be filed with the branch of the county court which handles probate matters, either in the county from which the patient is committed or in the county in which the patient is detained.

(c) If a hearing has been held with respect to the subject individual's commitment within 30 days of the filing of a petition under this subsection, no hearing shall be held. If such a hearing has not been held within 30 days of the filing of a petition, but has been held within 120 days of the filing, the court shall within 24 hours of the filing order an examination to be completed within 96 hours, exclusive of Saturdays, Sundays and holidays, by the appropriate board under s. 51.42 or 51.437. A hearing may then be held in the court's discretion. If such a hearing has not been held within 120 days of the filing, a hearing shall be held on the petition within 30 days of receipt.

(d) Reexaminations under this subsection are subject to the standards prescribed in sub. (14) (g).

(e) If the court determines or is required to hold a hearing, it shall thereupon proceed in accordance with sub. (10) (a). For the purposes of the examination and observation, the court may order the patient confined in any place designated in s. 51.15 (3).

(f) If a patient is involuntarily committed and placed in a hospital, a notice of the appointment of the examining physicians and a copy of their report shall be furnished to such hospital by the court.

(g) Upon the filing of a report the court shall fix a time and place of hearing and cause reasonable notice to be given to the petitioner, the treatment facility, the patient's legal counsel and the guardian of the patient, if any, and may notify any known relative of the patient. Subsections (11) to (14) shall govern the

procedure to be used in the conduct of such hearing, insofar as applicable.

(h) All persons who render services in such proceedings shall receive compensation as provided in sub. (19) and all expenses of such proceedings shall be paid and adjusted as provided in sub. (19).

(i) Subsequent reexaminations may be had at any time in the discretion of the court but may be compelled after 120 days of the preceding examination in accordance with this subsection. All petitions for reexamination must be heard within 30 days of their receipt by the court.

(j) This subsection applies to petitions for reexamination which are filed pursuant to chs. 971 and 975.

(k) Any order of a board established pursuant to s. 51.42 or 51.437 is subject to review by the branch of the county court which handles probate matters upon petition pursuant to this subsection.

**(18)** RIGHT TO REEVALUATION. With the exception of alcoholic commitments under s. 51.45 (13), every patient committed involuntarily to a board under this chapter shall be reevaluated by the treatment staff or visiting physician within 30 days after the commitment, and within 3 months after the initial reevaluation, and again thereafter at least once each 6 months for the purpose of determining whether such patient has made sufficient progress to be entitled to transfer to a less restrictive facility or discharge. The findings of such reevaluation shall be written and placed with the patient's treatment record, and a copy shall be sent to the board which has responsibility for the patient and to the committing court.

**(19)** FEES OF EXAMINERS, WITNESSES; EXPENSES OF PROCEEDINGS. (a) Unless previously fixed by the county board of supervisors in the county in which the examination is held, the examiners shall receive a fee as fixed by the court for participation in commitment proceedings, and reasonable reimbursement for travel expenses.

(b) Witnesses subpoenaed before the court shall be entitled to the same fees as witnesses subpoenaed before the court in other cases.

(c) Expenses of the proceedings, from the presentation of the application to the conclusion of the proceeding, including reasonable actual attorney's fees for court appointed attorneys in the case of indigents, shall be allowed by the court and paid by the county from which the subject individual is committed or released, in the manner that the expenses of a criminal prosecution are paid, as provided in s. 59.77.

(d) If the subject individual has a legal residence in a county other than the county from which he or she is committed or discharged, that county shall reimburse the county from which the individual was committed or discharged for all expenses under pars. (a) to (c). The county clerk on each July 1 shall submit evidences of payments of all such proceedings on nonresident payments to the department, which shall certify such expenses for reimbursement in the form of giving credits to the committing or discharging county and assessing such costs against the county of legal residence or against the state at the time of the next apportionment of charges and credits under s. 70.60.

**History:** 1975 c. 430

**51.22 Care and custody of persons.** (1) Unless otherwise specified in this section, any person committed under this chapter shall be committed to the board established under s. 51.42 or 51.437 serving the person's county of residence, and such board shall authorize placement of the person in an appropriate facility for care, custody and treatment according to s. 51.42 (9) (a) or 51.437 (12) (a). If such person is a nonresident of this state, the commitment shall be to the department.

**(2)** Voluntary admissions under ss. 51.10 and 51.45 (10) shall be through the board established under s. 51.42 or 51.437 serving the person's county of residence or through the department if such person is a nonresident of this state. Admissions through a community board shall be made in accordance with s. 51.42 (9) (a) or 51.437 (12) (a). Admissions through the department shall be made in accordance with sub. (3).

**(3)** For any admission to be made through the department, the need for inpatient care shall be determined by the department prior to the admission of the patient to a facility. Unless a state-operated facility is used, the department for the purpose intended by this section may only authorize care in an inpatient facility which is operated by or under a purchase of service contract with a board established under s. 51.42 or 51.437 or an inpatient facility which is under a contractual agreement with the department. Except in the case of state treatment facilities, the department shall reimburse the facility for the actual cost of all authorized care and services from the appropriation under s. 20.435 (2) (d). For collections made under the authority of s. 46.10 (16), moneys shall be credited or remitted to the department no later than 60 days after the month in which collections are made. Such collections are also subject to s. 46.036 or special agreement. Collections made by the department under ss. 46.03 (18) and 46.10 shall be deposited in the general fund.

**(4)** If a patient is placed in a facility authorized by a community board and such

placement is outside the jurisdiction of such board, the placement does not transfer the patient's legal residence to the county of the facility's location while such patient is under commitment.

**(5)** The board to which a patient is committed shall provide the least restrictive treatment alternative appropriate to the patient's needs, and movement through all appropriate and necessary treatment components to assure continuity of care.

**History:** 1975 c. 430.

**51.23 Uniforms for psychiatric officers.** The department shall furnish and, from time to time replace, a standard uniform to be prescribed by the department including items of clothing, shoulder patches, collar insignia, caps and name plates to each psychiatric officer in the department who is required to wear such standard uniform.

**History:** 1975 c. 430 s. 12.

**51.30 Records.** (1) ACCESS TO COURT RECORDS. The files and records of the court proceedings under this chapter shall be closed but shall remain accessible to any individual against whom a petition is filed and such individual's attorney.

**(2)** ACCESS TO TREATMENT RECORDS. (a) An individual's counsel shall have access to all treatment records concerning the individual at any time.

(b) Except as otherwise provided in this section and ss. 905.03 and 905.04 the registration and all other records of treatment facilities shall remain confidential and are privileged to the patient. Access to treatment records by the patient during treatment may be restricted by the director of a treatment facility.

(c) The patient shall have a right, following discharge under s. 51.35 (3), to a record of all medications and somatic treatments prescribed and to a copy of the discharge summary which was prepared at the time of his or her discharge. A reasonable and uniform charge for reproduction may be assessed.

(d) In addition to the information provided under par. (c), the patient shall following discharge, if the patient so requests, have access to all of his or her treatment records. Such right of access applies to the parent or guardian of a minor or person in loco parentis, and to a minor himself or herself only after reaching the age of 18. A minor who is aged 14 or more may give a valid medical release to the minor's attorney or guardian ad litem without consent of the minor's parent, guardian, or person in loco parentis. A reasonable and uniform charge for reproduction may be assessed. The director of the treatment facility or such person's designee and the treating physician may be present during inspection of any patient records. Notice of inspection of treatment records shall be provided to the director of the treatment facility and the treating physician at least 24 hours before inspection of the records is made. Treatment records may be modified prior to inspection to protect the confidentiality of other patients or the names of any person referred to in the record who gave information subject to the condition that his or her identity remain confidential.

(e) Nothing in this section shall be construed so as to prohibit the department, the community boards under s. 51.42 or 51.437 or the legislative audit bureau from collecting names and data of persons as is necessary for, and only to be used for, billing, collection and auditing purposes. Such information shall remain confidential. The department and the community boards shall develop procedures to assure the confidentiality of such information.

(f) Nothing in this section prohibits the release of information pursuant to the lawful order of a court of record.

(g) Except as otherwise specifically provided, this subsection applies to commitments under chs. 971 and 975.

(h) The program director of the community board under s. 51.42 or 51.437 which has custody of any person shall have access to such records as are necessary to determine progress and adequacy of treatment, and to determine whether the person should be transferred to a less restrictive or more appropriate treatment modality or facility. Such records shall remain confidential and are privileged to the patient.

**(3)** PRIVILEGES. Sections 905.03 and 905.04 supersede this section with respect to communications between physicians and patients, and between attorneys and clients.

**History:** 1975 c. 430.

**51.35 Transfers and discharges.** (1) TRANSFER OF PATIENTS AND RESIDENTS. (a) The department or the board established under s. 51.42 or 51.437 may transfer any patient or resident who is committed to it, or who is admitted to a facility under its supervision or operating under an agreement with it, between treatment facilities or from a facility into the community if such transfer is consistent with reasonable medical and clinical judgment and consistent with s. 51.22 (5). The transfer shall be made in accordance with par. (e). Terms and conditions which will benefit the patient or resident may be imposed as part of a transfer to a less restrictive treatment alternative. The patient or resident shall be informed at the time of transfer of the consequences of violating such

terms and conditions, including possible transfer back to a facility which imposes a greater restriction on personal freedom of the patient or resident.

(b) In addition to the requirements in par. (a), a transfer of a patient in a mental health institute or center for the developmentally disabled by the department is subject to the approval of the appropriate board established under s. 51.42 and 51.437 to which the patient was committed or through which the patient was admitted to the facility, if any.

(c) The department may, without approval of the board established under s. 51.42 or 51.437 and notwithstanding par. (d) 3, transfer any patient from a treatment facility to another treatment facility when the condition of the patient requires such transfer without delay. The department shall notify the appropriate board established under s. 51.42 or 51.437 that the transfer has been made. Any patient so transferred may be returned to the treatment facility from which the transfer was made, upon orders from the department or the board established under s. 51.42 or 51.437, when such return would be in the best interests of the patient.

(d) 1. The department may, without approval of the appropriate board under s. 51.42 or 51.437, transfer any patient from a state treatment facility or other inpatient facility to an approved treatment facility which is less restrictive of the patient's personal freedom.

2. Transfer under this subsection may be made only if the transfer is consistent with the requirements of par. (a), and the department finds that the appropriate board established under s. 51.42 or 51.437 is unable to locate an approved treatment facility in the community, or that such board has acted in an arbitrary or capricious manner to prevent the transfer of the patient out of the state treatment facility or other inpatient facility contrary to medical and clinical judgment.

3. A transfer of a patient, made under authority of this subsection, may be made only after the department has notified the board established under s. 51.42 or 51.437 of its intent to transfer a patient in accordance with this subsection. The patient's guardian, if any, or if a minor his or her parent or person in loco parentis shall be notified.

(e) Whenever any transfer between different facilities results in a greater restriction of personal freedom for the patient and whenever the patient is transferred from outpatient to inpatient status, such patient shall be informed both orally and in writing of his or her right to contact an attorney and a member of his or her immediate family, the right to have an attorney provided at county expense if the patient is indigent and the right to petition a court where the patient is located or the committing court for a review of the transfer.

**(2)** TRANSFER OF CERTAIN DEVELOPMENTALLY DISABLED PATIENTS. The department may authorize a transfer of a patient from a center for the developmentally disabled to a state treatment facility if such patient is mentally ill and exhibits conduct which constitutes a danger as defined in s. 51.20 (1) (a) 2. to himself or herself to others in the treatment facility where he or she is present. The department shall file an affidavit of emergency detention with the committing court within 24 hours after receiving such person for emergency detention. Such affidavit shall conform to the requirements specified in s. 51.15 (2).

**(3)** TRANSFER OF CERTAIN CHILDREN FROM ETHAN ALLEN SCHOOL. (a) When a licensed physician or licensed psychologist of the Ethan Allen school, or a licensed physician or licensed psychologist of the department, reports in writing to the superintendent of the school that any individual confined therein is, in his or her opinion, mentally ill, drug dependent, or developmentally disabled, and is dangerous as defined in s. 51.20 (1) (a) 2, or is an alcoholic and is dangerous as specified in s. 51.45 (13) (a); or that the individual is mentally ill, drug dependent, alcoholic or developmentally disabled and is in need of psychiatric treatment; and that voluntary consent has been obtained to a transfer for treatment, the superintendent shall make a written report to the department. In the case of a minor between the ages of 14 and 17, the minor and the minor's parent or guardian shall consent, and in the case of a minor under the age of 14, only the minor's parent or guardian need consent. Thereupon the department may transfer the individual to a state treatment facility. The court which ordered confinement to the school shall be notified by the department. The department may order the return of the person to the school before the expiration of the order of confinement if it is satisfied that he or she can be conditionally transferred.

(b) Within a reasonable time before the expiration of such individual's confinement, if he or she is still in the facility, the director shall make an application under s. 51.20 or 51.45 (13) to the court of the county in which the hospital is located for an inquiry into the individual's mental condition, and thereafter the proceedings shall be as in other applications under that section. Notwithstanding s. 51.20 (1) (b), the application of the director of the state treatment facility alone is sufficient.

(c) The department may authorize emergency transfer of an individual from the Ethan

Allen school to a state treatment facility if there is cause to believe that such individual is mentally ill, drug dependent, alcoholic or a minor who is developmentally disabled and exhibits conduct which constitutes a danger as defined in s. 51.20 (1) (a) 2 to the individual or to others. The department shall file an affidavit of emergency detention under s. 51.15 (2) with the court within 24 hours after such person is received for detention. After an emergency transfer is made, the director of the receiving facility may file a petition for continued commitment under s. 51.20 (1) or may return the individual to the institution from which the transfer was made.

**(4)** DISCHARGE. (a) The board established under s. 51.42 or 51.437 shall grant a conditional transfer or discharge from an order of commitment or protective placement when it determines that the patient no longer meets the standard for recommitment under s. 51.20 (14) (g) or placement under s. 55.06 (2). The board shall grant a discharge to a patient who is voluntarily admitted to a treatment facility if the treatment director determines that treatment is no longer necessary or if the individual requests such discharge. Discharge or retention of a patient who is voluntarily admitted is subject to the procedures prescribed in s. 51.10 (1) (e).

(b) The department shall grant a discharge from commitment, protective placement or from voluntary admission for patients committed, place or voluntarily admitted to a facility under control of the department. The procedure shall be the same as provided in par. (a).

(c) The director of an approved treatment facility may grant a discharge or may terminate services to any patient voluntarily admitted under s. 51.10 when, on the advice of the treatment staff, such discharge or termination is in the best interests of the patient.

(d) The director of an approved treatment facility may grant a discharge or may terminate services to any patient voluntarily admitted under s. 51.10 when such patient requests a discharge. Such discharge shall conform to s. 51.10 (1) (e) 3.

(e) A discharge may be issued to a patient who participates in outpatient, after-care, or follow-up treatment programs. The discharge may permit the patient to receive necessary medication, outpatient treatment, consultation and guidance from the issuing facility at the request of the patient. Such discharge is not subject to withdrawal by the issuing agency.

(f) Notice of discharge shall be filed with the committing court or the court which ordered protective placement by the department or the board which granted the discharge. After such discharge, if it becomes necessary for the individual who is discharged to have further care and treatment, and such individual cannot be voluntarily admitted, a new commitment or placement must be obtained, following the procedure for the original commitment or placement.

**(5)** RESIDENTIAL LIVING ARRANGEMENTS; TRANSITIONARY SERVICES. The department and any person, director or board authorized to discharge or transfer patients pursuant to this section shall ensure that a proper residential living arrangement and the necessary transitionary services are available and provided for the patient being discharged or transferred.

**(6)** VETERANS. (a) When the department has notice that any person other than a prisoner is entitled to receive care and treatment in a veterans' administration facility, the person may petition the department for a transfer to such facility, and the department shall in cooperation with the department of veterans affairs procure his or her admission to such facility in accordance with s. 45.30.

(b) If an individual who is committed under s. 51.37 is entitled to receive care and treatment in a veterans' administration facility, the person may petition the department for a transfer to such facility. If the department declines to grant the request, it shall give the person a written reply, stating the reasons for its position. The decision of the department is subject to review by the court which passed sentence or ordered commitment of the person.

(c) The department shall advise the department of veterans affairs of the transfer or discharge of a veteran.

**(7)** GUARDIANSHIP AND PROTECTIVE SERVICES. Prior to discharge from any state treatment facility, the department shall review the possible need of a developmentally disabled, aged infirm or person with other like incapacities for protective services or placement under ch. 55 after discharge, including the necessity for appointment of a guardian or limited guardian. The department shall petition for limited or full guardianship, or for protective services or placement for the person if needed. When the department makes a petition for guardianship under this subsection, it shall not be appointed as guardian.

**History:** 1975 c. 430 ss. 18, 81.

**51.37 Criminal commitments; state hospital.** (1) All commitments under ss. 971.14 (5), 971.17, 975.01, 975.02 and 975.06 shall be to the department.

**(2)** The state hospital at Waupun is known as the "central state hospital", and except as provided in s. 53.05 may be used for the custody, care and treatment of adult male persons

committed or transferred thereto pursuant to this section and chs. 971 and 975. Whenever the director is not a psychiatrist, all psychiatric reports, testimony or recommendations regarding the mental condition of a patient or prisoner shall be made by a staff psychiatrist of the hospital or the department.

**(3)** The Mendota and Winnebago mental health institutes may be used for the custody, care and treatment of persons committed or transferred thereto pursuant to this section and chs. 971 and 975.

**(4)** The department may, with the approval of the committing court and the community board established under s. 51.42 or 51.437, and subject to s. 51.35, transfer to the care and custody of a community board established under s. 51.42 or 51.437 any person in an institution of the department committed under s. 971.14 or 971.17, if in its opinion, the mental condition of the person is such that further care is required and can be properly provided under the direction of the community board established under s. 51.42 or 51.437.

**(5)** (a) When a licensed physician or licensed psychologist of a state prison, of a county jail or of the department reports in writing to the officer in charge of a jail or institution that any prisoner is, in his or her opinion, mentally ill, drug dependent, or developmentally disabled and is dangerous as defined in s. 51.20 (1), or is an alcoholic and is dangerous as specified in s. 51.45 (13) (a); or that the prisoner is mentally ill, drug dependent, developmentally disabled or is an alcoholic and is in need of psychiatric or psychological treatment, and that the prisoner voluntarily consents to a transfer for treatment, the officer shall make a written report to the department which may transfer the petitioner if a voluntary application is made, and if not file a petition for involuntary commitment under s. 51.20 (1). Any time spent by a prisoner in an institution designated under sub. (2) or (3) shall be included as part of such individual's sentence.

(b) The department may authorize an emergency transfer of an individual from a prison, jail or other criminal detention facility to a state treatment facility if there is cause to believe that such individual is mentally ill and exhibits conduct which constitutes a danger as defined in s. 51.20 (1) (a) 2 of physical harm to himself or herself or to others. The department shall file an affidavit of emergency detention with the court within 24 hours after receiving such individual for detention. Such affidavit shall conform to s. 51.15 (2).

**(6)** After an emergency transfer is made, the director of the receiving facility may file a petition for continued commitment under s. 51.20 (1).

**(7)** Section 51.20 (19) applies to witness fees, attorney fees and other court fees incurred under this section.

**(8)** (a) Rights to reexamination under s. 51.20 (17) apply to a prisoner who is found to be mentally ill or drug dependent except that the petition shall be made to the court which made the finding or, if the prisoner is detained by transfer, to the county court of the county in which he or she is detained. If upon rehearing it is found that the standards for recommitment under s. 51.20 (14) (f) no longer apply to the prisoner or that he or she is not in need of psychiatric or psychological treatment, the prisoner shall be returned to the prison unless his or her term has expired, in which case he or she shall be discharged.

(b) If the prisoner's condition will require psychiatric or psychological treatment after his or her sentence expires, the director shall, within a reasonable time before the prisoner's sentence expires, make a written application to the court which committed the prisoner under sub. (5) (a). Thereupon the proceeding shall be upon application made under s. 51.20, but no physician or psychologist who is connected with a state prison, Winnebago or Mendota mental health institute, central state hospital or any county jail may be appointed as an examiner. If the court does not commit the prisoner, it may dismiss the application and order the prisoner returned to the institution from which he or she was transferred until expiration of the prisoner's sentence. If the court commits the prisoner for the period commencing upon expiration of his or her sentence, such commitment shall be to the care and custody of the board established under s. 51.42 or 51.437. Any retransfer by the board to central state hospital is subject to s. 51.35 (1) (a).

**(9)** If in the judgment of the director of central state hospital, Mendota mental health institute, Winnebago mental health institute or the Milwaukee county mental health center, any person who is committed under s. 971.14 or 971.17 is not in such condition as warrants his or her return to the court but is in a condition to receive a conditional transfer or discharge under supervision, the director shall report to the department and the committing court his or her reasons for such judgment. If the court does not file objection to the conditional transfer or discharge within 60 days of the date of the report, the director may, with the approval of the department, conditionally transfer any person to a legal guardian or other person, subject to the rules of the department.

**History:** 1975 c. 430.

**51.38 Nonresident patients on unauthorized absence.** The county court may order the detention of any nonresident individual who is on unauthorized absence from a mental institution of another state. Detention shall be for the period necessary to complete the deportation of that individual.

**History:** 1975 c. 430.

**51.39 Resident patients on unauthorized absence.** If any patient admitted under s. 51.15 or 51.20 is on unauthorized absence from a treatment facility, the sheriff of the county in which the patient is found, upon the request of the director, shall take charge of and return the patient to the facility. The costs incident to the return shall be paid out of the facility's operating funds and be charged back to the patient's county of residence.

**History:** 1975 c. 430.

**51.42 Community mental health, mental retardation, alcoholism and drug abuse services.** (1) PROGRAM. (a) *Purpose.* The purpose and intent of this section is to enable and encourage counties to develop a comprehensive range of services offering continuity of care; to utilize and expand existing governmental, voluntary and private community resources for provision of services to prevent or ameliorate mental disabilities, including but not limited to mental illness, mental retardation, alcoholism and drug abuse; to provide for the integration of administration of those services and facilities organized under this section through the establishment of a unified governing and policy-making board of directors; and to authorize state consultative services, reviews and establishment of standards and grants-in-aid for such program of services and facilities.

(b) *Responsibility of county government.* The county boards of supervisors have the primary responsibility for the well-being, treatment and care of the mentally ill, developmentally disabled, alcoholic and other drug dependent citizens residing within their respective counties and for ensuring that those individuals in need of such emergency services found within their respective counties receive immediate emergency services. County liability for care and services purchased through or provided by a board established under this section shall be based upon the client's county of residence except for emergency services for which liability shall be placed with the county in which the individual is found. For the purpose of establishing county liability, "emergency" services means those services provided under the authority of s. 51.15 (1), 51.45 (11) (b) and (12), 55.05 (4) or 55.06 (11) (a); and s. 51.45 (11) (a) for not more than 24 hours. Nothing in this paragraph prevents recovery of liability under s. 46.10 or any other statute creating liability upon the individual receiving a service or any other designated responsible party.

**(2)** DEFINITIONS. As used in this section:

(a) "Program" means community services and facilities for the prevention or amelioration of mental disabilities, including but not limited to mental illness, mental retardation, alcoholism and drug abuse.

(b) "Board" means the community board of directors established under this section.

(c) "Director" means the director appointed by the community board.

(d) "Secretary" means the secretary of health and social services.

**(3)** ESTABLISHMENT. (a) The county board of supervisors of every county, or the county boards of supervisors of any combination of counties, shall establish a community mental health, mental retardation, alcoholism and drug abuse program, make appropriations to operate the program and authorize the board of directors of the program to apply for grants-in-aid pursuant to this section.

(b) The county board or boards of supervisors shall review and approve the overall plan, program and budgets proposed by the board.

(c) No grant-in-aid may be made to any combination of counties until the counties have drawn up a detailed contractual agreement, approved by the secretary, setting forth the plans for joint sponsorship.

(d) The county board of supervisors of any county may designate the board established under this section as the governing board of any other county health care program or institution, but the operation of such program or institution shall not be reimburseable under sub. (8).

**(4)** CREATION OF BOARDS; APPOINTMENT, COMPOSITION AND TERMS OF MEMBERS. (a) The county board or boards of supervisors of every county or every combination of counties administering a program shall, before it qualifies under this section, appoint a governing and policy-making board of directors to be known as the community board. Notwithstanding par. (b) in counties having a population of 500,000 or more, the board of public welfare established under s. 46.21 may constitute the community board of directors under this section.

(b) In any county which does not combine with another county the board shall be composed of not less than 9 nor more than 15 persons of recognized ability and demonstrated interest in the problems of the mentally ill, developmentally disabled, alcoholic or drug dependent persons. The board shall have representation from each of the aforementioned mental disability interest

groups. No more than 5 members may be appointed from the county board of supervisors.

(c) In any combination of counties, the board shall be composed of 11 members with 3 additional members for each combining county in excess of 2. Appointments shall be made by the county boards of supervisors of the combining counties in a manner acceptable to the combining counties, from the interested groups mentioned in par. (b), but each of the combining counties may appoint to the board not more than 3 members from its county board of supervisors.

(d) Except in counties having a population of 500,000 or more, the term of office of any member of the board shall be 3 years, but of the members first appointed, at least one-third shall be appointed for one year; at least one-third for 2 years; and the remainder for 3 years. Vacancies shall be filled for the residue of the unexpired term in the manner that original appointments are made. Any board member may be removed from office for cause by a two-thirds vote of the appointing authority, on due notice in writing and hearing of the charges against him.

**(5)** POWERS AND DUTIES OF BOARDS. Subject to this section and the rules promulgated thereunder, boards shall provide for:

(a) Collaborative and cooperative services with public health and other groups for programs of prevention;

(b) Comprehensive diagnostic and evaluation services;

(c) Inpatient and outpatient care and treatment, residential facilities, partial hospitalization, precare, aftercare, emergency care, rehabilitation and habilitation services, and supportive transitional services;

(d) Professional consultation;

(e) Public informational and educational services;

(f) Related research and staff in-service training;

(g) The program needs of persons suffering from mental disabilities, including but not limited to mental illness, mental retardation, alcoholism or drug abuse;

(h) Continuous planning, development and evaluation of programs and services for all population groups; and shall:

1. Establish long-range goals and intermediate-range plans, detail priorities and estimate costs;

2. Develop coordination of local services and continuity of care where indicated;

3. Utilize available community resources and develop new resources necessary to carry out the purposes of this section;

4. Appoint a director of the program on the basis of recognized and demonstrated interest in and knowledge of the problems of mental health, mental retardation, alcoholism and drug addiction, with due regard to training, experience, executive and administrative ability, and general qualification and fitness for the performance of the duties of the director;

5. Fix the salaries of personnel employed to administer the program;

7. Enter into contracts to render services to or secure services from other agencies or resources including out-of-state agencies or resources; and

8. Enter into contracts for the use of any facility as an approved public treatment facility under s. 51.45 for the treatment of alcoholics if the board deems it to be an effective and economical course to follow.

**(6)** DIRECTOR; POWERS AND DUTIES. (a) All of the administrative and executive powers and duties of managing, operating, maintaining and improving the program shall be vested in the director, subject to such delegation of authority as is not inconsistent with this section and the rules promulgated thereunder.

(b) In consultation and agreement with the board, the director shall prepare:

1. An annual comprehensive plan and budget of all funds necessary for the program and services authorized by this section in which priorities and objectives for the year are established as well as any modifications of long-range objectives;

2. Intermediate-range plans and budgets;

3. An annual report of the operation of the program; and

4. Such other reports as are required by the secretary and the county board or boards of supervisors.

(c) The director shall make recommendations to the board for:

1. Personnel and the salaries of employes; and

2. Changes in program services.

**(7)** OTHER PROGRAM REQUIREMENTS. (a) The first step in the establishment of a program shall be the preparation of a local plan which includes an inventory of all existing resources, identifies needed new resources and services and contains a plan for meeting the needs of the mentally ill, developmentally disabled, alcoholic, drug abusers and other psychiatric disabilities for citizens residing within the jurisdiction of the board and for persons in need of emergency services found within the jurisdiction of the board. The plan shall also include the establishment of long-range goals and intermediate-range plans, detailing priorities and estimated costs and providing for coordination of local services and continuity of care.

(b) The clinical treatment program shall be directed by a licensed physician trained in psychiatry who may also be the director.

(c) Under the supervision of a director, qualified personnel with training or experience, or both, in mental health, developmental disabilities, or in alcoholism and drug abuse shall be responsible for the planning and implementation of programs relating to mental health, developmental disabilities, alcoholism or drug abuse. A single coordinator may be responsible for alcoholism, drug abuse, mental health and developmental disabilities programs.

**(8)** GRANTS-IN-AID. (a) Beginning July 1, 1975, the department shall fund, within the limits of the appropriation under s. 20.435 (2) (b) and subject to this subsection, services for mental illness, developmental disability and alcoholism and drug abuse to meet standards of service quality and accessibility. The department's primary responsibility is to guarantee that boards established under either s. 51.42 or 51.437, or both, receive a reasonably uniform minimum level of funding and its secondary responsibility is to fund programs which meet exceptional community needs or provide specialized or innovative services. Moneys appropriated under s. 20.435 (2) (b) shall be allocated as a grant-in-aid by the department to boards established under s. 51.42 or 51.437, or both, in the manner set forth in this subsection.

(b) Within the limits of the appropriation under s. 20.435 (2) (b), each board which is established under both s. 51.42 and 51.437 shall receive an amount calculated by multiplying $11.25 by the number of persons within the board's jurisdiction, except that:

1. In the fiscal year beginning July 1, 1975, and ending June 30, 1976, no such unified board may receive more in general purpose revenues in its per capita allocation than 125% of its minimum tentative allocation of general purpose revenues for the calendar year 1975, as determined by the department prior to April 1, 1975. In the fiscal year beginning July 1, 1976, and ending June 30, 1977, no such unified board may receive more in general purpose revenues in its per capita allocation than 125% of the amount of general purpose revenues it received in its per capita allocation for the fiscal year beginning July 1, 1975, and ending June 30, 1976.

2. In the fiscal year beginning July 1, 1975, and ending June 30, 1976, and the fiscal year beginning July 1, 1976, and ending June 30, 1977, if the portion of such board's minimum tentative allocation consisting of general purpose revenues for the calendar year 1975, as determined by the department prior to April 1, 1975, exceeds an amount calculated by multiplying $12.25 by the number of persons within the board's jurisdiction, the board shall also receive 90% of the difference between such minimum tentative allocation and the amount so calculated in the fiscal year beginning July 1, 1975, and ending June 30, 1976, and 80% of such difference in the fiscal year beginning July 1, 1976, and ending June 30, 1977.

(c) Each board established under either s. 51.42 or 51.437, but not both, shall be treated, for the purpose of this subsection only, as unified with any other board established in its jurisdiction under either s. 51.42 or 51.437. The boards so unified shall receive an amount determined under par. (b) which shall be allocated among the boards in proportion to the amounts of general purpose revenues tentatively allocated to the boards in calendar year 1975.

(d) For the purpose of this subsection, the number of persons within the jurisdiction of any board shall be the yearly revised population of its jurisdiction as determined under s. 16.96 (2) for the fiscal year for which an allocation is being made.

(e) If any funds appropriated under s. 20.435 (2) (b) remain unallocated after application of the formula set forth in pars. (a) to (d), such funds shall be distributed by the department to boards established under either s. 51.42 or 51.437, or both, for programs reflecting exceptional need, including additional family care programs beyond the amounts allocated under pars. (a) to (d) and for specialized or innovative programs defined according to written criteria determined by the department.

(f) If the funds appropriated under s. 20.435 (2) (b) for any fiscal year are insufficient to provide boards with the sums calculated under pars. (a) to (d), the appropriation shall be allocated among boards in proportion to the sums they would receive thereunder.

(g) Each board which is eligible under the state plan for medical assistance shall obtain a medical assistance provider number and shall bill for all eligible clients. A board operating an inpatient facility shall apply for a special hospital license under s. 140.24 (1) (c). Under powers delegated under s. 46.10 (16), each board shall retain 100% of all collections it makes and its providers make for care other than that provided or purchased by the state.

(h) Each board established under either s. 51.42 or 51.437, or both shall apply all funds it receives under pars. (a) to (d) to provide the services enumerated in ss. 51.42 (5), 51.437 (5) and 51.45 (2) (g) to meet the needs for service quality and accessibility of the persons in its jurisdiction, except that the board may pay for inpatient treatment only with funds designated by the department for this purpose. The board may expand programs and services with county and other local or private funds at the discretion of the board. Moneys collected under s. 46.10

shall be applied to cover the costs of primary services, exceptional and specialized services or to reimburse supplemental appropriations funded by counties. Boards shall include 100% of collections made by the department under s. 46.10 on or after January 1, 1975, for care in county hospitals, as revenues on their grant-in-aid expenditure reports to the department.

(i) By September 30 of each year, each board shall submit to the department an annual program budget based on requirements of s. 46.03 (21) for the succeeding calendar year covering services, including active treatment community mental health center services, as prescribed by the department based on the plan required under sub. (7) (a). The cost of all services purchased by the board shall be developed based on the standards and requirements of s. 46.036.

(j) The department shall review each such annual program budget to insure uniform costing of services. The department shall approve such budget unless it determines, after reasonable notice and an opportunity for hearing, that the budget includes proposed expenditures inconsistent with the purposes of this subsection. The joint committee on finance may require the department to submit contracts between boards established under this section or s. 51.437 and providers of service to the committee for review and approval.

(k) After a board's budget has been approved, the department, after reasonable notice and an opportunity for hearing, may withhold a portion of the appropriation allocable to the board under this subsection if the department determines that such portion of the allocable appropriation:

1. Is for services which duplicate or are inconsistent with services being provided or purchased by the department or other county agencies receiving grants-in-aid or reimbursement from the department;

2. Is inconsistent with statutes, rules or regulations, whether state or federal;

3. Is for the treatment of alcoholics in treatment facilities which have not been approved by the department in accordance with s. 51.45 (8); or

4. Is for inpatient treatment in excess of an average of 28 days, excluding care for patients at the colonies for the developmentally disabled.

(l) At any hearing under par. (k), the department shall have the burden of proof, but the board shall be required to furnish the department with information necessary for a determination. If the department withholds a portion of the allocable appropriation, pursuant to par. (k), the board may submit an amendment to its annual program budget to rectify the deficiency found by the department. The department shall not provide state aid to any board for excessive inpatient treatment. For each board in each calendar year, sums expended for the 29th and all subsequent average days of care shall be deemed excessive inpatient treatment. No inpatient treatment provided to children, adolescents, chronically mentally ill patients, patients requiring specialized care at a mental health institute, or patients at the colonies for the developmentally disabled shall be deemed excessive. If a patient is discharged or released and then readmitted within 60 days after such discharge or release from an inpatient facility, the number of days of care following readmission shall be added to the number of days of care before discharge or release for the purpose of calculating the total length of such patient's stay in the inpatient facility.

**(9)** CARE IN OTHER FACILITIES. (a) Authorization for all care of any patient in a state, local or private facility shall be provided under a contractual agreement between the board and the facility, unless the board governs such facility. The need for inpatient care shall be determined by the clinical director of the program prior to the admission of a patient to the facility except in the case of emergency services. In cases of emergency, a facility under contract with any board shall charge the board having jurisdiction in the county where the patient is found. The board shall reimburse the facility for the actual cost of all authorized care and services less applicable collections according to s. 46.036, unless the department determines that a charge is administratively infeasible, or unless the department, after individual review, determines that the charge is not attributable to the cost of basic care and services. However, boards shall not reimburse any state institution nor receive credit for collections for care received therein by nonresidents of this state, interstate compact clients, transfers under s. 51.35 (2) (a), commitments under s. 971.14, 971.17, 975.01, 975.02, 975.06 or admissions under s. 975.17, or children placed in the guardianship or legal custody of the department under s. 48.34, 48.35 or 48.43. The exclusionary provisions of s. 46.03 (18) do not apply to direct and indirect costs which are attributable to care and treatment of the client.

(b) Where a state hospital has provided a board established under this section with service, the department shall regularly bill the board. Where collections for such care exceed current billings, the difference shall be remitted to the board through the appropriation under s. 20.435 (2) (d). Payment shall be due within 60 days of the billing date subject to provisions of the contract. If any payment has not been received

within 60 days, the department shall deduct all or part of the amount from any payment due from the department to the board. Any bill outstanding on July 31, 1975 shall be due within 60 days after July 31, 1975.

(c) Care, services and supplies provided after December 31, 1973, to any person who, on December 31, 1973, was in or under the supervision of a mental health institute, or was receiving mental health services in a facility authorized by s. 51.08 or 51.09, but was not admitted to a mental health institute by the department, shall be charged to the board established under this section which was responsible for such care and services at the place where the patient resided when admitted to the institution. The department shall bill boards established under this section for care provided at the mental health institutes which reflects the estimated per diem cost of specific levels of care, to be adjusted annually by the department.

**(10)** DEPARTMENTAL DUTIES. The department shall:

(a) Review requests and certify boards created under sub. (4) to assure that the boards are in compliance with the respective subsections.

(b) Review and approve required annual program plans and budgets but shall not approve budgets for amounts in excess of available revenues. It may certify to the desirability of programs or services above the approved level of services which are not included in the approved budget.

(c) Periodically review and evaluate boards and programs to assure compliance with this section. Such review shall include a periodic assessment of need which shall separately identify elements of service required under this section.

(d) Provide consultative staff services to communities to assist in ascertaining local needs and in planning, establishing and operating programs.

(e) Develop and implement a uniform cost reporting system according to s. 46.18 (8), (9) and (10).

**(12)** RULES GOVERNING ADMINISTRATIVE STRUCTURE. The secretary shall adopt rules governing the administrative structure deemed necessary to administer community mental health, developmental disabilities, alcoholism and drug abuse services; establishing uniform cost record-keeping requirements; governing eligibility of counties and combinations of counties for state grants-in-aid to operate programs; prescribing standards for qualifications and salaries of personnel; prescribing standards for quality of professional services; prescribing requirements for in-service and educational leave programs for personnel; prescribing standards for establishing patient fee schedules; governing eligibility of patients to the end that no person is denied service on the basis of age, race, color, creed, location or inability to pay; and prescribing such other standards and requirements as may be necessary to carry out the purposes of this section.

**History:** 1971 c. 125; 1973 c. 90, 198, 333, 336; 1975 c. 39, 198, 199, 224, 422; 1975 c. 428 s. 16; 1975 c. 430 ss. 24 to 31, 80.

Members of a county board appointed to a unified board, created under (4) (b) serve for the full term for which appointed, without reference to the termination of their office as county board members. 63 Atty. Gen. 203.

See note to 59.07, citing 63 Atty. Gen. 468.

Liability, reimbursement and collection for services provided under 51.42 and 51.437 programs discussed. 63 Atty. Gen. 560.

**51.437 Developmental disabilities services.** (1) DEFINITION. In this section, "services" mean specialized services or special adaptations of generic services directed toward the prevention and alleviation of a developmental disability or toward the social, personal, physical or economic habilitation or rehabilitation of an individual with such a disability, and includes diagnosis, evaluation, treatment, personal care, day care, domiciliary care, special living arrangements, training, education, sheltered employment, recreation, counseling of the individual with a developmental disability and his or her family, protective and other social and socio-legal services, information and referral services, follow-along services and transportation services necessary to assure delivery of services to individuals with developmental disabilities.

**(2)** DUTIES OF THE COUNCIL ON DEVELOPMENTAL DISABILITIES. (a) The council on developmental disabilities shall:

1. Designate appropriate state or local agencies for the administration of programs and fiscal resources made available to the state under federal legislation affecting the delivery of services to the developmentally disabled.

2. Develop, approve and continue modification of a statewide plan for the delivery of services, including the construction of facilities, to the developmentally disabled.

3. Review and approve program and fiscal plans submitted by community developmental disabilities services boards when such plans require the expenditure of federal or state funds in their implementation.

4. Continue evaluation of state and local services to the developmentally disabled.

5. Provide continuing counsel to the governor and legislature.

(b) The council may establish such reasonable administrative rules and procedures as are essential to the exercise of its responsibilities.

**(3)** DUTIES OF THE SECRETARY. The secretary of health and social services shall:

(a) Maintain a listing of present or potential resources for serving the needs of the developmentally disabled, including private and public persons, associations and agencies.

(b) Collect factual information concerning the problems.

(c) Provide information, advice and assistance to communities and try to coordinate their activities on behalf of the developmentally disabled.

(d) Assist counties in obtaining professional services on a shared-time basis.

(e) Establish and maintain liaison with all state and local agencies to establish a continuum of services, consultative and informational.

**(4)** RESPONSIBILITY OF COUNTY GOVERNMENT. The county boards of supervisors have the primary governmental responsibility for the well-being of those developmentally disabled citizens residing within their respective counties and the families of the mentally retarded insofar as the usual resultant family stresses bear on the well-being of the developmentally disabled citizen. County liability for care and services purchased through or provided by a board established under this section shall be based upon the client's county of residence except for emergency services for which liability shall be placed with the county in which the individual is found. For the purpose of establishing county liability, "emergency" services means those services provided under the authority of s. 51.15 (1), 55.05 (4) or 55.06 (11) (a). Nothing in this paragraph prevents recovery of liability under s. 46.10 or any other statute creating liability upon the individual receiving a service or any other designated responsible party. Adjacent counties, lacking the financial resources and professional personnel needed to provide or secure such services on a single-county basis, may and shall be encouraged to combine their energies and financial resources to provide these joint services and facilities with the approval of the council on developmental disabilities. This responsibility includes:

(a) The development, approval and continuing modification of a county or multicounty plan for the delivery of services, including the construction of facilities, to those citizens affected by developmental disabilities.

1. The purpose of such planning shall be to insure the delivery of needed services and the prevention of unnecessary duplication, fragmentation of services and waste of resources. Plans shall include, to the fullest extent possible, participation by existing and planned agencies of the state, counties, municipalities, school districts and all other public and private agencies as are required to, or may agree to, participate in the delivery of services.

2. Plans shall, to the fullest extent possible, be coordinated with and integrated into plans developed by regional comprehensive health planning agencies.

(b) Providing continuing counsel to public and private agencies as well as other appointed and elected bodies within the county.

(c) Establishing a program of citizen information and education concerning the problems associated with developmental disabilities.

(d) Establishing a fixed point of referral within the community for developmentally disabled persons and their families.

**(5)** FURNISHING OF SERVICES. The county board of supervisors shall establish community developmental disabilities services boards to furnish services within the counties. Such services shall be provided either directly or by contract.

**(6)** EDUCATIONAL SERVICES. The community developmental disabilities board shall not furnish services and programs provided by the department of public instruction and local educational agencies.

**(7)** COMPOSITION; COMBINATION OF BOARDS. (a) In counties having a population of less than 500,000, the community developmental disabilities services board shall be composed of not less than 9 nor more than 15 persons of recognized ability and demonstrated interest in the problems of the developmentally disabled but not more than 3 members shall be appointed from the county board of supervisors. Except that when counties combine to furnish services, the community developmental disabilities services board shall be composed of 11 members and with 2 additional members for each combining county in excess of 2. Appointments shall be made by the county boards of the combining counties in a manner acceptable to the combining counties, but each of the combining counties may appoint only 2 members from its county board. At least one-third of the members serving at any one time shall be appointed from the developmentally disabled citizens or their parents residing in the county or combining counties. Appointments shall be for staggered 3-year terms. Vacancies shall be filled for the residue of the unexpired term in the manner that original appointments are made. Any member may be removed from office for cause by a two-thirds vote of the appointing authority, on due notice in writing and hearing of the charges against him.

(b) In counties having a population of less than 500,000, a county board of supervisors may designate the community board established under s. 51.42 as the community developmental

disabilities board. The combined board shall plan for and establish a community developmental disabilities program as provided in sub. (9).

**(8)** MILWAUKEE COUNTY. In counties having a population of 500,000 or more, the board of public welfare established under s. 46.21 shall constitute the governing and policy-making board of directors. Such counties shall not combine with other counties. The appointment, composition and term of the members of the board of such counties shall be governed by s. 46.21.

**(9)** DUTIES OF THE BOARD. The community developmental disabilities services board shall:

(a) Establish a community developmental disabilities services program, appoint the director of the program, establish salaries and personnel policies for the program and arrange and promote local financial support for the program. The first step in the establishment of a program shall be the preparation of a local plan which includes an inventory of all existing resources, identifies needed new resources and services and contains a plan for meeting the needs of developmentally disabled individuals based upon the services designated under sub. (1). The plan shall also include the establishment of long-range goals and intermediate-range plans, detailing priorities and estimated costs and providing for coordination of local services and continuity of care.

(b) Assist in arranging cooperative working agreements with other health, educational, vocational and welfare services, public or private, and with other related agencies.

(c) Enter into contracts to provide or secure services from other agencies or resources including out-of-state agencies or resources.

(d) Comply with the state requirements for the program.

**(10)** DUTIES OF THE DIRECTOR. The director shall operate, maintain and improve the community developmental disabilities services program.

(a) The director and the board shall prepare:

1. An annual comprehensive plan and budget of all funds necessary for the program and services authorized by this section.

2. An annual report of the operation of the program.

3. Such other reports as are required by the council on developmental disabilities and the county board.

(b) The director shall make recommendations to the community developmental disabilities services board for:

1. Personnel and salaries.

2. Changes in the program and services.

**(11)** PROGRAM BUDGETING. Boards established under this section shall be funded pursuant to s. 51.42 (8).

**(12)** COST OF SERVICES. (a) Authorization for all care of any patient in a state, local or private facility shall be provided under a contractual agreement between the board and the facility, unless the board governs such facility. The need for inpatient care shall be determined by the clinical director of the program prior to the admission of a patient to the facility except in the case of emergency services. In cases of emergency, a facility under contract with any board shall charge the board having jurisdiction in the county where the individual receiving care is found. The board shall reimburse the facility for the actual cost of all authorized care and services less applicable collections according to s. 46.036, unless the department determines that a charge is administratively infeasible, or unless the department, after individual review, determines that the charge is not attributable to the cost of basic care and services. The exclusionary provisions of s. 46.03 (18) do not apply to direct and indirect costs which are attributable to care and treatment of the client. Boards shall not reimburse any state institution nor receive credit for collections for care received therein by nonresidents of this state, interstate compact clients, transfers under s. 51.35 (2) (a), commitments under s. 971.14, 971.17, 975.01, 975.02, 975.06, admissions under s. 975.17, or children placed in the guardianship or legal custody of the department under s. 48.34, 48.35 or 48.43.

(b) Where any of the community developmental disabilities services authorized are provided by any of the institutions specified in s. 46.10, the costs of such services shall be segregated from the costs of residential care provided at such institutions. The uniform cost record-keeping system established under s. 46.18 (8), (9) and (10) shall provide for such segregation of costs.

(c) Where a center for the developmentally disabled has provided a board established under this section with service, the department shall regularly bill the board. Where collections for such care exceed current billings, the difference shall be remitted to the board through the appropriation under s. 20.435 (2) (d). Payment shall be due within 60 days of the billing date subject to provisions of the contract. If any payment has not been received within 60 days, the department shall deduct all or part of the amount due from any payment due from the department to the board. Any bill outstanding on July 31, 1975 shall be due within 60 days after July 31, 1975.

(d) Care, services and supplies provided after December 31, 1973, to any person who, on December 31, 1973, was in or under the

supervision of a colony, shall be charged to the board established under this section which was responsible for such care and services at the place where the person resided when admitted to the institution. The department shall bill boards established under this section for care provided at the colonies at a rate which reflects the estimated per diem cost of specific levels of care, to be adjusted annually by the department.

**(13)** DAY CARE SERVICES: MILWAUKEE. In counties having a population of 500,000 or more, the board of public welfare shall integrate day care programs for mentally retarded persons and those programs for persons with other developmental disabilities into the community developmental disabilities program and shall appoint a director to administer the overall services program.

**(14)** DEPARTMENTIAL DUTIES. The department shall:

(a) Review requests and certify boards created under sub. (4) to assure that the boards are in compliance with the respective subsections.

(b) Review and approve required annual program plans and budgets but shall not approve budgets for amounts in excess of available revenues. The department may certify to the desirability of programs or services above the approved level of services which are not included in the approved budget.

(c) Periodically review and evaluate each board's program.

(d) Provide consultative staff services to communities to assist in ascertaining local needs and in planning, establishing and operating programs.

(e) Develop and implement a uniform cost reporting system according to s. 46.18 (8), (9) and (10).

**(15)** SOURCE OF SERVICES. Nothing in this section shall be construed to mean that developmentally disabled persons are not eligible for services available from all sources.

**History:** 1971 c. 307, 322; 1973 c. 90, 333; 1975 c. 39, 199, 430.

See note to 59.07, citing 63 Atty. Gen. 468.

See note to 51.42, citing 63 Atty. Gen. 560.

**51.45 Prevention and control of alcoholism.** (1) DECLARATION OF POLICY. It is the policy of this state that alcoholics and intoxicated persons may not be subjected to criminal prosecution because of their consumption of alcoholic beverages but rather should be afforded a continuum of treatment in order that they may lead normal lives as productive members of society.

**(2)** DEFINITIONS. As used in this section, unless the context otherwise requires:

(a) "Alcoholic" means a person who habitually lacks self-control as to the use of alcoholic beverages, or uses such beverages to the extent that health is substantially impaired or endangered or social or economic functioning is substantially disrupted.

(b) "Approved private treatment facility" means a private agency meeting the standards prescribed in sub. (8) (a) and approved under sub. (8) (c).

(c) "Approved public treatment facility" means a treatment agency operating under the direction and control of the department or providing treatment under this section through a contract with the department under sub. (7) (g) or with the county mental health, mental retardation, alcoholism and drug abuse board under s. 51.42 (5) (h) 8, and meeting the standards prescribed in sub. (8) (a) and approved under sub. (8) (c).

(cm) "Community board" means any community mental health, alcoholism and drug abuse policy-making board under s. 51.42.

(cr) "Designated person" means a person who performs, in part, the protective custody functions of a law enforcement officer under sub. (11), operates under an agreement between a community board and an appropriate law enforcement agency under sub. (11), and whose qualifications are established by such board.

(d) "Incapacitated by alcohol" means that a person, as a result of the use of or withdrawal from alcohol, is unconscious or has his or her judgment otherwise so impaired that he or she is incapable of making a rational decision, as evidenced objectively by such indicators as extreme physical debilitation, physical harm or threats of harm to himself or herself or to any other person, or to property.

(e) "Incompetent person" means a person who has been adjudged incompetent by the county court.

(f) "Intoxicated person" means a person whose mental or physical functioning is substantially impaired as a result of the use of alcohol.

(g) "Treatment" means the broad range of emergency, outpatient, intermediate, and inpatient services and care, including diagnostic evaluation, medical, surgical, psychiatric, psychological, and social service care, vocational rehabilitation and career counseling, which may be extended to alcoholics and intoxicated persons, and psychiatric, psychological and social service care which may be extended to their families. Treatment may also include, but shall not be replaced by, physical detention of persons who have threatened, attempted or inflicted physical harm on themselves or another while in protective custody or undergoing involuntary treatment under this section, or who

have attempted or committed an escape while in protective custody or undergoing involuntary treatment under this section.

**(3)** POWERS OF DEPARTMENT. To implement this section, the department may:

(a) Plan, establish and maintain treatment programs as necessary or desirable.

(b) Make contracts necessary or incidental to the performance of its duties and the execution of its powers, including contracts with public and private agencies, organizations, and individuals to pay them for services rendered or furnished to alcoholics or intoxicated persons.

(c) Keep records and engage in research and the gathering of relevant statistics.

**(4)** DUTIES OF DEPARTMENT. The department shall:

(a) Develop, encourage and foster statewide, regional, and local plans and programs for the prevention of alcoholism and treatment of alcoholics and intoxicated persons in cooperation with public and private agencies, organizations, and individuals and provide technical assistance and consultation services for these purposes.

(b) Coordinate the efforts and enlist the assistance of all public and private agencies, organizations and individuals interested in prevention of alcoholism and treatment of alcoholics and intoxicated persons.

(c) Provide treatment for alcoholics and intoxicated persons in or on parole from state correctional institutions and assure that the community board provides treatment for such persons in county, town and municipal institutions for the detention and incarceration of persons charged with or convicted of a violation of a state law or a county, town or municipal ordinance.

(d) Cooperate with the department of public instruction, local boards of education, schools, police departments, courts, and other public and private agencies, organizations and individuals in establishing programs for the prevention of alcoholism and treatment of alcoholics and intoxicated persons, and preparing curriculum materials thereon for use at all levels of school education.

(e) Prepare, publish, evaluate and disseminate educational material dealing with the nature and effects of alcohol.

(f) Develop and implement and assure that community boards develop and implement, as an integral part of treatment programs, an educational program for use in the treatment of alcoholics and intoxicated persons, which program shall include the dissemination of information concerning the nature and effects of alcohol.

(g) Organize and foster training programs for all persons engaged in treatment of alcoholics and intoxicated persons.

(h) Sponsor and encourage research into the causes and nature of alcoholism and treatment of alcoholics and intoxicated persons, and serve as a clearinghouse for information relating to alcoholism.

(i) Specify uniform methods for keeping statistical information by public and private agencies, organizations, and individuals, and collect and make available relevant statistical information, including number of persons treated, frequency of admission and readmission, and frequency and duration of treatment.

(j) Advise the governor or the state health planning agency under P.L. 93-641, as amended, in the preparation of a comprehensive plan for treatment of alcoholics and intoxicated persons for inclusion in the state's comprehensive health plan.

(k) Review all state health, welfare and treatment plans to be submitted for federal funding under federal legislation, and advise the governor or the state health planning agency under P.L. 93-641, as amended, on provisions to be included relating to alcoholics and intoxicated persons.

(l) Develop and maintain, in cooperation with other state agencies, local governments and businesses and industries in the state, appropriate prevention, treatment and rehabilitation programs and services for alcohol abuse and alcoholism among employes thereof.

(m) Utilize the support and assistance of interested persons in the community, particularly recovered alcoholics, to encourage alcoholics voluntarily to undergo treatment.

(n) Cooperate with the highway safety coordinator and highway commission in establishing and conducting programs designed to deal with the problem of persons operating motor vehicles while intoxicated.

(o) Encourage general hospitals and other appropriate health facilities to admit without discrimination alcoholics and intoxicated persons and to provide them with adequate and appropriate treatment.

(p) Submit to the governor or the state health planning agency under P.L. 93-641, as amended, an annual report covering the activities of the department relating to treatment of alcoholism.

(q) Gather information relating to all federal programs concerning alcoholism, whether or not subject to approval by the department, to assure coordination and avoid duplication of efforts.

**(6)** CITIZENS ADVISORY COUNCIL ON ALCOHOLISM. (a) The citizens advisory council on alcoholism shall meet at least once every 3 months and report on its activities, advise and

make recommendations under par. (b) to the secretary and the state health planning agency under P.L. 93-641, as amended, at least once a year.

(b) The council shall formulate advice on operation of the alcoholism program and on other matters referred to it, and shall encourage public understanding and support of the alcoholism program.

**(7)** COMPREHENSIVE PROGRAM FOR TREATMENT. (a) The department shall establish a comprehensive and coordinated program for the treatment of alcoholics and intoxicated persons.

(b) The program of the department shall include:

1. Emergency medical treatment provided by a facility affiliated with or part of the medical service of a general hospital.

2. Nonmedical emergency treatment provided by a facility having a written agreement with a general hospital for the provision of emergency medical treatment to patients as may be necessary.

3. Inpatient treatment.

4. Intermediate treatment as a part-time resident of a treatment facility.

5. Outpatient and follow-up treatment.

6. Extended care in a sheltered living environment with minimal staffing providing a program emphasizing at least one of the following elements: the development of self-care, social and recreational skills or prevocational or vocational training.

7. Prevention, intervention, information and referral services.

(c) The department shall provide for adequate and appropriate treatment for alcoholics and intoxicated persons admitted under subs. (10) to (13). Treatment may not be provided at a correctional institution except for inmates.

(d) The superintendent of each facility shall make an annual report of its activities to the secretary in the form and manner the secretary specifies.

(e) All appropriate public and private resources shall be coordinated with and utilized in the program if possible.

(f) The secretary shall prepare, publish and distribute annually a list of all approved public and private treatment facilities.

(g) The department may contract for the use of any facility as an approved public treatment facility if the secretary considers this to be an effective and economical course to follow.

**(8)** STANDARDS FOR PUBLIC AND PRIVATE TREATMENT FACILITIES; ENFORCEMENT PROCEDURES. (a) The department shall establish minimum standards for approved treatment facilities that must be met for a treatment facility to be approved as a public or private treatment facility, and fix the fees to be charged by the department for the required inspections. The standards may concern only the health standards to be met and standards of treatment to be afforded patients and shall distinguish between facilities rendering different modes of treatment. In setting standards, the department shall consider the residents' needs and abilities, the services to be provided by the facility, and the relationship between the physical structure and the objectives of the program. Nothing in this subsection shall prevent community boards from establishing reasonable higher standards.

(b) The department periodically shall make unannounced inspections of approved public and private treatment facilities at reasonable times and in a reasonable manner.

(c) Approval of a facility must be secured under this section before application for a grant-in-aid for such facility under s. 51.42 or before treatment in any facility is rendered to patients.

(d) Each approved public and private treatment facility shall file with the department on request, data, statistics, schedules and information the department reasonably requires. An approved public or private treatment facility that without good cause fails to furnish any data, statistics, schedules or information as requested, or files fraudulent returns thereof, shall be removed from the list of approved treatment facilities.

(e) The department, after notice and hearing, may suspend, revoke, limit, or restrict an approval, or refuse to grant an approval, for failure to meet its standards.

(f) The county court may restrain any violation of this section, review any denial, restriction, or revocation of approval, and grant other relief required to enforce its provisions.

**(9)** ACCEPTANCE FOR TREATMENT; RULES. The secretary shall adopt and may amend and repeal rules for acceptance of persons into the treatment program, considering available treatment resources and facilities, for the purpose of early and effective treatment of alcoholics and intoxicated persons. In establishing the rules the secretary shall be guided by the following standards:

(a) If possible a patient shall be treated on a voluntary rather than an involuntary basis.

(b) A patient shall be initially assigned or transferred to outpatient or intermediate treatment, unless he is found to require inpatient treatment.

(c) No person may be denied treatment solely because he has withdrawn from treatment against medical advice on a prior occasion or because he has relapsed after earlier treatment.

(d) An individualized treatment plan shall be prepared and maintained on a current basis for each patient.

(e) Provision shall be made for a continuum of coordinated treatment services, so that a person who leaves a facility or a form of treatment will have available and utilize other appropriate treatment.

**(10)** VOLUNTARY TREATMENT OF ALCOHOLICS. (a) An alcoholic may apply for voluntary treatment directly to an approved public treatment facility. If the proposed patient is an incompetent person who has not been deprived of the right to contract under subch. I of ch. 880, the person or a legal guardian or other legal representative may make the application. If the proposed patient is an incompetent person who has been deprived of the right to contract under subch. I of ch. 880, a legal guardian or other legal representative may make the application.

(b) Subject to rules adopted by the department, the superintendent in charge of an approved public treatment facility may determine who shall be admitted for treatment. If a person is refused admission to an approved public treatment facility, the superintendent, subject to rules adopted by the department, shall refer the person to another approved public treatment facility for treatment if possible and appropriate.

(c) If a patient receiving inpatient care leaves an approved public treatment facility, the patient shall be encouraged to consent to appropriate outpatient or intermediate treatment. If it appears to the superintendent in charge of the treatment facility that the patient is an alcoholic or intoxicated person who requires help, the community board shall arrange for assistance in obtaining supportive services and residential facilities. If the patient is an incompetent person the request for discharge from an inpatient facility shall be made by a legal guardian or other legal representative or by the incompetent if he or she was the original applicant.

(d) If a patient leaves an approved public treatment facility, with or against the advice of the superintendent in charge of the facility, the community board may make reasonable provisions for the patient's transportation to another facility or to his or her home or may assist the patient in obtaining temporary shelter.

**(11)** TREATMENT AND SERVICES FOR INTOXICATED PERSONS AND OTHERS INCAPACITATED BY ALCOHOL. (a) An intoxicated person may come voluntarily to an approved public treatment facility for emergency treatment. Any law enforcement officer, or designated person upon the request of a law enforcement officer, may assist a person who appears to be intoxicated in a public place and to be in need of help to his or her home, an approved treatment facility or other health facility, if such person consents to the proffered help.

(b) A person who appears to be incapacitated by alcohol shall be placed under protective custody by a law enforcement officer. The law enforcement officer shall either bring such person to an approved public treatment facility for emergency treatment or request a designated person to bring such person to the facility for emergency treatment. If no approved public treatment facility is readily available or if, in the judgment of the law enforcement officer or designated person, the person is in need of emergency medical treatment, the law enforcement officer or designated person upon the request of the law enforcement officer shall take such person to an emergency medical facility. The law enforcement officer or designated person, in detaining such person or in taking him or her to an approved public treatment facility or emergency medical facility, is holding such person under protective custody and shall make every reasonable effort to protect the person's health and safety. In placing the person under protective custody the law enforcement officer may search such person for and seize any weapons. Placement under protective custody under this subsection is not an arrest. No entry or other record shall be made to indicate that such person has been arrested or charged with a crime. A person brought to an approved public treatment facility under this paragraph shall be deemed to be under the protective custody of the facility upon arrival.

(c) A person who comes voluntarily or is brought to an approved treatment facility shall be examined by trained staff as soon as practicable in accordance with a procedure developed by the facility in consultation with a licensed physician. The person may then be admitted as a patient or referred to another treatment facility or to an emergency medical facility, in which case the community board shall make provision for transportation. Upon arrival, the person shall be deemed to be under the protective custody of the facility to which he or she has been referred.

(d) A person who by examination pursuant to par. (c) is found to be incapacitated by alcohol at the time of admission, or to have become incapacitated at any time after admission, shall be detained at the appropriate facility for the duration of the incapacity but may not be detained when no longer incapacitated by alcohol, or if the person remains incapacitated by alcohol for more than 72 hours after admission as a patient, exclusive of Saturdays, Sundays and

legal holidays, unless he or she is committed under sub. (12). A person may consent to remain in the facility as long as the physician or official in charge believes appropriate.

(e) The community board shall arrange transportation home for a person who was brought under protective custody to an approved public treatment facility or emergency medical facility and who is not admitted, if the home is within 50 miles of the facility. If the person has no home within 50 miles of the facility, the community board shall assist him or her in obtaining shelter.

(f) If a patient is admitted to an approved public treatment facility, the family or next of kin shall be notified as promptly as possible unless an adult patient who is not incapacitated requests that no notification be made.

(g) Any law enforcement officer, designated person or officer or employe of an approved treatment facility who acts in compliance with this section is acting in the course of official duty and is not criminally or civilly liable for false imprisonment.

(h) Prior to discharge, the patient shall be informed of the benefits of further diagnosis and appropriate voluntary treatment.

(i) No provision of this section may be deemed to require any emergency medical facility which is not an approved private or public treatment facility to provide to incapacitated persons nonmedical services including, but not limited to, shelter, transportation or protective custody.

**(12)** EMERGENCY COMMITMENT. (a) An intoxicated person who has threatened, attempted or inflicted physical harm on himself or herself or on another and is likely to inflict such physical harm unless committed, or a person who is incapacitated by alcohol, may be committed to the community board and brought to an approved public treatment facility for emergency treatment. A refusal to undergo treatment does not constitute evidence of lack of judgment as to the need for treatment.

(b) The physician, spouse, guardian or a relative of the person sought to be committed, or any other responsible person, may petition a court commissioner or the county court of the county in which the person sought to be committed resides or is present for commitment under this subsection. The petition shall:

1. State facts to support the need for emergency treatment;

2. State facts sufficient for a determination of indigency of the person; and

3. Be supported by one or more affidavits which aver with particularity the factual basis for the allegations contained in the petition.

(c) Upon receipt of a petition under par. (b), the court commissioner or court shall:

1. Determine whether the petition and supporting affidavits sustain the grounds for commitment and dismiss the petition if the grounds for commitment are not sustained thereby. If the grounds for commitment are sustained by the petition and supporting affidavits, the court or court commissioner shall issue an order temporarily committing the person to the custody of the community board pending the outcome of the preliminary hearing under sub. (13) (d).

2. Assure that the person sought to be committed is represented by counsel and, if the person is indigent, appoint counsel.

3. Issue an order directing the sheriff or other law enforcement agency to take the person into protective custody and bring him or her to an approved public treatment facility designated by the community board, if the person is not detained under sub. (11).

4. Set a time for a preliminary hearing under sub. (13) (d), such hearing to be held not later than 48 hours after receipt of a petition under par. (b), exclusive of Saturdays, Sundays and legal holidays. If at such time the person is unable to assist in the defense because he or she is incapacitated by alcohol, an extension of not more than 48 hours, exclusive of Saturdays, Sundays and legal holidays, may be had upon motion of the person or the person's attorney.

(d) Upon arrival at the approved public treatment facility, the person shall be advised both orally and in writing of the right to counsel, the right to consult with counsel before a request is made to undergo voluntary treatment under sub. (10), the right not to converse with examining physicians, psychologists or other personnel, the fact that anything said to examining physicians, psychologists or other personnel may be used as evidence against him or her at subsequent hearings under this section, the right to refuse medication which would render him or her unable adequately to prepare a defense, the exact time and place of the preliminary hearing under sub. (13) (d), and of the reasons for detention and the standards under which he or she may be committed prior to all interviews with physicians, psychologists or other personnel. Such notice of rights shall be provided to the patient's immediate family if they can be located and may be deferred until the patient's incapacitated condition, if any, has subsided to the point where the patient is capable of understanding the notice. Under no circumstances may interviews with physicians, psychologists or other personnel be conducted until such notice is given, except that the patient may be questioned to determine immediate medical

needs. The patient may be detained at the facility to which he or she was admitted or, upon notice to the attorney and the court, transferred by the community board to another appropriate public or private treatment facility, until discharged under par. (e).

(e) When on the advice of the treatment staff the superintendent of the facility having custody of the patient determines that the grounds for commitment no longer exist, he or she shall discharge a person committed under this subsection. No person committed under this subsection shall be detained in any treatment facility beyond the time set for a preliminary hearing under par. (c) 4. If a petition for involuntary commitment under sub. (13) has been filed and a finding of probable cause for believing the patient is in need of commitment has been made under sub. (13) (d), the person may be detained until the petition has been heard and determined.

(f) A copy of the written application for commitment and all supporting affidavits shall be given to the patient at the time notice of rights is given under par. (d) by the superintendent, who shall provide a reasonable opportunity for the patient to consult counsel.

**(13)** INVOLUNTARY COMMITMENT. (a) A person may be committed to the custody of the community board by the county court upon the petition of 3 adults, each of whom has personal knowledge of the conduct and condition of the person sought to be committed. A refusal to undergo treatment shall not constitute evidence of lack of judgment as to the need for treatment. The petition for commitment shall:

1. Allege that the condition of the person is such that he or she habitually lacks self-control as to the use of alcoholic beverages, and uses such beverages to the extent that health is substantially impaired or endangered and social or economic functioning is substantially disrupted;

2. Allege that such condition of the person is evidenced by a pattern of conduct which is dangerous to the person or to others;

3. State facts sufficient for a determination of indigency of the person; and

4. Be supported by the affidavit of each petitioner which avers with particularity the factual basis for the allegations contained in the petition.

(b) Upon receipt of a petition under par. (a), the court shall:

1. Determine whether the petition and supporting affidavits meet the requirements of par. (a) and dismiss the petition if the requirements of par. (a) are not met thereby. If the person has not been temporarily committed under sub. (12) (c) and the petition and supporting affidavits meet the requirements of par. (a), the court may issue an order temporarily committing the person to the custody of the community board pending the outcome of the preliminary hearing under par. (d).

2. Assure that the person is represented by counsel and, if the person is indigent, appoint counsel. The person shall be represented by counsel at the preliminary hearing under par. (d). The person may, with the approval of the court, waive his or her right to representation by counsel at the full hearing under par. (f).

3. If the court orders temporary commitment, issue an order directing the sheriff or other law enforcement agency to take the person into protective custody and to bring the person to an approved public treatment facility designated by the community board, if the person is not detained under sub. (11) or (12).

4. Set a time for a preliminary hearing under par. (d). If the person is taken into protective custody, such hearing shall be held not later than 48 hours after receipt of a petition under par. (a), exclusive of Saturdays, Sundays and legal holidays. If at such time the person is unable to assist in the defense because he or she is incapacitated by alcohol, an extension of not more than 48 hours, exclusive of Saturdays, Sundays and legal holidays, may be had upon motion of the person or the person's attorney.

(c) Effective and timely notice of the preliminary hearing, together with a copy of the petition and supporting affidavits under par. (a), shall be given to the person unless he or she has been taken into custody under par. (b), the spouse or legal guardian if the person is incompetent, the person's counsel and the petitioner. The notice shall include a written statement of the person's right to an attorney, the right to trial by jury, the right to be examined by a physician, and the standard under which he or she may be committed under this section. If the person is taken into custody under par. (b), upon arrival at the approved public treatment facility, the person shall be advised both orally and in writing of the right to counsel, the right to consult with counsel before a request is made to undergo voluntary treatment under sub. (10), the right not to converse with examining physicians, psychologists or other personnel, the fact that anything said to examining physicians, psychologists or other personnel may be used as evidence against him or her at subsequent hearings under this section, the right to refuse medication which would render him or her unable adequately to prepare a defense, the exact time and place of the preliminary hearing under par. (d), the right to trial by jury, the right to be examined by a physician and of the reasons for detention and the standards under which he

or she may be committed prior to all interviews with physicians, psychologists or other personnel. Such notice of rights shall be provided to the person's immediate family if they can be located and may be deferred until the person's incapacitated condition, if any, has subsided to the point where the person is capable of understanding the notice. Under no circumstances may interviews with physicians, psychologists or other personnel be conducted until such notice is given, except that the person may be questioned to determine immediate medical needs. The person may be detained at the facility to which he or she was admitted or, upon notice to the attorney and the court, transferred by the community board to another appropriate public or private treatment facility, until discharged under this subsection. A copy of the petition and all supporting affidavits shall be given to the person at the time notice of rights is given under this paragraph by the superintendent, who shall provide a reasonable opportunity for the patient to consult counsel.

(d) Whenever it is desired to involuntarily commit a person, a preliminary hearing shall be held under this paragraph. The purpose of the preliminary hearing shall be to determine if there is probable cause for believing that the allegations of the petition under par. (a) are true. The person shall be represented by counsel at the preliminary hearing and, if the person is indigent, counsel shall timely be appointed at county expense. Counsel shall have access to all reports and records, psychiatric and otherwise, which have been made prior to the preliminary hearing. The person shall be present at the preliminary hearing and shall be afforded a meaningful opportunity to be heard. Upon failure to make a finding of probable cause under this paragraph, the court shall dismiss the petition and discharge the person from the custody of the community board.

(e) Upon a finding of probable cause under par. (d), the court shall fix a date for a full hearing to be held within 14 days. An extension of not more than 14 days may be granted upon motion of the person sought to be committed upon a showing of cause. Effective and timely notice of the full hearing, the right to counsel, the right to jury trial and the standards under which the person may be committed shall be given to the person, the immediate family other than a petitioner under par. (a) or sub. (12) (b) if they can be located, the spouse or legal guardian if the person is incompetent, the superintendent in charge of the appropriate approved public treatment facility if the person has been temporarily committed under par. (b) or sub. (12), the person's counsel, unless waived, and to the petitioner under par. (a). Counsel, or the person if counsel is waived, shall have access to all reports and records, psychiatric and otherwise, which have been made prior to the full hearing on commitment, and shall be given the names of all persons who may testify in favor of commitment and a summary of their proposed testimony at least 96 hours before the full hearing, exclusive of Saturdays, Sundays and legal holidays.

(f) The hearing shall be open, unless the person sought to be committed or the person's attorney moves that it be closed, in which case only persons in interest (including representatives of the community board in all cases) and their attorneys and witnesses may be present. At the hearing the jury, or, if trial by jury is waived, the court, shall consider all relevant evidence, including, if possible, the testimony of at least one licensed physician who has examined the person whose commitment is sought. Ordinary rules of evidence shall apply to any such proceeding. The person whose commitment is sought shall be present and shall be given an opportunity to be examined by a court-appointed licensed physician. If the person refuses and there is sufficient evidence to believe that the allegations of the petition are true, or if the court believes that more medical evidence is necessary, the court may make a temporary order committing the person to the community board for a period of not more than 5 days for purposes of diagnostic examination.

(g) The court shall make an order of commitment to the community board if, after hearing all relevant evidence, including the results of any diagnostic examination, the trier of fact finds: 1) that the allegations of the petition under par. (a) have been established beyond a reasonable doubt; and 2) that there is a relationship between the alcoholic condition and the pattern of conduct during the 12-month period immediately preceding the time of petition which is dangerous to the person or others and that such relationship has been established to a reasonable medical certainty; and 3) that there is an extreme likelihood that the pattern of conduct will continue or repeat itself without the intervention of involuntary treatment or institutionalization. The court may not order commitment of a person unless it is shown beyond a reasonable doubt that there is no suitable alternative available in which the person will voluntarily participate and that the community board is able to provide the most appropriate treatment and that the treatment is likely to be beneficial.

(h) A person committed under this subsection shall remain in the custody of the community board for treatment for a period of 30 days.

During this period of commitment the community board may transfer the person from one approved public treatment facility or program to another as provided in par. (k). At the end of the 30-day period, the person shall be discharged automatically unless the community board before expiration of the period obtains a court order for recommitment upon the grounds set forth in par. (a) for a further period of 90 days. If after examination it is determined that the person is likely to inflict physical harm on himself or herself or on another, the community board shall apply for recommitment.

(i) A person recommitted under par. (h) shall be discharged at the expiration of the 90-day period unless the community board, before expiration of the period, obtains a court order on the grounds set forth in par. (a) for recommitment for a further period not to exceed 90 days. If after examination it is determined that the person is likely to inflict physical harm on himself or herself or on another, the community board shall apply for recommitment. Only 2 recommitment orders under this paragraph and par. (h) are permitted.

(j) Upon the filing of a petition for recommitment under par. (h) or (i), the court shall fix a date for a recommitment hearing within 10 days, assure that the person sought to be recommitted is represented by counsel and, if the person is indigent, appoint counsel for him or her, unless waived. The provisions of par. (e) relating to notice and to access to records, names of witnesses and summaries of their testimony shall apply to recommitment hearings under this paragraph. At the recommitment hearing, the court shall proceed as provided under pars. (f) and (g).

(k) The community board shall provide for adequate and appropriate treatment of a person committed to its custody. Any person committed or recommitted to custody may be transferred by the community board from one approved public treatment facility or program to another upon the written application to the community board from the facility or program treating the person. Such application shall state the reasons why transfer to another facility or program is necessary to meet the treatment needs of the person. Notice of such transfer and the reasons therefor shall be given to the court, the person's attorney and the person's immediate family, if they can be located.

(l) If an approved private treatment facility agrees with the request of a competent patient or a parent, sibling, adult child, or guardian to accept the patient for treatment, the community board may transfer the person to the private treatment facility.

(m) A person committed under this section may at any time seek to be discharged from commitment by writ of habeas corpus under s. 292.01 (2).

(n) The venue for proceedings under this subsection is the place in which the person to be committed resides or is present.

(o) All fees and expenses incurred under this section which are required to be assumed by the county shall be governed by s. 51.07 [51.20 (19)].

(p) A record shall be made of all proceedings held under this subsection. Transcripts shall be made available under s. 256.57. The community board may in any case request a transcript.

(q) 1. Within 5 days after the date of mailing of notice of entry of judgment, as indicated in the case docket, an appeal from any final judgment under this section may be taken to the circuit court by any party to the action or proceedings, upon filing with the clerk of court which tried the case a notice of appeal signed by the appellant or his or her attorney, and serving a copy of such notice on all parties bound by the judgment who appeared in the action or their attorneys. Execution may be stayed under ch. 817. Within 40 days after notice of appeal is filed the appellant shall file with the clerk of court a transcript of the reporter's notes of the hearing. The appellant shall pay the costs of preparing the transcript unless the appellant is indigent, in which case the community board shall pay such costs.

2. Within 10 days after the transcript is filed with the clerk, the clerk shall return the case file and transcript to the circuit court and shall notify the parties of such filing.

3. On appeal, the circuit court has power similar to that of the supreme court to review and to affirm, reverse or modify the judgment appealed from. In addition, the circuit court may order a new hearing in whole or in part, which shall be in the county court.

4. At any time after the filing in the circuit court of the return on an appeal, any party to the action or proceeding, upon notice, may move that the judgment appealed from be affirmed, or modified and affirmed as modified, or that the appeal be dismissed, or may move for a new hearing or a reversal. This motion shall state concisely the grounds upon which it is made and shall be heard on the record.

**(14)** CONFIDENTIALITY OF RECORDS OF PATIENTS. (a) Except as otherwise provided in this subsection, the registration and other records of treatment facilities shall remain confidential and are privileged to the person.

(b) Notwithstanding par. (a), the department may make available information from patients' records for purposes of research into the

causes and treatment of alcoholism. Information obtained under this paragraph shall not be used in a way that discloses patients' names or other identifying information. In making such information available, the department shall impose appropriate safeguards against identification and disclosure.

(c) Notwithstanding par. (a), the registration and other records of treatment facilities may be used for purposes of management audits, financial audits or program evaluation. Information obtained under this paragraph shall not be used in a way that discloses patients' names or other identifying information. The department shall promulgate rules to assure the confidentiality of such information.

(d) Notwithstanding par. (a), the registration and other records of treatment facilities may be disclosed to a licensed physician who has determined that the life or health of the patient is in danger and that treatment without the information contained therein could be injurious to the patient's health. The disclosure shall be limited to that part of the records necessary to meet the medical emergency.

(e) Any person who violates this subsection shall forfeit not more than $5,000.

**(15)** CIVIL RIGHTS AND LIBERTIES. (a) A person being treated under this section does not thereby lose any legal rights.

(b) The department shall establish reasonable hours of visitation for treatment facilities providing inpatient or intermediate treatment under this section. Patients residing in such facilities may not be denied the opportunity for adequate consultation with counsel or for continuing contact with family and friends consistent with effective treatment.

(c) Neither mail nor other communication to or from a patient in any approved treatment facility may be intercepted, read or censored. The department may adopt reasonable security rules regarding the receipt of packages and use of a telephone by patients in approved treatment facilities.

(d) No provisions of this section may be deemed to contradict any rules or regulations governing the conduct of any inmate of a state or county correctional institution who is being treated in an alcoholic treatment program within the institution.

(e) A private or public general hospital may not refuse admission or treatment to a person in need of medical services solely because that person is an "alcoholic", "incapacitated by alcohol" or is an "intoxicated person" as defined in sub. (2). This paragraph does not require a hospital to admit or treat the person if the hospital does not ordinarily provide the services required by the person. A private or public general hospital which violates this paragraph shall forfeit not more than $500.

**(16)** PAYMENT FOR TREATMENT. (a) Liability for payment for care, services and supplies provided under this section, the collection and enforcement of such payments, and the adjustment and settlement with the several counties for their proper share of all moneys collected under s. 46.10, shall be governed exclusively by s. 46.10.

(b) Payment for treatment of persons treated under s. 53.38 shall be made under that section.

**(17)** APPLICABILITY OF OTHER LAWS; PROCEDURE. (a) Nothing in this section affects any law, ordinance or rule the violation of which is punishable by fine, forfeiture or imprisonment.

(b) All administrative procedure followed by the secretary in the implementation of this section shall be in accordance with ch. 227.

**(18)** CONSTRUCTION. This section shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this section insofar as possible among states which enact similar laws.

**(19)** SHORT TITLE. This section may be cited as the "Alcoholism and Intoxication Treatment Act".

**History:** 1973 c. 198; 1975 c. 200, 428; 1975 c. 430 s. 80.

The revision of Wisconsin's law of alcoholism and intoxication. Robb, 58 MLR 88.

Wisconsin's new alcoholism act encourages early voluntary treatment. 1974 WBB No. 3.

**51.61 Patients rights.** (1) Except as provided in subs. (2) and (3), each patient admitted or committed under this chapter shall:

(a) Upon admission or commitment be informed orally and in writing of his or her rights under this section. Copies of this section shall be posted conspicuously in each patient area, and shall be available to the patient's guardian and immediate family.

(b) Receive wages or an allowance for work performed which is of financial benefit to the facility in accordance with the regulations established for compliance with the minimum wage and hour laws by the U.S. department of labor.

(c) Have an unrestricted right to send sealed mail and receive sealed mail, and have reasonable access to letter writing materials including postage stamps.

(d) Except in the case of a person who is committed for alcoholism, have the right to petition the court for review of the commitment order or for withdrawal of the order or release from commitment as provided in s. 51.20 (17).

(e) Have the right to the least restrictive conditions necessary to achieve the purposes of admission or commitment.

(f) Have a right to receive prompt and adequate treatment, rehabilitation and educational services appropriate for his or her condition.

(g) Prior to the final commitment hearing and court commitment orders, have the right to refuse all medication and treatment except in a life threatening situation, or in a situation where such medication or treatment is necessary to prevent serious physical injury to the patient or others. Medications and treatment may be refused only as provided in par. (h).

(h) Have a right to be free from unnecessary or excessive medication. No medication may be administered to a patient except at the written order of a physician. The attending physician is responsible for all medication which is administered to a patient. A record of the medication which is administered to each patient shall be kept in his or her medical records. Medication may not be used as punishment, for the convenience of staff, as a substitute for a treatment program, or in quantities that interfere with a patient's treatment program. A patient may refuse medications and medical treatment if the patient is a member of a recognized religious organization and the religious tenets of such organization prohibit such medications and treatment. The individual shall be informed of this right prior to administration of medications or treatment whenever the patient's condition so permits.

(i) Have a right to be free from physical restraint and isolation except for emergency situations or when isolation or restraint is a part of a treatment program. Isolation or restraint may be used only when less restrictive measures are ineffective or not feasible and shall be used for the shortest time possible. When a patient is placed in isolation or restraint, his or her status shall be reviewed once every 30 minutes. Each facility shall have a written policy covering the use of restraint or isolation which ensures that the dignity of the individual is protected, that the safety of the individual is ensured and that there is regular, frequent monitoring by trained staff to care for bodily needs as may be required. Isolation or restraint may be used for emergency situations only when it is likely that the patient may physically harm himself or herself or others. The treatment director shall specifically designate physicians who are authorized to order isolation or restraint, and shall specifically designate licensed psychologists who are authorized to order isolation. In the instance where the treatment director is not a physician, the medical director shall make the designation. In the case of a center for the developmentally disabled, use shall be authorized by the director of the center. The authorization for emergency use of isolation or restraint shall be in writing, except that isolation or restraint may be authorized in emergencies for not more than an hour, after which time an appropriate order in writing shall be obtained from the physician or licensed psychologist designated by the director. Emergency isolation or restraint may not be continued for more than 24 hours without a new written order. Isolation may be used as part of a treatment program if it is part of a written treatment plan and the rights specified in this subsection are provided to the patient. Such treatment plan shall be evaluated at least once every 2 weeks.

(j) Have a right not to be subjected to experimental research without the express and informed consent of the patient and of the patient's guardian or next of kin after consultation with independent specialists and the patient's legal counsel. Such proposed research shall first be reviewed and approved by the institution's research and human rights committee created under sub. (4) and by the department before such consent may be sought. Prior to such approval, the committee and the department shall determine that research complies with the principles of the statement on the use of human subjects for research adopted by the American Association on Mental Deficiency, and with the regulations for research involving human subjects required by the U.S. department of health, education and welfare for projects supported by that agency.

(k) Have a right not to be subjected to treatment procedures such as psychosurgery, or other drastic treatment procedures without the express and informed consent of the patient after consultation with his or her counsel and legal guardian, if any. Express and informed consent of the patient after consultation with the patient's counsel and legal guardian, if any, is required for the use of electroconvulsive treatment.

(l) Have the right to religious worship within the facility if the patient desires such an opportunity and a clergyman of the patient's religious denomination or society is available to the facility. The provisions for such worship shall be available to all patients on a nondiscriminatory basis. No individual may be coerced into engaging in any religious activities.

(m) Have a right to a humane psychological and physical environment within the hospital facilities. These facilities shall be designed to afford patients with comfort and safety, to promote dignity and ensure privacy. Facilities shall also be designed to make a positive contribution to the effective attainment of the treatment goals of the hospital.

(n) Be permitted to make and receive telephone calls within reasonable limits.

(o) Be permitted to use and wear his or her own clothing and personal articles, or be furnished with an adequate allowance of clothes if none are available. Provision shall be made to launder the patient's clothing.

(p) Be provided access to a reasonable amount of individual secure storage space for his or her own private use.

(q) Have reasonable protection of privacy in such matters as toileting and bathing.

(r) Be permitted to see visitors each day.

**(2)** Except in the case of a person receiving treatment for alcoholism a patient's rights guaranteed under sub. (1) (n) to (r) may be denied for cause after review by the director of the facility, and may be denied when medically contraindicated as documented by the patient's physician in the patient's treatment record. The individual shall be informed of the grounds for withdrawal of the right and shall have the opportunity to refute the grounds. There shall be documentation of the grounds for withdrawal of rights in the patient's hospital record.

**(3)** The patient's rights guaranteed under sub. (1) (a) to (m) may be denied only after an administrative hearing. The decision shall be subject to court review, upon petition by the patient or such person's legal counsel at the request of the patient.

**(4)** (a) Each facility which conducts research upon human subjects shall establish a research and human rights committee consisting of not less than 5 persons with varying backgrounds to assure complete and adequate review of research activities commonly conducted by the facility. The committee shall be sufficiently qualified through the maturity, experience and expertise of its members and diversity of its membership to ensure respect for its advice and counsel for safeguarding the rights and welfare of human subjects. In addition to possessing the professional competence necessary to review specific activities, the committee shall be able to ascertain the acceptability of proposals in terms of commitments of the facility and federal regulations, applicable law, standards of professional conduct and practice, and community attitudes.

(b) No member of a committee may be directly involved in the research activity or involved in either the initial or continuing review of an activity in which he or she has a conflicting interest, except to provide information requested by the committee.

(c) No committee may consist entirely of persons who are officers, employes or agents of or are otherwise associated with the facility, apart from their membership on the committee.

(d) No committee may consist entirely of members of a single professional group.

(e) A majority of the membership of the committee constitutes a quorum to do business.

**(5)** Any individual who believes that his or her rights under this section are being violated may petition the court for a review of the action in accordance with s. 51.20 (17), except that s. 51.20 (17) (e) and (f) may be applied at the discretion of the court.

**(6)** The department shall establish procedures to assure protection of parental rights, and to implement a grievance procedure to assure that rights of patients under this chapter are protected and enforced by the department, by service providers and by boards established under ss. 51.42 and 51.437.

**(7)** Subject to the rights of patients provided under this section, the department or community boards under s. 51.42 or 51.437, or any agency providing services under an agreement with the department or such boards has the right to use customary and usual treatment techniques and procedures in a reasonable and appropriate manner in the treatment of patients who are receiving services under the mental health system, for the purpose of ameliorating the conditions for which the patients were admitted to the system. The permission of any patient who was voluntarily admitted shall first be obtained. In the case of a minor, the permission of the parent or guardian is required.

**History:** 1975 c. 430.

**51.63 Private pay for patients.** Any person may pay, in whole or in part, for the maintenance and clothing of any mentally ill, developmentally disabled, alcoholic or drug dependent person at any institution for the treatment of persons so afflicted, and his or her account shall be credited with the sums paid. The person may also be likewise provided with such special care in addition to those services usually provided by the institution as is agreed upon with the director, upon payment of the charges therefor.

**History:** 1975 c. 430.

**51.65 Segregation of tuberculosis patients.** The department shall make provision for the segregation of tuberculosis patients in the state-operated and community-operated facilities, and for that purpose may set apart facilities and equip facilities for the care and treatment of such patients.

**History:** 1975 c. 430.

**51.67 Alternate procedure; protective services act.** If, after hearing under s. 51.20 (11) or (12), the court finds that commitment under this chapter is not warranted and that the

subject individual is a fit subject for guardianship and protective placement or services, the court may, without further notice, appoint a temporary guardian for the subject individual and order protective placement or services under ch. 55 for a period not to exceed 30 days. If, during such period, a guardian of the subject individual is appointed, the court may, without further petition or hearing, order protective placement or services under ch. 55. Appeal may be taken to the circuit court for the county as provided in s. 51.20 (16).

**History:** 1975 c. 430.

**51.75 Interstate compact on mental health.** The interstate compact on mental health is enacted into law and entered into by this state with all other states legally joining therein substantially in the following form:

THE INTERSTATE COMPACT ON MENTAL HEALTH.

The contracting states solemnly agree that:

Article I.

The party states find that the proper and expeditious treatment of the mentally ill and mentally deficient can be facilitated by cooperative action, to the benefit of the patients, their families and society as a whole. Further, the party states find that the necessity of and desirability for furnishing such care and treatment bears no primary relation to the residence or citizenship of the patient but that, on the contrary, the controlling factors of community safety and humanitarianism require that facilities and services be made available for all who are in need of them. Consequently, it is the purpose of this compact and of the party states to provide the necessary legal basis for the institutionalization or other appropriate care and treatment of the mentally ill and mentally deficient under a system that recognizes the paramount importance of patient welfare and to establish the responsibilities of the party states in terms of such welfare.

Article II.

As used in this compact:

(a) "Sending state" means a party state from which a patient is transported pursuant to the provisions of the compact or from which it is contemplated that a patient may be so sent.

(b) "Receiving state" means a party state to which a patient is transported pursuant to the provisions of the compact or to which it is contemplated that a patient may be so sent.

(c) "Institution" means any hospital or other facility maintained by a party state or political subdivision thereof for the care and treatment of mental illness or mental deficiency.

(d) "Patient" means any person subject to or eligible as determined by the laws of the sending state, for institutionalization or other care, treatment or supervision pursuant to the provisions of this compact.

(e) "Aftercare" means care, treatment and services provided a patient, as defined herein, on convalescent status or conditional release.

(f) "Mental illness" means mental disease to such extent that a person so afflicted requires care and treatment for his own welfare, or the welfare of others, or of the community.

(g) "Mental deficiency" means mental deficiency as defined by appropriate clinical authorities to such extent that a person so afflicted is incapable of managing himself and his affairs, but shall not include mental illness as defined herein.

(h) "State" means any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

Article III.

(a) Whenever a person physically present in any party state is in need of institutionalization by reason of mental illness or mental deficiency, he shall be eligible for care and treatment in an institution in that state irrespective of his residence, settlement or citizenship, qualifications.

(b) The provisions of par. (a) of this article to the contrary notwithstanding any patient may be transferred to an institution in another state whenever there are factors based upon clinical determinations indicating that the care and treatment of said patient would be facilitated or improved thereby. Any such institutionalization may be for the entire period of care and treatment or for any portion thereof. The factors referred to in this paragraph include the patient's full record with due regard for the location of the patient's family, character of the illness and probable duration thereof, and such other factors as are considered appropriate.

(c) No state is obliged to receive any patient pursuant to par. (b) of this article unless the sending state has given advance notice of its intention to send the patient, furnished all available medical and other pertinent records concerning the patient and given the qualified medical or other appropriate clinical authorities of the receiving state an opportunity to examine the patient if said authorities so wish, and unless the receiving state agrees to accept the patient.

(d) If the laws of the receiving state establish a system of priorities for the admission of patients, an interstate patient under this compact shall receive the same priority as a local patient and shall be taken in the same order and at the same time that he would be taken if he were a local patient.

(e) Pursuant to this compact, the determination as to the suitable place of institutionalization for a patient may be reviewed at any time and such further transfer of the patient may be made as seems likely to be in the best interest of the patient.

Article IV.

(a) Whenever, pursuant to the laws of the state in which a patient is physically present, it is determined that the patient should receive aftercare or supervision, such care or supervision may be provided in a receiving state. If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state have reason to believe that aftercare in another state would be in the best interest of the patient and would not jeopardize the public safety, they shall request the appropriate authorities in the receiving state to investigate the desirability of affording the patient such aftercare in said receiving state, and such investigation shall be made with all reasonable speed. The request for investigation shall be accompanied by complete information concerning the patient's intended place of residence and the identity of the person in whose charge it is proposed to place the patient, the complete medical history of the patient and such other documents as are pertinent.

(b) If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state and the appropriate authorities in the receiving state find that the best interest of the patient would be served thereby, and if the public safety would not be jeopardized thereby, the patient may receive aftercare or supervision in the receiving state.

(c) In supervising, treating or caring for a patient on aftercare pursuant to the terms of this article, a receiving state shall employ the same standards of visitation, examination, care and treatment that it employs for similar local patients.

Article V.

Whenever a dangerous or potentially dangerous patient escapes from an institution in any party state, that state shall promptly notify all appropriate authorities within and without the jurisdiction of the escape, in a manner reasonably calculated to facilitate the speedy apprehension of the escapee. Immediately upon the apprehension and identification of any such dangerous or potentially dangerous patient, he shall be detained in the state where found, pending disposition in accordance with law.

Article VI.

The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the patient, shall be permitted to transport any patient being moved pursuant to this compact through any state party to this compact, without interference.

Article VII.

(a) No person shall be deemed a patient of more than one institution at any given time. Completion of transfer of any patient to an institution in a receiving state shall have the effect of making the person a patient of the institution in the receiving state.

(b) The sending state shall pay all costs of and incidental to the transportation of any patient pursuant to this compact, but any 2 or more party states may, by making a specific agreement for that purpose, arrange for a different allocation of costs as among themselves.

(c) No provision of this compact shall be construed to alter or affect any internal relationships among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs or responsibilities therefor.

(d) Nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person in regard to costs for which such party state or subdivision thereof may be responsible pursuant to any provision of this compact.

(e) Nothing in this compact shall be construed to invalidate any reciprocal agreement between a party state and a nonparty state relating to institutionalization, care or treatment of the mentally ill or mentally deficient or any statutory authority pursuant to which such agreements may be made.

Article VIII.

(a) Nothing in this compact shall be construed to abridge, diminish or in any way impair the rights, duties and responsibilities of any patient's guardian on his own behalf or in respect of any patient for whom he may serve, except that where the transfer of any patient to another jurisdiction makes advisable the appointment of a supplemental or substitute guardian, any court of competent jurisdiction in the receiving state may make such supplemental or substitute appointment and the court which appointed the previous guardian shall, upon being duly advised of the new appointment, and upon the satisfactory completion of such accounting and other acts as such court by law requires, relieve the previous guardian of power and responsibility to whatever extent is appropriate in the circumstances. In the case of any patient having settlement in the sending state, the court of competent jurisdiction in the sending state has the sole discretion to relieve a guardian appointed by it or continue his power and

responsibility, whichever it deems advisable. The court in the receiving state may, in its discretion, confirm or reappoint the person previously serving as guardian in the sending state in lieu of making a supplemental or substitute appointment.

(b) The term "guardian" as used in par. (a) of this article includes any guardian, trustee, legal committee, conservator or other person or agency however denominated who is charged by law with power to act for or responsibility for the person or property of a patient.

Article IX.

(a) No provision of this compact except Article V applies to any person institutionalized while under sentence in a penal or correctional institution or while subject to trial on a criminal charge, or whose institutionalization is due to the commission of an offense for which, in the absence of mental illness or mental deficiency, said person would be subject to incarceration in a penal or correctional institution.

(b) To every extent possible, it is the policy of states party to this compact that no patient shall be placed or detained in any prison, jail or lockup, but such patient shall, with all expedition, be taken to a suitable institutional facility for mental illness or mental deficiency.

Article X.

(a) Each party state shall appoint a "compact administrator" who, on behalf of his state, shall act as general co-ordinator of activities under the compact in his state and who shall receive copies of all reports, correspondence and other documents relating to any patient processed under the compact by his state either in the capacity of sending or receiving state. The compact administrator or his duly designated representative shall be the official with whom other party states shall deal in any matter relating to the compact or any patient processed thereunder.

(b) The compact administrators of the respective party states shall have power to promulgate reasonable rules and regulations to carry out more effectively the terms and provisions of this compact.

Article XI.

The duly constituted administrative authorities of any 2 or more party states may enter into supplementary agreements for the provision of any service or facility or for the maintenance of any institution on a joint or co-operative basis whenever the states concerned find that such agreements will improve services, facilities or institutional care and treatment in the fields of mental illness or mental deficiency. No such supplementary agreement shall be construed so as to relieve any party state of any obligation which it otherwise would have under other provisions of this compact.

Article XII.

This compact enters into full force and effect as to any state when enacted by it into law and such state shall thereafter be a party thereto with all states legally joining therein.

Article XIII.

(a) A state party to this compact may withdraw therefrom by enacting a statute repealing the same. Such withdrawal takes effect one year after notice thereof has been communicated officially and in writing to the governors and compact administrators of all other party states. However, the withdrawal of any state shall not change the status of any patient who has been sent to said state or sent out of said state pursuant to the provisions of the compact.

(b) Withdrawal from any agreement permitted by Article VII (b) as to costs or from any supplementary agreement made pursuant to Article XI shall be in accordance with the terms of such agreement.

Article XIV.

This compact shall be liberally construed so as to effectuate the purpose thereof. The provisions of this compact are severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state, or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact is held contrary to the constitution of any party state thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

**51.76 Compact administrator.** Pursuant to the interstate compact on mental health, the secretary shall be the compact administrator and, acting jointly with like officers of other party states, may promulgate rules to carry out more effectively the terms of the compact. The compact administrator shall co-operate with all departments, agencies and officers of and in the government of this state and its subdivisions in facilitating the proper administration of the compact or any supplementary agreement entered into by this state thereunder.

**51.77 Transfer of patients.** (1) In this section "relatives" means the patient's spouse, parents, grandparents, adult children, adult siblings, adult aunts, adult uncles and adult cousins, and any other relative with whom the patient has resided in the previous 10 years.

**(2)** Transfer of patients out of Wisconsin to another state under the interstate compact on mental health shall be upon recommendation of no less than 3 physicians licensed under ch. 448 appointed by the court of competent jurisdiction and shall be only in accord with the following requirements:

(a) That the transfer be requested by the patient's relatives or guardian or a person with whom the patient has resided for a substantial period on other than a commercial basis. This requirement does not preclude the compact administrator or the institution in which the patient is in residence from suggesting that relatives or the guardian request such transfer.

(b) That the compact administrator determine that the transfer of said patient is in his best interest.

(c) That the patient have either interested relatives in the receiving state or a determinable interest in the receiving state.

(d) That the patient, guardian and relatives, as determined by the patient's records, whose addresses are known or can with reasonable diligence be ascertained, be notified.

(e) That none of the persons given notice under par. (d) object to the transfer of said patient within 30 days of receipt of such notice.

(f) That records of the intended transfer, including proof of service of notice under par. (d) be reviewed by branch 1 of the county court of the county in which the patient is confined or by any other court which a relative or guardian requests to do so.

**(3)** If the request for transfer of a patient is rejected for any of the reasons enumerated under sub. (2), the compact administrator shall notify all persons making the request as to why the request was rejected and of his right to appeal the decision to a competent court.

**(4)** If the patient, guardian or any relative feels that the objections of other relatives or of the compact administrator raised under sub. (2) are not well-founded in preventing transfer, such person may appeal the decision not to transfer to a competent court having jurisdiction which shall determine, on the basis of evidence by the interested parties and psychiatrists, psychologists and social workers who are acquainted with the case, whether transfer is in the best interests of the patient. The requirements of sub. (2) (c) shall apply to this subsection.

**(5)** The determination of mental illness or developmental disability in proceedings in this state requires a finding of a court in accordance with the procedure contained in s. 51.20.

**History:** 1975 c. 430.

**51.78 Supplementary agreements.** The compact administrator may enter into supplementary agreements with appropriate officials of other states pursuant to Articles VII and XI of the compact. If such supplementary agreements require or contemplate the use of any institution or facility of this state or county or require or contemplate the provision of any service by this state or county, no such agreement shall take effect until approved by the head of the department or agency under whose jurisdiction said institution or facility is operated or whose department or agency will be charged with the rendering of such service.

**51.79 Transmittal of copies.** Duly authorized copies of this act shall, upon its approval, be transmitted by the secretary of state to the governor of each state, the attorney general and the administrator of general services of the United States and the council of state governments.

**51.80 Patients' rights.** Nothing in the interstate compact on mental health shall be construed to abridge, diminish or in any way impair the rights or liberties of any patient affected by the compact.

**51.81 Definitions.** The terms "flight" and "fled" as used in ss. 51.81 to 51.85 shall be construed to mean any voluntary or involuntary departure from the jurisdiction of the court where the proceedings hereinafter mentioned may have been instituted and are still pending with the effect of avoiding, impeding or delaying the action of the court in which such proceedings may have been instituted or be pending, or any such departure from the state where the person demanded then was, if he then was under detention by law as a person of unsound mind and subject to detention. The word "state" wherever used in ss. 51.81 to 51.85 shall include states, territories, districts and insular and other possessions of the United States. As applied to a request to return any person within the purview of ss. 51.81 to 51.85 to or from the District of Columbia, the words, "executive authority," "governor" and "chief magistrate," respectively, shall include a justice of the supreme court of the District of Columbia and other authority.

**History:** 1971 c. 40 s. 93.

**51.82 Delivery of certain nonresidents.** A person alleged to be of unsound mind found in this state, who has fled from another state, in which at the time of his flight: (a) He was under detention by law in a hospital, asylum or other institution for the insane as a person of unsound mind; or (b) he had been theretofore determined

by legal proceedings to be of unsound mind, the finding being unreversed and in full force and effect, and the control of his person having been acquired by a court of competent jurisdiction of the state from which he fled; or (c) he was subject to detention in such state, being then his legal domicile (personal service of process having been made) based on legal proceedings there pending to have him declared of unsound mind, shall on demand of the executive authority of the state from which he fled, be delivered up to be removed thereto.

**History:** 1975 c. 430.

**51.83 Authentication of demand; discharge; costs.** (1) Whenever the executive authority of any state demands of the executive authority of this state, any fugitive within the purview of s. 51.82 and produces a copy of the commitment, decree or other judicial process and proceedings, certified as authentic by the governor or chief magistrate of the state whence the person so charged has fled with an affidavit made before a proper officer showing the person to be such a fugitive, it is the duty of the executive authority of this state to cause him to be apprehended and secured, if found in this state, and to cause immediate notice of the apprehension to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he appears.

**(2)** If no such agent appears within 30 days from the time of the apprehension, the fugitive may be discharged. All costs and expenses incurred in the apprehending, securing, maintaining and transmitting such fugitive to the state making such demand, shall be paid by such state. Any agent so appointed who receives the fugitive into his custody shall be empowered to transmit him to the state from which he has fled. The executive authority of this state is hereby vested with the power, on the application of any person interested, to demand the return to this state of any fugitive within the purview of ss. 51.81 to 51.85.

**History:** 1971 c. 40 s. 93.

**51.84 Limitation of time to commence proceeding.** Any proceedings under this chapter shall be begun within one year after the flight referred to in ss. 51.81 to 51.85.

**History:** 1971 c. 40 s. 93.

**51.85 Interpretation.** Sections 51.81 to 51.85 shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

**History:** 1971 c. 40 s. 93.

**51.90 Antidiscrimination.** No employe, prospective employe, patient or resident of an approved treatment facility, or consumer of services provided under this chapter may be discriminated against because of age, race, creed, color, sex or handicap.

**History:** 1975 c. 430.

**51.91 Supplemental aid.** (1) DECLARATION OF POLICY. The legislature recognizes that mental health is a matter of state-wide and county concern and that the protection and improvement of health are governmental functions. It is the intent of the legislature, therefore, to encourage and assist counties in the construction of community mental health facilities, and public medical institutions as defined by rule of the department.

**(2)** ELIGIBILITY. (a) Any county which qualifies for additional state aid under s. 51.26 [Stats. 1971] and has obtained approval for the construction of mental health facilities pursuant to s. 46.17 may apply for the financial assistance authorized by this section if such county has, at the time of application for assistance, an existing obligation to pay interest on loans for the construction of mental health facilities approved pursuant to s. 46.17.

(b) Any county may apply for the financial assistance authorized by this section if such county has, at the time of application for assistance, an existing obligation to pay interest on loans for the construction of public medical institutions as defined by rule of the department.

(c) Any county may apply for the financial assistance authorized by this section if such county has, at the time of application for assistance, an existing obligation to pay interest on loans for the construction of mental health facilities as defined by rule of the department.

(d) No county may claim aid under this section on any single obligation for more than 20 years.

(e) Termination of eligibility for aid under s. 51.26 [Stats. 1971] shall terminate eligibility for aid for the construction of mental health facilities, and failure to meet the requirements established for public medical institutions by rule of the department shall terminate eligibility for aid for the construction of public medical institutions. Failure to meet the requirements for mental health facilities established by rule of the department shall terminate eligibility for aid for the construction of mental health facilities.

(f) Mental health facilities shall include services required for the prevention, diagnosis, treatment and rehabilitation of the mentally ill, as established by rule of the department.

**(3)** LIMITATION OF AID. (a) Aid under this section shall be paid only on interest accruing

after January 1, 1967, or after the date construction begins, whichever is later.

(b) Until June 30, 1970, such aid shall be at the rate of 60% of the interest obligations eligible under this section or that amount of such obligation as is equal to the percentage rate of participation of the state set forth in s. 49.52 (2) (a) [1971 Stats.], whichever is higher. The contribution of the state for such interest accruing in each fiscal year shall be controlled by the percentage rate of participation under s. 49.52 (2) (a) [1971 Stats.] on January 1 of that fiscal year. Beginning July 1, 1970, such aid shall be at the rate of 100%.

(c) This section applies only to construction projects approved for state interest aid by the department of health and social services prior to June 30, 1973.

**(4)** APPLICATION FOR AID. Application for aid under this section shall be filed with the department as prescribed by it. Such application shall include evidence of the existence of the indebtedness on which the county is obligated to pay interest. The department may by audit or investigation satisfy itself as to the amount and validity of the claim and, if satisfied, shall grant the aid provided by this section. Payment of aid shall be made to the county treasurer.

**History:** 1971 c. 125, 164, 211, 215; 1975 c. 430 s. 23.

**51.95 Short title.** This chapter shall be known as The State Mental Health Act.

**History:** 1975 c. 430 s. 59.