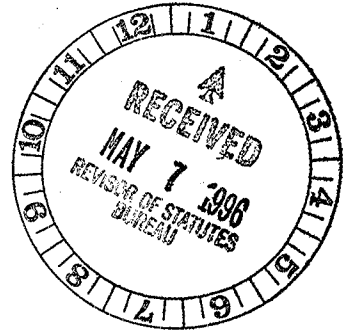


Clearinghouse Rule 95-113



CERTIFICATE


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

I, Joseph Leean, Secretary of the Department of Health and Social Services and custodian of the official records of the Department, do hereby certify that the annexed rules relating to the rights of persons receiving services for mental illness, a developmental disability, alcohol abuse or dependency or other drug abuse or dependency, and standards for grievance procedures, were duly approved and adopted by this Department on May 7, 1996.

I further certify that this copy has been compared by me with the original on file in the Department and that this copy is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the State Office Building, 1 W. Wilson Street, in the city of Madison, this 7th day of May, 1996.

SEAL:



Joseph Leean, Secretary
Department of Health and Social Services

95-113
7-1-96

**ORDER OF THE
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
REPEALING, AMENDING, REPEALING AND RECREATING AND CREATING RULES**

To repeal HSS 94.15(Note) and 94.27(2) to (6) and (Note); to renumber HSS 94.07(5), 96.04(2) and (3), 94.09(1) to (8) and 94.25 to 94.26 and 94.28 to 94.29; to renumber and amend HSS 94.01(2), 94.06 and 94.27(1); to amend chapter HSS 94 (title), 94.01(1), 94.03(1)(intro.), (a) (b), (d), (e) and (f), 94.04(1) and (Note), 94.05(title), (3)(a), (4)(a) and (5) and 94.07 (title), (1) and (3), 94.08, 94.09(4), as renumbered, 94.15(2) and (3), 94.20(1), (3) and (4), 94.24 (2)(b), and (j) and (3) (b), (f) and (g), and 94.30(1), as renumbered; to repeal and recreate HSS 94.02, 94.05(6) and 94.10; and to create subchapter I (title) of chapter HSS 94, 94.01(2)(b), 94.03(2m), 94.04(2) and (3), 94.06(2), subchapter II (title) of chapter HSS 94, 94.09(1), (3)(c) and (6)(d) and 94.11(5), 94.18(4), 94.25, 94.28 and subchapter III of chapter HSS 94, relating to the rights of patients receiving treatment for mental illness, a developmental disability, alcohol abuse or dependency or other drug abuse or dependency, and standards for grievance procedures for these patients.

Analysis Prepared by the Department of Health and Social Services

This order establishes standards for grievance procedures used by patients receiving treatment for mental illness, a developmental disability, alcohol abuse or dependency or other drug abuse or dependency. Section 51.61(5)(a), Stats., as amended by 1993 Wisconsin Act 445, requires grievance procedures for programs that provide services to people with these disabilities as one means of ensuring that the rights of these patients as set out under s.51.61, Stats., and ch. HSS 94 will be protected. Section 51.61(5)(b), Stats., as repealed and recreated by 1993 Wisconsin Act 445, directs the Department to promulgate rules that establish standards for the required grievance procedures. These are those rules. They are made a separate subchapter of ch. HSS 94.

The standards for a program's grievance procedure require the program to have written policies, designate one or more client rights specialists, have informal and formal resolution processes, have protections for client advocates and provide client instruction in understanding and use of the grievance procedure. As part of the formal resolution process, there is program level review (presentation of grievance, inquiry by client rights specialist, report of client rights specialist, program manager's decision) with time limits for filing a grievance and processing the grievance; a first administrative review at either the county or state level of the program manager's decision, leading to the county director's decision or a state grievance examiner's decision, with time limits for requesting a review and for the review; a state level review of a county director's decision; and a final state level review by a Department division administrator of a state grievance examiner's decision or a state office's decision. The standards also cover coalitions of programs that operate combined grievance resolution procedures, the treatment of multiple grievances, the treatment of grievances presented by others on behalf of clients, interim relief to protect a client's well-being pending resolution of the client's grievance, and the treatment of complaints related to existence or operation of a grievance procedure.

This order also updates the current ch. HSS 94 which has not been revised since it went into effect in February 1987. The updating incorporates new rights added to s. 51.61 by 1993 Wisconsin Act 445; allows for obtaining informed consent by telephone, under certain conditions, before getting it in writing; allows use of a video to orally explain patient rights; requires that long-term patients be renotified of their rights; requires notification of the county, guardian and guardian-ad-litem when a client is ready for placement in a less restrictive setting; reflects recent statutory changes concerning a patient's right to refuse treatment; allows use of restraint or seclusion in community settings, but only with Department approval on a case-by-case basis and approval of the county department in some cases; requires that providers using electroconvulsive therapy have written policies for obtaining and monitoring informed consent; allows requiring inpatients to perform light personal housekeeping chores without pay in shared living quarters; clarifies the right to telephone access; allows facilities to prohibit gang-related decorations and to restrict the areas where other potentially offensive room decorations may be displayed; and allows some restrictions on inpatient possessions and access to public media, the out of doors and physical exercise equipment for documented security reasons.

The Department's authority to repeal, amend, repeal and recreate and create these rules is found in s. 51.61(5)(b) and (9), Stats. The rules interpret s. 51.61, Stats.

SECTION 1. Chapter HSS 94 (title) is amended to read:

Chapter HSS 94

PATIENT RIGHTS AND RESOLUTION OF
PATIENT GRIEVANCES

SECTION 2. Subchapter I (title) of Chapter HSS 94 is created to read:

Subchapter I -
GENERAL PROVISIONS

SECTION 3. HSS 94.01(1) is amended to read:

HSS 94.01 AUTHORITY, PURPOSE AND APPLICABILITY. (1) AUTHORITY AND PURPOSE. This chapter is promulgated under the authority of s.51.61 (5)(b) and (9), Stats., to implement s.51.61, Stats., concerning the rights of patients receiving treatment for mental illness, a developmental disability, alcohol abuse and or dependency or other drug abuse and or dependency.

SECTION 4. HSS 94.01(2) is renumbered 94.01(2)(a) and amended to read:

HSS 94.01(2) TO WHOM THE RULES APPLY: (a) This Except as provided in par. (b), this chapter applies to the department, to county departments established under s.46.23, 51.42 or 51.437, Stats., and to all treatment facilities and other service providers, whether or not under contract to a county department, including the state-operated mental health institutes and centers for the developmentally disabled, habilitation or rehabilitation programs, programs certified under ch. HSS 61 and facilities licensed under ch. HSS 124 which also provide treatment for alcoholic, drug dependent, mentally ill or developmentally disabled persons. This chapter also applies to correctional institutions in which inmates receive treatment for mental disorders, but only in relation to patient rights specified in s.51.61(1)(a), (d), (f), (g), (h), (j) and (k), Stats. This chapter does not apply to a hospital emergency room or a hospital outpatient service except when the patient is a county department client.

Note: The mental health treatment of inmates of correctional institutions is governed by ch. DOC 314. The application of ch. HSS 94 to correctional institutions is consistent with ss. DOC 314.02 (9) and 314.04 (1)(c).

SECTION 5. HSS 94.01 (2)(b) is created to read:

HSS 94.01(2)(b) Subchapter III does not apply to the grievance procedures of the state mental health institutes, the state centers for persons with developmental disabilities or units housing patients committed under ch. 980, Stats., nor does it apply to individual private practitioners who deliver services through offices that are not part of a program.

SECTION 6. HSS 94.02 is repealed and recreated to read:

HSS 94.02 DEFINITIONS. In this chapter:

HSS 94.02 (1) "Body cavity search" means a strip search in which body cavities are inspected by the entry of an object or fingers into body cavities.

(2) "Body search" means a personal search, a strip search or a body cavity search of a patient.

(3) "Client," as used in subch. III, means a patient.

(4) "Client rights specialist" means a person designated by a program or a coalition of programs to facilitate informal resolution of concerns where requested and to conduct program level reviews of grievances and make proposed factual findings, determinations of merit and recommendations for resolution which are provided to the program manager and the client.

(5) "Coalition of programs," as used in subch. III, means a group of programs which have joined together for the explicit purpose of operating a combined grievance resolution system.

(6) "Community placement" means a living situation which is arranged with the assistance of a case manager or service coordinator or a person or agency performing tasks similar to those performed by a case manager or service coordinator and which is either a residential setting that is directed and controlled by the individual or his or her guardian or a place licensed or certified as a residential care facility or care home for either adults or children by representatives of the state or county government pursuant to a comprehensive individualized plan of care or service.

(7) "Concern" means a complaint, disagreement or dispute which a client or a person on behalf of a client may have with a program or program staff which the client chooses to resolve through the informal resolution process pursuant to s.HSS 94.40(4).

(8) "County department" means the county department of human services established under s.46.23, Stats., the county department of community programs established under s. 51.42, Stats., or the county department of developmental disabilities services established under s.51.427, Stats.

(9) "Court order" means a lawful order of a court of competent jurisdiction.

(10) "Department" means the Wisconsin department of health and social services.

(11) "Director" means the administrator of a treatment facility or the person directing the activities of any other service provider.

(12) "Drastic treatment procedure" means an extraordinary or last resort treatment method which places the patient at serious risk for permanent psychological or physical injury, including psychosurgery, convulsive therapy other than electroconvulsive therapy and behavior modification using painful stimuli.

(13) "Emergency" means that it is likely that the patient may physically harm himself or herself or others.

(14) "Emergency situation" means a situation in which, based on the information available at the time, there is reasonable cause to believe that a client or a group of clients is at significant risk of physical or emotional harm due to the circumstances identified in a grievance or concern.

(15) "Financial benefit" means improvement in the functioning of a facility due to patient labor.

(16) "Forensic unit" means an inpatient ward or unit where a majority of the patients are admitted or committed under ch. 971 or 975, Stats., or under s.51.37(5), Stats.

(17) "Grievance" means a statement by a grievant that an action or an inaction by a program or its staff has abridged rights guaranteed to the client under s. 51.61, Stats., and this chapter combined with a request that the matter be dealt with through the program's formal grievance resolution process pursuant to s.HSS 94.40(5).

(18) "Grievance examiner" means a staff person of the department designated by the secretary to conduct first administrative level reviews of grievances appealed from programs operating independently from a county department and second administrative level reviews of grievances filed regarding programs operated by or under contract with a county department.

(19) "Grievance resolution system" means the procedures established by a program or coalition of programs for formally responding to a grievance.

(20) "Grievant" means a client who has lodged a grievance or a person who has lodged a grievance on behalf of a client pursuant to s. HSS 94.51.

(21) "Hospital" has the meaning prescribed in s.50.33(2), Stats.

(22) "Informed consent" or "consent" means written consent voluntarily signed by a patient who is competent and who understands the terms of the consent, or by the patient's legal guardian or the parent of a minor, as permitted under s.51.61(6) and (8), Stats., without any form of coercion, or temporary oral consent obtained by telephone in accordance with s. HSS 94.03 (2m).

(23) "Inpatient" means a person who is receiving treatment, care, services or supports while residing in an inpatient treatment facility, a residential treatment facility or in any facility or home which is subject to regulation as a place of residence and service provision for patients by the department, a county department or a county department of social services established under s.46.215 or 46.22, Stats.

(24) "Inpatient treatment facility" has the meaning prescribed for "inpatient facility" in s.51.01(10), Stats., and includes the mental health institutes as defined in s.51.01(12), Stats., the Milwaukee county mental health center established under s.51.08, Stats., and county hospitals established under s.51.09, Stats.

(25) "Institutional review board" means a board established under 45 CFR 46.

(26) "Isolation" means any process by which a person is physically or socially set apart by staff from others but does not include separation for the purpose of controlling contagious disease.

(27) "Least restrictive treatment" means treatment and services which will best meet the patient's treatment and security needs and which least limit the patient's freedom of choice and mobility.

(28) "Mechanical support" means an apparatus that is used to properly align a patient's body or to help a patient maintain his or her balance.

(29) "Medical restraint" means an apparatus or procedure that restricts the free movement of a patient during a medical or surgical procedure or prior to or subsequent to such a procedure to prevent further harm to the patient or to aid in the patient's recovery, or to protect a patient during the time a medical condition exists.

(30) "Outpatient" means a person receiving treatment, care, services or supports from any service provider if the person receiving the services does not reside in a facility or home owned, operated or managed by the service provider.

(31) "Outpatient treatment facility" means a service provider providing services for patients who do not reside in a facility or home owned, operated or managed by the service provider.

(32) "Patient" has the meaning prescribed in s. 51.61 (1) (intro.), Stats.

(33) "Personal search" means a search of the patient's person, including the patient's pockets, frisking his or her body, an examination of the patient's shoes and hat and a visual inspection of the patient's mouth.

(34) "Physical restraint" means any physical hold or apparatus, excluding a medical restraint or mechanical support, that interferes with the free movement of a person's limbs and body.

(35) "Program," as used in subch. III, means any public or private organization or agency, other than Mendota and Winnebago mental health institutes, the state centers for persons with developmental disabilities and the Wisconsin resource center, which provides services or residential care for a client for mental illness, a developmental disability, alcoholism or drug dependency.

(36) "Program director" means the person appointed to administer the county department's programs.

(37) "Program manager," as used in subch. III, refers to the individual in charge of the operation of a program who has the specific authority to approve and implement decisions made through the grievance resolution process.

(38) "Research" means a systematic investigation designed to develop or contribute to generalizable knowledge, except that it does not include an investigation involving only treatment records or routine follow-up questionnaires.

(39) "Residential treatment facility" means a treatment facility or home that provides a 24-hour residential living program and services for inpatients, which is subject to regulation as a place of residence and services for patients by the department or any county department or a county department of social services under s.46.215 or 46.22, Stats., including a center for the developmentally disabled as defined in s.51.01(3), Stats.

(40) "Seclusion" means that form of isolation in which a person is physically set apart by staff from others through the use of locked doors.

(41) "Secretary" means the head of the department.

(42) "Service provider" means an agency, facility or individual providing treatment, care, services or supports to clients.

(43) "Strip search" means a search in which the patient is required to remove all of his or her clothing. Permissible inspection includes examination of the patient's clothing and body and visual inspection of his or her body cavities.

(44) "Treatment" has the meaning prescribed in s.51.01(17), Stats.

(45) "Treatment facility" means any publicly or privately operated facility, unit in a facility or agency providing treatment, habilitation or rehabilitation for alcoholic, drug dependent, mentally ill or developmentally disabled persons, including an inpatient treatment facility, a residential treatment facility or an outpatient treatment facility.

SECTION 7. HSS 94.03(1)(intro.), (a), (b), (d), (e) and (f) are amended to read:

HSS 94.03 INFORMED CONSENT. (1) Any informed consent document required under this chapter shall declare that the patient or the person acting on the patient's behalf has been provided with specific, complete and accurate information and time to study the information or to seek additional information concerning the proposed treatment or services made necessary by and directly related to the person's mental illness, developmental disability, alcoholism or drug dependency, including:

(a) The benefits of the proposed treatment and services;

(b) The way the treatment is to be administered and the services are to be provided;

(d) Alternative treatment modes and services;

(e) The probable consequences of not receiving the proposed treatment and services;

(f) The time period for which the informed consent is effective, which shall be no longer than 15 months from the time the consent is given; and

SECTION 8. HSS 94.03(2m) is created to read:

HSS 94.03(2m). In emergency situations or where time and distance requirements preclude obtaining written consent before beginning treatment and a determination is made that harm will come to the patient if treatment is not initiated before written consent is obtained, informed consent for treatment may be temporarily obtained by telephone from the parent of a minor patient or the guardian of a patient. Oral consent shall be documented in the patient's record, along with details of the information verbally explained to the parent or guardian about the proposed treatment. Verbal consent shall be valid for a period of 10 days, during which time informed consent shall be obtained in writing.

SECTION 9. HSS 94.04(1) is amended to read:

HSS 94.04(1). ~~At the time of~~ Before or upon admission or, in the case of an out-patient, before treatment is begun, the patient shall be notified both orally and ~~in writing~~ given a written copy of his or her rights in accordance with s. 51.61(1)(a), Stats., and ~~this section chapter.~~ Oral notification may be accomplished by showing the patient a video about patient rights under s. 51.61, Stats., and this chapter. The guardian of a patient who is incompetent and the parent of a minor patient shall also be notified, if they are available. Notification is not required before admission or treatment when there is an emergency.

SECTION 10. HSS 94.04(2) and (3) are renumbered 94.04(4) and (5).

SECTION 11. HSS 94.04(2) and (3) are created to read:

HSS 94.04(2) Before, upon or at a reasonable time after admission, a patient shall be informed in writing, as required by s. 51.61(1)(w), Stats., of any liability that the patient or any of the patient's relatives may have for the cost of the patient's care and treatment and of the right to receive information about charges for care and treatment services.

(3) Patients who receive services for an extended period of time shall be orally re-notified of their rights at least annually and be given another copy of their rights in writing if they request a copy or if there has been a statutory change in any of their rights since the time of their admission.

SECTION 12. HSS 94.04(Note) is amended to read:

HSS 94.04 (Note): A simplified version of patient rights in poster form is available from the Division of Community Services, P.O. Box 7851, Madison, WI 53707-7851.

SECTION 13. Subchapter II (title) of Chapter HSS 94 is created to read:

**Subchapter II -
PATIENT RIGHTS**

SECTION 14. HSS 94.05(title), (3)(a), (4)(a) and (5) are amended to read:

HSS 94.05(title) LIMITATION OR DENIAL OF RIGHTS.

(3)(a) Inform the patient and the guardian, if any, of the right to an informal hearing or a meeting with the person who made the decision to limit or deny the right.

(4)(a) If the patient is a county department patient, to the county department's ~~complaint investigator~~ client rights specialist and, in addition, if the patient is in a department-operated facility, to the department's division of care and treatment facilities; and

(b) If the patient is not a county department patient, to the treatment facility's ~~complaint investigator~~ client rights specialist and, in addition, if the patient is in a department-operated facility, to the department's division of care and treatment facilities.

Note: Treatment facilities other than state-operated facilities should request copies of the non-residential form from the area administrator in the Division of Community Services regional office serving the area in which the treatment facility is located. Information regarding areas served by each regional office and addresses of the regional offices are available from the Division of Community Services, P.O. Box 7851, Madison, WI 53707-7851. Department-operated facilities should request copies of the rights-denial form from the Client Rights Office, Division of Care and Treatment Facilities, P.O. Box 7851, Madison, WI 53707-7851.

(5) The treatment facility director or that person's designee shall hold an informal hearing or arrange for the person who made the decision to limit or deny the right to hold a meeting within 3 days after receiving a hearing request or a request for a meeting with the person who made the decision from a patient whose rights have been denied or limited; and The treatment facility director or designee, in the case of a hearing, or the person who made the decision to limit or deny the right, in the case of a meeting, shall consider all relevant information submitted by or on behalf of the patient prior to when rendering a decision.

SECTION 15. HSS 94.05(6) is repealed and recreated to read:

HSS 94.05(6) The service provider shall inform a patient whose rights are limited or denied in accordance with this subsection that the patient may file a grievance concerning the limitation or denial.

SECTION 16. HSS 94.06 is renumbered 94.06(1) and amended to read:

HSS 94.06(1) ~~Each county department and treatment facility~~ service provider shall assist patients in the exercise of all rights specified under ch. 51, Stats., and this chapter.

SECTION 17. HSS 94.06(2) is created to read:

HSS 94.06(2) No patient may be required to waive any of his or her rights under ch. 51, Stats., or this chapter as a condition of admission or receipt of treatment and services.

SECTION 18. HSS 94.07(title), (1) and (3) are amended to read:

HSS 94.07 (title) LEAST RESTRICTIVE TREATMENT AND CONDITIONS. (1)
Each Except in the case of a patient who is admitted or transferred under s.51.35(3) or 51.37, Stats., or under ch. 971 or 975, Stats., each patient shall be provided the least restrictive treatment and conditions which allows allow the maximum amount of personal and physical freedom in accordance with s.51.61(1)(e), Stats., and this section.

(3) Inpatient and residential treatment facilities shall identify all patients ready for placement in less restrictive settings and shall, for each of these patients, notify the county department or the county social services department that placed the patient of the identified county of responsibility, as determined in accordance with s.51.40, Stats., and shall also notify the patient's guardian and guardian ad litem, if any, and the court with jurisdiction over the patient's ch. 51 or 55 placement, if any, that the patient is ready for placement in a less restrictive setting. The county department or the county social services department then shall then act in accordance with s.51.61(1)(e), Stats., to place the patient in a less restrictive setting.

SECTION 19. HSS 94.07(5) is renumbered 94.24(3)(i).

SECTION 20. HSS 94.08 is amended to read:

HSS 94.08 All patients shall be provided prompt and adequate treatment, habilitation or rehabilitation, supports, community services and educational services as required under s.51.61(1)(f), Stats., and copies of applicable licensing and certification rules and program manuals and guidelines.

SECTION 21. HSS 94.09(1) to (8) are renumbered 94.09(2) to (9).

SECTION 22. HSS 94.09(1) is created to read:

HSS 94.09(1) Each patient shall be informed of his or her treatment and care and shall be permitted and encouraged to participate in the planning of his or her treatment and care.

SECTION 23. HSS 94.09(3)(c) is created to read:

HSS 94.09(3)(c) Service providers may pay for some or all of the costs of any second consultation allowed under sub. (b). Service providers may also enter into agreements with other service providers to furnish consultations for each other's clients.

SECTION 24. HSS 94.09(4), as renumbered, is amended to read:

HSS 94.09(4) No treatment Except in an emergency when it is necessary to prevent serious physical harm to self or others, no medication may be given to any patient or treatment performed against an involuntary patient's will on any patient without the prior informed consent of the patient, unless the patient has been found not competent to refuse medication and treatment under s. 51.61(1)(g), Stats., and the court orders medication or treatment. In the case of a patient found incompetent under ch. 880, Stats., the informed consent of the guardian is required. In the case of a minor, the informed consent of the parent or guardian is required. Except as provided under an order issued under s.51.14(3)(h) or (4)(g), Stats., if a minor is 14 years of age or older, the informed consent of the minor and the minor's parent or guardian is required. Informed consent for treatment from a patient's parent or guardian may be temporarily obtained by telephone in accordance with s. HSS 94.03(2m).

SECTION 25. HSS 94.09(6)(d) is created to read:

HSS 94.09(6)(d) Documentation that is specific and objective and that adequately explains the reasons for any conclusions or decisions made regarding the patient.

SECTION 26. HSS 94.10 is repealed and recreated to read:

HSS 94.10 ISOLATION, SECLUSION AND PHYSICAL RESTRAINTS. Any service provider using isolation, seclusion or physical restraint shall have written policies that meet the requirements specified under s. 51.61(1)(i), Stats., and this chapter. Isolation, seclusion or physical restraint may be used only in an emergency, when part of a treatment program or as provided in s. 51.61(1)(i)2, Stats. For a community placement, the use of isolation, seclusion or physical restraint shall be specifically approved by the department on a case-by-case basis and by the county department if the county department has authorized the community placement. In granting approval, a determination shall be made that use is necessary for continued community placement of the individual and that supports and safeguards necessary for the individual are in place.

Note: The use of isolation, seclusion or physical restraint may be further limited or prohibited by licensing or certification standards for that service provider.

SECTION 27. HSS 94.11(5) is created to read:

HSS 94.11(5) A service provider performing electroconvulsive therapy shall develop and implement written policies and procedures for obtaining and monitoring informed consent.

SECTION 28. HSS 94.15(2) and (3) are amended to read:

HSS 94.15(2) Patients may only be required to perform tasks that are equivalent to personal housekeeping chores performed in common or private living areas of an ordinary

home. Personal housekeeping tasks may include light cleaning of shared living quarters if all patients sharing those quarters participate as equally as possible in the cleaning chores.

(3) ~~Plans for payment~~ Payment for the therapeutic labor authorized under s.51.61(1)(b), Stats., shall be ~~approved by the department prior to implementation~~ made in accordance with wage guidelines established under state and federal law.

SECTION 29. HSS 94.15 (Note) is repealed.

SECTION 30. HSS 94.20(1), (3) and (4) are amended to read:

HSS 94.20(1) ~~Patients~~ Inpatients shall be allowed reasonable access to a telephone to make and receive a reasonable number of telephone calls as authorized by s. 51.61(1)(p), Stats., and this section.

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

(4) Inpatients who have been determined indigent under the a facility's operating policies shall be permitted to make telephone calls under subs. sub. (2) and (3), and at least one private, personal call per day free of charge.

SECTION 31. HSS 94.24(2)(b) and (j) and (3)(b), (f) and (g) are amended to read:

HSS 94.24(2)(b) ~~All patients~~ Each patient shall be treated as ~~individuals and addressed with respect and with recognition of the patient's dignity by all employes of the service provider and by all licensed, certified, registered or permitted providers of health care with whom the patient comes in contact.~~

(j) Inpatients shall be allowed to provide their own room decorations except that a facility when restricted may restrict this right for documented security or safety reasons. Facilities may adopt policies restricting the areas where patients may display sexually explicit or patently offensive room decorations and may prohibit gang-related room decorations.

(3)(b) ~~All inpatients~~ An inpatient shall be allowed individual expression through a choice of music, art, reading materials and media access except for any limitation that may be necessary for documented security or safety reasons.

(f) Each inpatient shall have an opportunity for reasonable and regular access to facilities for physical exercise and shall have an opportunity for access to a variety of appropriate recreational facilities away from the living unit to the extent possible, except for any limitation that may be necessary for documented individual security or safety reasons.

(g) Each inpatient shall be provided an opportunity to be out of doors at regular and frequent intervals, with supervision as necessary, except when health reasons or documented individual security reasons indicate otherwise.

SECTION 32. HSS 94.24(3)(h) is created to read:

HSS 94.24(3)(h) Patients have a right to be free from having arbitrary decisions made about them. To be non-arbitrary, a decision about a client shall be rationally based upon a legitimate treatment, management or security interest.

SECTION 33. HSS 94.25 to 94.26 are renumbered 94.26 to 94.27.

SECTION 34. HSS 94.25 is created to read:

HSS 94.25 PATIENT FUNDS. Except as otherwise provided under s. 51.61(1)(v), Stats., a patient shall be permitted to use the patient's own money as the patient wishes. A service provider holding funds for a patient shall give the patient an accounting of those funds in accordance with s. 51.61(1)(v), Stats.

SECTION 35. HSS 94.27(1) is renumbered 94.29 and amended to read:

HSS 94.29 GRIEVANCE RESOLUTION PROCEDURES. Failure of a treatment facility to comply with any provision of rights under s.51.61, Stats., or this chapter may be processed as a grievance under s.51.61(5), Stats., and subch. III of this chapter.

SECTION 36. HSS 94.27(2) to (6) and (Note) are repealed.

SECTION 37. HSS 94.28 to 94.29 are renumbered 94.30 to 94.31.

SECTION 38. HSS 94.28 is created to read:

HSS 94.28 RIGHT TO FILE GRIEVANCES. (1) A patient or a person acting on behalf of a patient may file a grievance under s. HSS 94.29 procedures with the administrator of a facility or other service provider or with a staff member of the facility or other service provider without fear of reprisal and may communicate, subject to s. 51.61(1)(p), Stats., with any public official or any other person without fear of reprisal.

(2) No person may intentionally retaliate or discriminate against any patient, person acting on behalf of a patient or employe for contacting or providing information to any official or to an employe of any state protection and advocacy agency, or for initiating, participating in or testifying in a grievance procedure or in any action for any remedy authorized by law.

(3) No person may deprive a patient of the ability to seek redress for alleged violations of his or her rights by unreasonably precluding the patient from using the grievance procedure

established under s. HSS 94.29 or from communicating, subject to any valid telephone or visitor restriction under s. HSS 94.05, with a court, government official, grievance investigator or staff member of a protection and advocacy agency or with legal counsel.

SECTION 39. HSS 94.30(1), as renumbered, is amended to read:

HSS 94.30(1) Each treatment facility director and program director shall ensure that all of his or her employes who have any patient contact are aware of the requirements of this chapter and of the criminal and civil liabilities penalties for violation of s ss.51.30(10), 51.61, 146.84, 813.123, 940.22(2), 940.225, 940.285, 940.295 and 943.20(3)(d)6, Stats., and of the protection for reporting violations of rights to licensing agencies under s.51.61(10), Stats.

SECTION 40. Subchapter III of Chapter HSS 94 is created to read:

**Subchapter III -
STANDARDS FOR GRIEVANCE RESOLUTION PROCEDURES**

HSS 94.40 SYSTEM REQUIREMENTS. (1) **GRIEVANCE RESOLUTION SYSTEM REQUIRED.** All programs providing services or residential care to persons who need the services or residential care because of mental illness, a developmental disability, alcoholism or drug dependency, as those terms are defined in s. 51.01, Stats., shall have a grievance resolution system which complies with the requirements of this subchapter.

(2) **WRITTEN POLICIES.** A program shall have written policies which provide that:

(a) Staff of the program know and understand the rights of the clients they serve;

(b) Fair, responsive and respectful procedures are available which permit clients to obtain resolution of their grievances within the time frames provided in this subchapter;

(c) Staff and clients are instructed in both the formal procedures by which clients may seek resolution of grievances, and informal methods for resolving client concerns; and

(d) Staff who act as client rights specialists, or private individuals with whom the program contracts for this service, are trained in the procedures required by this subchapter, techniques for resolution of concerns and grievances and the applicable provisions of ch. 51, Stats., ch. HSS 92 and this chapter.

(3) **CLIENT RIGHTS SPECIALIST.** (a) Each program or coalition of programs shall designate one or more persons to act as client rights specialists.

(b) The client rights specialist may be an employe of the program or of one of the programs in a coalition or may be a person under contract to a program or to a coalition of programs.

(c) The client rights specialist assigned to conduct a program level review under s. HSS 94.41 shall not have any involvement in the conditions or activities forming the basis of the client's grievance, or have any other substantial interest in those matters arising from his or her relationship to the program or the client, other than employment.

(d) If at any time during the formal resolution process a grievant wishes to switch to the informal resolution process, and the other parties agree to the switch, the client rights specialist may suspend the formal resolution process and attempt to facilitate a resolution of the matter between the parties without prejudice to positions of the grievant or the program.

(e) If the client chooses to use the informal resolution process and the matter is resolved, the client rights specialist shall prepare a brief report indicating the nature of the resolution and file it with the program manager, with copies to the client, any person acting on behalf of the client pursuant to s. HSS 94.47, and the parent or guardian of a client if that person's consent is required for treatment.

(4) INFORMAL RESOLUTION PROCESS. (a) Each program shall have available a process which offers clients and persons acting on behalf of clients the option of seeking informal resolution of their concerns.

(b) Use of the informal resolution process shall not be a prerequisite for seeking formal relief.

(c) The informal resolution process may be used pending initiation of the formal resolution process or as an adjunct during the formal resolution process.

(d) The informal resolution process shall be adapted to the particular needs and strengths of the clients being served by the program in order to assist them and any persons acting on their behalf to participate in and understand the process as much as possible.

(e) Any applicable time limits of the formal resolution process shall be suspended during the use of the informal resolution process until a grievant indicates that he or she wishes the formal resolution process to begin or until any party requests that the formal resolution process resume.

(5) FORMAL RESOLUTION PROCESS. Each program shall have a formal resolution process for program level review of grievances under s. HSS 94.41 which includes:

(a) A process for training client rights specialists and for protecting their neutrality while conducting grievance reviews by establishing conditions which allow them to be objective in their actions, such as not allowing retribution against them for unpopular decisions;

(b) Procedures for:

1. Conducting program level inquiries;
2. Preparing reports that include factual findings, determinations of merit and recommendations for resolving grievances;
3. Completing the review process within the time limits of this subchapter;
4. Maintaining impartiality in the conduct of the inquiry; and
5. Permitting both clients and staff an equal opportunity to be heard during the process;

(c) A method for informing clients and their guardians, parents and advocates about the way grievances are presented and the process by which reviews of grievances are conducted which takes into account any special limitations clients of the program may have and adapts the system to allow clients to participate in the process to the fullest extent possible;

(d) A process for responding to decisions on grievance reviews at any level that provides for rapid and accurate compliance with final determinations as well as orders for interim relief under s. HSS 94.48; and

(e) A provision that, at any time, if all parties agree, the formal resolution process and any applicable time limits may be suspended to allow the parties to attempt an informal resolution of the matter under sub. (4), facilitated by the individual conducting the review at that level of the process. If time limits are suspended, they shall begin running again upon request of any party that the formal process be resumed.

(6) PROTECTIONS FOR CLIENTS AND ADVOCATES. A program shall have policies and procedures in place which provide that no sanctions will be threatened or imposed against any client who files a grievance, or any person, including an employe of the department, a county department or a service provider, who assists a client in filing a grievance.

Note: See s.51.61(5)(d) and (7m), Stats., for the civil and criminal penalties that are available to deal with anyone who threatens action or takes action against a client who files a grievance or against a person who assists a client in filing a grievance.

(7) CLIENT INSTRUCTION. As part of the notification of rights required under s. HSS 94.04, each program shall establish specific methods of instruction to help clients and their parents or guardians, if consent by a parent or guardian is required for treatment, understand and use the grievance system.

HSS 94.41 PROGRAM LEVEL REVIEW. (1) PRESENTATION OF GRIEVANCE.

(a) A program shall establish a flexible and open process through which clients and those acting on behalf of clients can present grievances.

Note: See HSS 94.47 for grievances presented on behalf of clients, including clients under guardianship.

(b) A grievance may be presented to the program manager or any staff person in writing, orally or by any alternative method through which the client or other person ordinarily communicates.

(c) Whenever possible, a program shall attempt to resolve a grievance at the time it is presented by listening to the nature of the complaint and by making adjustments in operations or conditions that respond to the individual needs of the client.

(d) If a grievance cannot be immediately resolved, the person presenting the issue shall be given the option of using the program's formal or informal resolution process.

(e) If the informal resolution process under s. HSS 94.40(4) is chosen, any time limits in sub. (5) shall be suspended while the parties work out their differences.

(f) If the formal resolution process under s. HSS 94.40(5) is chosen, the program shall refer the grievance to a client rights specialist who shall conduct an inquiry and file a report as provided in subs. (2) and (3).

(2) INQUIRY BY CLIENT RIGHTS SPECIALIST. (a) Upon receiving a referral, the client rights specialist shall meet with the grievant and the client, if different, and any staff member who may be named in the complaint, identify the matters at issue and explain the process for seeking formal resolution of grievances.

(b) If the grievance was presented orally or through an alternative form of communication, the client rights specialist shall assist the grievant in putting the grievance into writing for use in the ongoing process. A copy of the written grievance shall be given to the grievant and the client, and included in the report.

(c) 1. If there are facts in dispute, the client rights specialist shall conduct an inquiry into the incidents or conditions which are the focus of the grievance.

2. The program manager shall provide the client rights specialist with full access to all information needed to investigate the grievance, all relevant areas of the program facility named in the grievance and all records pertaining to the matters raised in the grievance.

3. The inquiry of the client rights specialist may include questioning staff, the client or clients on whose behalf the grievance was presented, other clients, reviewing applicable

records and charts, examining equipment and materials and any other activity necessary in order to form an accurate factual basis for the resolution of the grievance.

(d) When an inquiry requires access to confidential information protected under s. 51.30, Stats., and the client rights specialist conducting the inquiry does not otherwise have access to the information under an exception found in s.51.30 (4)(b), Stats., the client, or the guardian or parent of the client, if the guardian or parent's consent is required, may be asked to consent in writing to the release of that information to the client rights specialist and other persons involved in the grievance resolution process. The client rights specialist may proceed with the inquiry only if written consent is obtained. If consent for access is not granted, the program shall attempt to resolve the matter through the informal resolution process. The program may include in forms used for presenting written grievances a corresponding provision relating to consent for release of confidential information.

(e) The client rights specialist shall maintain the confidentiality of any information about any program client gained during the inquiry, unless specific releases for that information are granted.

(f) With the consent of the grievant, the client rights specialist may suspend the formal resolution process and attempt an informal resolution of the grievance as provided in s. HSS 94.40(4).

(3) REPORT OF CLIENT RIGHTS SPECIALIST. (a) In this subsection:

1. "Founded" means that there has been a violation of a specific right guaranteed to the client under ch. HSS 92 or 94 or ch. 51, Stats.

2. "Unfounded" means that the grievance is without merit or not a matter within the jurisdiction of ch. HSS 92 or 94 or s. 51.61, Stats.

(b) When the inquiry under sub. (2)(c) is complete, the client rights specialist shall prepare a written report with a description of the relevant facts agreed upon by the parties or gathered during the inquiry, the application of the appropriate laws and rules to those facts, a determination as to whether the grievance was founded or unfounded, and the basis for the determination.

(c) If the grievance is determined to be founded, the report shall describe the specific actions or adjustments recommended by the client rights specialist for resolving the issues presented. Where appropriate, the recommendation may include a timeline for carrying out the proposed acts and adjustments.

(d) If the grievance is determined to be unfounded, but through the process of the inquiry the client rights specialist has identified issues which appear to affect the quality of

services in the program or to result in significant interpersonal conflicts, the report may include informal suggestions for improving the situation.

(e) Copies of the report shall be given to the program manager, the client and the grievant, if other than the client, the parent or guardian of a client if that person's consent is required for treatment, and all relevant staff.

(f) The client rights specialist shall purge the names or other client identifying information of any client involved in the grievance, other than the client directly involved, when providing copies of the report to persons other than the staff directly involved, the program manager or other staff who have a need to know the information.

(4) PROGRAM MANAGER'S DECISION. (a) If the program manager, the client, the grievant, if other than the client, and the guardian or parent, if that person's consent is required for treatment, agree with the report of the client rights specialist, and if the report contains recommendations for resolution, those recommendations shall be put into effect within an agreed upon timeframe.

(b) If there is disagreement over the report, the client rights specialist may confer with the client, the grievant, if other than the client, the parent or guardian of the client, if that person's consent is required for treatment, and the program manager or his or her designee to establish a mutually acceptable plan for resolving the grievance.

(c) If the disagreement cannot be resolved through the discussions under par. (b), the program manager or designee shall prepare a written decision describing the matters which remain in dispute and stating the findings and determinations or recommendations which form the official position of the program.

(d) The decision may affirm, modify or reverse the findings and recommendations proposed by the client rights specialist. However, the program manager shall state the basis for any modifications which are made.

(e) The program manager's decision shall be given personally or sent by first class mail to the client and the grievant, if other than the client, the parent or guardian of a client, if that person's consent is required for treatment, and all staff who received a copy of the report of the client rights specialist. The decision shall include a notice which explains how, where and by whom a request for administrative review of the decision under s. HSS 94.42(2) may be filed and states the time limit for filing a request for administrative review.

(5) TIME LIMITS. (a) Filing a grievance. 1. A client or a person acting on the client's behalf shall present a grievance to the client rights specialist, a staff person or the program manager within 45 days of the occurrence of the event or circumstance in the grievance or of the time when the event or circumstance was actually discovered or should

reasonably have been discovered, or of the client's gaining or regaining the ability to report the matter, whichever comes last.

2. The program manager may grant an extension of the 45 day time limit for filing a grievance for good cause. In this subdivision, "good cause" may include but is not limited to circumstances in which there is a reasonable likelihood that despite the delay:

a. Investigating the grievance will result in an improvement in care for or prevention of harm to the client in question or other clients in the program; or

b. Failing to investigate the grievance would result in a substantial injustice.

(b) Processing grievances in non-emergency situations. In situations in which there is not an emergency, the following time limits apply:

1. A staff person receiving a request for formal resolution of a grievance shall present the request to the program manager or his or her designee as soon as possible but not later than the end of the staff person's shift;

2. The program manager or his or her designee shall assign a client rights specialist to the grievance within 3 business days after the request for formal process has been made;

3. The client rights specialist shall complete his or her inquiries and submit the report under sub. (4) within 30 days from the date the grievance was presented to a program staff person; and

4. A written decision under sub. (4) (e) shall be issued within 10 days of the receipt of the report, unless the client, the grievant, if other than the client, and the parent or guardian of the client, if that person's consent is necessary for treatment, agree to extend this period of time while further attempts are made to resolve the matters still in dispute.

(c) Processing grievances in emergency situations. 1. In emergency situations, the following time limits apply:

a. A staff person receiving the request shall immediately present the matter to the program manager or his or her designee;

b. The program manager or designee shall assign a client rights specialist as soon as possible but no later than 24 hours after the request is received;

c. The client rights specialist shall complete the inquiry and submit the report identified in sub. (4) within 5 days from the date the grievance was presented; and

d. A written decision under sub. (4)(e) shall be issued within 5 days of the receipt of the report, unless the client, the grievant, if other than the client, and the guardian or parent of the client, if that person's consent is necessary for treatment, agree to extend this period of time while further attempts are made to resolve the matters still in dispute.

2. If after a preliminary investigation it appears that there is no emergency, the client rights specialist may treat the situation as a non-emergency for the remainder of the process.

(6) PROTECTION OF CLIENTS. If the client rights specialist determines that a client or a group of clients is at risk of harm, and the program has not yet acted to eliminate this risk, he or she shall immediately inform the program manager, the county department operating or contracting for the operation of the program, if any, and the office of the department with designated responsibility for investigating client grievances under s. HSS 94.42(1)(b)2 of the situation. If the situation continues to place the client or the group of clients at risk, the office designated under s. HSS 94.42 (1)(b)2 shall take immediate action to protect the client or clients, pending further investigation.

HSS 94.42 ADMINISTRATIVE REVIEW BY COUNTY OR STATE. (1)
RESPONSIBILITY FOR ADMINISTRATIVE REVIEW. (a) 1. For a program operated by a county department or under contract with a county department, a requested administrative review of the program manager's decision under s. HSS 94.41 (4)(e) shall be conducted by the director of the county department.

2. The director of a county department may conduct administrative reviews or may designate a specific person or persons from the county department's staff to conduct administrative reviews at the county level. If a staff person is designated to carry out a review, he or she shall prepare a final report for the approval of the director.

(b) 1. For a program operating independently of a county department, including a program operated by a state agency, a requested administrative review shall be carried out by the office of the department with responsibility for investigating client grievances as provided in subd. 2.

2. The secretary shall designate a unit or office of the department to be responsible for conducting state level administrative reviews. The supervisor of the unit or office shall assign a specific staff person to act as grievance examiner for a review brought directly to the state from a program under subd. 1 or for a review brought to the state following a county level review under s. HSS 94.43. This office shall also be responsible for investigating complaints under s. HSS 94.49 relating to the existence or adequacy of grievance resolution systems.

(2) REQUEST FOR ADMINISTRATIVE REVIEW. (a) A request for administrative review of a program manager's decision shall state the basis for the grievant's objection and may include a proposed alternative resolution.

(b) 1. A request for administrative review may be made in writing, orally or through a person's alternative means of communication to the program manager by the grievant, the client, if other than the grievant, or the client's parent or guardian, if that person's consent is necessary for treatment.

2. If the request is made orally or through an alternative mode of communication, the program manager shall prepare a written summary of the request.

(c) When an administrative review is requested, the program manager shall transmit a copy of the original grievance, the report of the client rights specialist, the written decision and the request for review to the director of the county department or the state grievance examiner, as appropriate.

(3) SWITCH TO INFORMAL RESOLUTION PROCESS. At any time, if all parties agree, the formal resolution process and any applicable time limits may be suspended to allow the parties to attempt an informal resolution of the matter under s.HSS 94.40(4), facilitated by the individual conducting the review at that level of the process. If time limits are suspended, they shall begin running again upon request of any party that the formal resolution process be resumed.

(4) GATHERING OF INFORMATION AND PREPARATION OF REPORT. (a) Consideration of report and decision. The individual conducting the administrative review shall consider the report of the client rights specialist and the decision of the program manager, but shall independently render an opinion by applying the appropriate provisions of ch. 51, Stats., ch. HSS 92 and this chapter to the facts and circumstances of the grievance.

(b) Gathering of additional information. 1. If the state grievance examiner or county director, or his or her designee, determines that additional information is necessary to complete the review, or if the client or person acting on behalf of the client has made a reasonable allegation that the findings of fact by the client rights specialist or the program manager are inaccurate, further inquiry into the circumstances underlying the grievance may be made, including but not limited to personal interviews, telephone calls and inspection of equipment, facilities, records, documents and other physical or written materials which may be relevant.

2. Individuals gathering information in support of an administrative review shall have access to all relevant areas of the facility or other program named in the grievance during ordinary business hours or any other times specifically referenced in the original grievance, and shall have access to all records pertaining to the grievance.

3. If requested by the client or other grievant, the individual conducting the administrative review shall contact the client or other grievant.

4. If the circumstances underlying the grievance require an examination of clinical services, including but not limited to psychotherapeutic treatment, behavioral interventions and the administration of medication, the individual conducting the review may request that consultation on the matters in question be provided by an independent clinician with the experience and training appropriate for the inquiry.

(c) Report. 1. The individual conducting the review shall prepare a written report with findings of fact, conclusions based on upon the findings of fact and a determination of whether the grievance was founded or unfounded as defined in s. HSS 94.41 (3)(a).

2. If the review has been carried out by a staff person designated by the county director, the staff person shall submit a draft report to the county director who shall issue a written decision in the matter.

3. If the review has been conducted by a grievance examiner appointed under sub. (1)(b)2, the report by the grievance examiner shall constitute the administrative decision at the state level.

4. If the grievance is determined to be founded, the decision shall identify the specific actions or adjustments to be carried out to resolve the grievance.

5. If the grievance is determined to be unfounded, the decision shall dismiss the grievance, pending any further request for review.

(5) DISTRIBUTION OF COUNTY DIRECTOR DECISION. (a) Copies of the decision by the county director shall be given personally or sent by first class mail to the program manager, the client, the grievant if other than the client, the client rights specialist, the parent or guardian of the client, if that person's consent is required for treatment, all staff who received a copy of the program manager's decision, and the office of the department designated under sub. (1)(b)2.

(b) If the parties agree with the decision, any recommendations shall be put into effect as soon as possible.

(c) If there is a disagreement over the decision, the parties may confer in a meeting facilitated by the individual conducting the review in an attempt to establish a mutually acceptable plan for resolving the grievance. Any applicable time limits shall be suspended while the parties confer, but shall begin running again if either party indicates a desire to resume the formal resolution process.

(d) The county director's decision shall include a notice to the client and the program director which explains how and where a state level review of the decision can be requested under s. HSS 94.43 and the time limits within which a request for further review must be filed.

(e) Any party shall have 14 days from the date the party receives a county director's decision under par. (a) to request a state level review under s. HSS 94.43 of the county director's decision.

(6) DISTRIBUTION OF STATE GRIEVANCE EXAMINER DECISION. (a) Copies of the decision by the state grievance examiner shall be given personally or sent by first class mail to the program manager, the client, the grievant, if other than the client, the client rights specialist, the parent or guardian of a client, if that person's consent is required for treatment, and all staff who received a copy of the program manager's decision.

(b) If the program manager, the client and the person acting on behalf of the client, if any, agree with the decision, any recommendations shall be put into effect as soon as possible.

(c) If there is disagreement over the decision, the parties may confer in a meeting facilitated by the state grievance examiner in an attempt to establish a mutually acceptable plan for resolving the grievance. Any applicable time limits shall be suspended while the parties confer, but shall begin running again if either party indicates a desire to resume the formal resolution process.

(d) The decision shall include a notice to the parties which tells how and where to request final state review under s. HSS 94.44 and states the time limits within which any request for final state review must be made.

(7) TIME LIMITS. (a) Request for review. A grievant shall have 14 days from the date he or she received the written decision of the program manager under s. HSS 94.41 (4)(e) to request an administrative review.

(b) Review in non-emergency situations. 1. In situations in which there is not an emergency, the following time limits apply:

a. The program manager or his or her designee shall, upon receipt of a request for review, transmit by first class mail the materials identified in sub. (2)(c) to the county director or the office of the department designated under sub. (1)(b)2, as appropriate, within 7 days of receiving the request; and

b. The written decision on the review shall be issued within 30 days after the request for review was presented to the program manager.

2. The county director or the state grievance examiner in non-emergency situations may extend the time limit for completing the administrative review for up to 30 additional days with the consent of the program director, the client and the grievant, if other than the client, or upon a showing that additional time is necessary to complete the inquiry or evaluation of the matters presented for review.

(c) Review in emergency situations. 1. In emergency situations, the following time limits apply:

a. The program manager or his or her designee shall, upon receipt of a request for review, transmit by overnight mail the materials identified in sub. (2)(c) to the county director or the office of the department designated under sub. (1)(b)2, as appropriate, within 3 business days of receiving the request; and

b. The written decision on the review shall be issued within 10 days after the request for review was presented to the program manager.

2. If after a preliminary investigation it appears that there is no emergency, the state grievance examiner or county director may treat the situation as a non-emergency for the remainder of the process.

(8) PROTECTION OF CLIENTS. If the state grievance examiner or county director determines that a client or group of clients is at risk of harm, and the program has not yet acted to eliminate this risk, he or she shall take immediate action to protect the client or clients, pending further investigation.

(9) PROTECTION OF CLIENT CONFIDENTIALITY. The county director or state grievance examiner shall purge the names or other client identifying information of any client involved in the grievance, including the client directly involved, when providing copies of the decision to persons other than the client or a person acting on the client's behalf, the parent or guardian of the client, the staff directly involved, or the program manager or other staff who have a need to know the information.

HSS 94.43 STATE LEVEL REVIEW OF COUNTY ADMINISTRATIVE DECISION.

(1) REQUEST FOR REVIEW. (a) For a program operated by or under contract with a county department, if the program manager, the client or the grievant, if other than the client, disagrees with the decision of the county director under s. HSS 94.42(5), that person may seek a review of the decision by the office or unit designated by the secretary under s. HSS 94.42(1)(b)2.

(b) If a grievant wishes to seek a state review of the county director's decision, he or she shall make the request to the program manager. The program manager shall forward the request and supporting materials to the office or unit designated under s. HSS 94.42 (1)(b)2 in the same manner as provided in s. HSS 94.42(2)(c), with a copy sent by first class mail to the county director. All other parties shall make their request to the office or unit designated under s. HSS 94.42 (1)(b)2, with copies of the request given personally or sent by first class mail to the other parties.

(2) PROCEDURES AND TIME LIMITS. State review of a decision of a county director shall be conducted in the same manner and under the same time limits as an

administrative review of a program operating independently of a county department under s. HSS 94.42.

(3) DISTRIBUTION OF DECISION. Copies of the decision by the state grievance examiner shall be given personally or sent by first class mail to the program manager, the client, the grievant, if other than the client, the county director, the client rights specialist and the client's parent or guardian if that person's consent is required for treatment.

(4) NOTICE OF RIGHT TO FINAL STATE REVIEW. The decision shall include a notice which explains how and where and under what time limits a party who disagrees with the decision of the state grievance examiner may seek final state review of the grievance under s. HSS 94.44.

(5) PROTECTION OF CLIENT CONFIDENTIALITY. The state grievance examiner shall purge the names or other client identifying information of any client involved in the grievance, including the client directly involved, when providing copies of the decision to persons other than the client, or a person acting on behalf of the client, the parent or guardian of the client, the staff directly involved, or the program manager or other staff who have a need to know the information.

HSS 94.44 FINAL STATE REVIEW. **(1) DESIGNATION OF ADMINISTRATOR.** The secretary of the department shall designate a specific division administrator or administrators to conduct final reviews of client grievances.

(2) REQUEST FOR REVIEW. (a) A grievant seeking final state review shall present his or her request to the program manager who shall transmit the request to an administrator designated under sub. (1) along with copies of the original grievance and all prior decisions and reports.

(b) A request by a program manager or county director for final state review shall be presented to the designated administrator or administrators on forms provided by the department and include with the request copies of the original grievance and all subsequent decisions and reports. A copy of the request for review shall be sent by first class mail to all other parties, including the client and the grievant, if other than the client.

(c) A request shall describe the portion or portions of the prior decision with which the party disagrees, the basis for the disagreement and any arguments or additional information the party wishes the department to consider.

(d) If the grievant is unable to prepare a written request for final state review, the program manager or his or her designee shall assist in completing the necessary forms.

Note: For copies of the form for requesting a final state review, write: Division of Care and Treatment Facilities, P.O. Box 7851, Madison WI 53707.

(3) INFORMATION FOR REVIEW. The administrator conducting the final state review may request that additional information be submitted by any party or may conduct the final review based solely on the information already received.

(4) FINAL ADMINISTRATIVE DETERMINATION. (a) The administrator shall prepare a final administrative determination for resolution of the grievance.

(b) The administrator shall affirm the prior decision unless it is contrary to state statutes or administrative rules.

(c) If the administrator determines that the prior decision should be modified or reversed, he or she shall state the basis for the modification or reversal and shall include in the final administrative determination specific instructions for carrying out any acts or adjustments being ordered to resolve the grievance and the timelines for carrying them out.

(5) DISTRIBUTION OF DECISION. (a) Copies of the decision shall be sent by first class mail to the grievance examiner, the county director, if the program was operated by or under contract with a county department, the program manager, the client, the grievant, if other than the client, the client rights specialist, the parent or guardian of a client, if that person's consent is required for treatment, and all staff who received a copy of the state grievance examiner's decision..

(b) The decision shall contain a notice to the parties that there is no further administrative appeal beyond this stage. The grievant shall be advised of the client's right to pursue additional consideration of the matter by bringing action in a court under s. 51.61(7), Stats.

(6) TIME LIMITS. (a) Request for review. A party shall have 14 days from the date he or she receives the written decision by the state grievance examiner under s. HSS 94.42(6) or 94.43 to request a final state review.

(b) Non-emergency situations. 1. In situations in which there is not an emergency, the following time limits apply:

a. The program manager or his or her designee shall, upon receipt of the request for review by a grievant, transmit by first class mail the materials identified in sub. (2) (a) to the administrator designated under sub. (1) within 7 days of receiving the request;

b. Other parties shall transmit by first class mail their request for review along with all of the materials directly to the department administrator within 14 days of receiving the decision of the state grievance examiner; and

c. The designated department administrator shall issue a final decision on the review within 30 days after the request for review was presented to the program manager by the

grievant or a request for review by any other party was received by the designated department administrator.

2. The department administrator in non-emergency situations may extend the time limit for completing the administrative review for up to 30 additional days with the approval of the program director, the client and the grievant, if other than the client, or upon a showing that additional time is necessary to complete the inquiry or evaluation of the matters presented for review.

(c) Emergency situations. 1. In emergency situations, the following time limits apply:

a. The program manager or his or her designee shall, upon receipt of the request for review by a grievant, transmit by overnight mail the materials identified in sub. (2) (a) to the administrator designated under sub. (1) within 3 business days of receiving the request.

b. Other parties shall transmit by overnight mail their request for review along with all of the materials directly to the department administrator within 7 days of receiving the decision of the state grievance examiner; and

c. The final decision on the review shall be issued within 10 days after the request for review was presented to the program manager by the grievant or a request for review by any other party was received by the department administrator.

2. If after a preliminary investigation it appears that there is no emergency, the department administrator may treat the situation as a non-emergency for the remainder of the process.

(7) **PROTECTION OF CLIENTS.** If the department administrator determines that a client or group of clients continues at risk of harm and the program has not yet acted to eliminate this risk, he or she shall take immediate action to protect the client or clients, pending further investigation.

(8) **PROTECTION OF CLIENT CONFIDENTIALITY.** The department administrator shall purge the names or other client identifying information of any client involved in the grievance, including the client directly involved, when providing copies of the decision to persons other than the client or a person acting on behalf of the client, the parent or guardian of the client, the staff directly involved, or the program manager or other staff who have a need to know the information.

HSS 94.45 PROGRAM COALITIONS. (1) A group of programs may form a coalition to operate a combined grievance resolution system in order to share the costs of operating the system and to increase the independence and expertise of the individuals acting as client rights specialists.

(2) The coalition may establish a common process for conducting program level reviews and for offering informal resolution services, or may identify specific variations of the process as it applies to each coalition member, so long as each variation complies with this subchapter.

(3) The programs in the coalition may agree to share the costs of training existing staff to act as client rights specialists or may jointly contract with one or more private individuals to provide this service upon request for any member of the coalition.

(4) A coalition shall operate in accordance with a written agreement signed by the member programs. The terms of the agreement shall provide for meeting the requirements of this subchapter in the operation of the grievance resolution system and for maintaining the impartiality of the client rights specialist.

HSS 94.46 MULTIPLE GRIEVANCES BY ONE CLIENT. (1) When a client or a person acting on behalf of a client has presented multiple grievances involving a variety of circumstances, the client rights specialist may establish an expanded timetable with specific priorities for investigating the allegations in a manner which appears most likely to deal with the issues in an efficient manner while addressing the most serious allegations first. This timetable may exceed the time limits in this subchapter, but shall include reasonable time limits for completing the investigation of each grievance. The client rights specialist shall notify the client or person acting on behalf of the client and the program manager of the timetable and priorities for resolution of multiple grievances within 10 days after beginning the inquiry.

(2) If there is an objection to the proposed timetable or priorities, the client rights specialist shall attempt to reach an informal resolution of the objection. If the client, person acting on behalf of the client or the program manager continues to object, that person may request a review of the issue by the county department or the state grievance examiner, whichever would normally hear an appeal of the program level review. In the absence of a request, the timetable and priorities established by the client rights specialist shall be controlling.

HSS 94.47 RELATED GRIEVANCES BY SEVERAL CLIENTS. (1) When 2 or more clients have presented individual grievances involving the same circumstances or a related group of circumstances relating to a single program, the client rights specialist may conduct the investigation as if it were one grievance.

(2) If the client rights specialist believes the investigation of the grievance will require more time to complete than is allowed under the time limits established in this subchapter, the client rights specialist shall establish a reasonable time limit for completing the investigation. The client rights specialist shall notify the clients, any person or persons acting on their behalf and the program manager of the time limit within 10 days after beginning the inquiry.

(3) If there is an objection to the proposed time limit for completing the investigation, the client rights specialist shall attempt to reach an informal resolution of the objection. If a client, any person acting on behalf of any of the clients or the program manager continues to object, that person may request a review of the issue by the county department or the state grievance examiner, whichever would normally hear an appeal of the program level review. In the absence of a request, the timetable established by the client rights specialist for completing the investigation shall be controlling.

HSS 94.48 GRIEVANCES INVOLVING SEVERAL PROGRAMS. (1) If a client has presented the same grievance against several programs, each of which would ordinarily use a different client rights specialist, the client rights specialists from all the programs named in the grievance may:

- (a) Jointly conduct the investigation;
- (b) Delegate the task to one or more of the client rights specialists involved; or
- (c) Refer the matter to the county department or the office of the department with jurisdiction over the services offered by the program for an immediate county or first state review.

(2) If the client rights specialist or specialists believe the investigation of the grievance will require more time to complete than is allowed under the time limits established in this subchapter, the client rights specialist or specialists shall establish a reasonable time limit for completing the investigation. The client rights specialist or specialists shall notify the client, any person acting on the client's behalf and the program manager of the time limit within 10 days after beginning the inquiry.

(3) If there is an objection to the proposed time limit for completing the investigation, the client rights specialist shall attempt to reach an informal resolution of the objection. If the client, person acting on behalf of the client or the program manager continues to object, that person may request a review of the issue by the county department or the state grievance examiner, whichever would normally hear an appeal of the program level review. In the absence of a request, the time limit established by the client rights specialist or specialists for completing the investigation shall be controlling.

HSS 94.49 GRIEVANCES PRESENTED ON BEHALF OF CLIENTS. (1) Any person who is aware of a possible violation of a client's rights under ch. 51, Stats., ch. HSS 92 or this chapter may present a grievance on behalf of the client.

(2) When a grievance is presented on behalf of a client by someone other than the client's parent or guardian, and the parent or guardian's consent is required for treatment, the client rights specialist shall meet with the client and the client's parent or guardian, to

determine if the client or the client's parent or guardian, as appropriate, wishes the grievance investigated and resolved through the formal resolution process.

(3) If the client or, when the parent's or guardian's consent is required for treatment, the parent or guardian is opposed to using the formal resolution process, the client rights specialist may proceed with the investigation only if there are reasonable grounds to believe that failure to proceed may place the client or other clients at risk of physical or emotional harm. If there is no parent or guardian, or that person is not available, and the client is unable to express an opinion, the client rights specialist shall proceed.

(4) Where a grievance is filed on behalf of a client by a person who does not have a right to information about the client because of confidentiality statutes, the person may only receive confidential information as part of the investigation or resolution of the grievance with the informed consent of the client or his or her guardian, if there is one, the parent of a client who is under the age of 18, if the parent's consent is required for a release of information, or pursuant to an order of a court with jurisdiction over matters relating to the client under ch. 48, 51 or 55, Stats.

(5) In the absence of this consent, a person presenting a grievance on behalf of a client shall be informed of the determination of the client rights specialist and decision of the program manager, if any, regarding the merit of the grievance, but if the text of the determination contains confidential information to which the person is not privileged or for which a release has not been obtained, the text may not be disclosed to the person.

(6) (a) A person presenting a grievance on behalf of a client may request additional review of an adverse decision, up to and including final state review under s. HSS 94.44.

(b) If the client is opposed to requesting additional review, or when the parent or guardian's consent is required for treatment and the parent or guardian is opposed to requesting additional review, the reviewing officer may only proceed if the person presenting the grievance provides sufficient information to demonstrate that there are reasonable grounds for believing that failure to proceed may place the client or other clients at risk of physical or emotional harm.

HSS 94.50 INTERIM RELIEF. (1) If the client rights specialist or a person conducting an administrative review of a grievance finds that interim relief is necessary to protect a client's well-being pending resolution of a grievance, a directive may be given to the program manager to modify the services being provided to the client to the extent necessary to protect the client.

(2) A directive for interim relief shall be designed to provide the necessary protection at the minimum expense to the program while protecting the rights of the client.

(3) A program manager may appeal a directive for interim relief to the department administrator designated under s. HSS 94.44(1).

HSS 94.51 COMPLAINTS RELATED TO THE EXISTENCE OR OPERATION OF GRIEVANCE RESOLUTION SYSTEMS. (1) Clients or persons acting on behalf of clients under s. HSS 94.47 may register complaints relating to failure of a program to have a grievance resolution system as required by s. 51.61(5)(b), Stats., and this subchapter, or relating to the operation of an existing grievance resolution system directly to the unit or office of the department designated to conduct administrative reviews under s. HSS 94.42(1)(b)2.

(2) If a complaint regarding the existence or operation of a grievance resolution system is filed with the department, a state grievance examiner shall conduct an investigation to determine whether a grievance resolution system meeting the requirements of s. 51.61(5)(b), Stats., and this subchapter is in place in the program.

(3) If the program lacks a grievance resolution system, or if the operation of an existing grievance resolution system is not in substantial compliance with the requirements of this subchapter, the state grievance examiner shall issue a report identifying the steps necessary for the program to implement a grievance resolution system that complies with this subchapter, with a timeline for implementation.

(4) The client or a person acting on behalf of the client or the program manager may seek a review of the state grievance examiner's report under sub. (3) by the administrator designated under s. HSS 94.44.

(5) If the program fails to implement the required steps in the expected time period, the matter shall be referred by the grievance examiner to the appropriate unit or office of the department or the county department with responsibility for oversight of the program for action related to certification, licensure or reimbursement or for censure of the program.

(6) Nothing in this section shall be read as prohibiting or limiting in any way the beginning of an action under s. 51.61(7) or (7m), Stats., or any other civil or criminal prosecution by or on behalf of a client.

HSS 94.52 INVESTIGATION BY THE DEPARTMENT. The department may investigate any alleged violation of this chapter and shall, in accordance with ch. HSS 92, have access to treatment records and other materials and to individuals having information relating to the alleged violation.

HSS 94.53 SUPPORT FOR DEVELOPMENT OF GRIEVANCE RESOLUTION SYSTEMS. (1) The department shall prepare materials, including but not limited to model policies and program guidelines, which describe methods for implementing the elements necessary for a grievance resolution system which is in compliance with this subchapter.


(2) The secretary of the department shall designate an office or unit of the department which shall be responsible for providing or contracting for the provision of technical assistance to programs with questions about the development, operation and maintenance of consistency of grievance resolution systems, and for providing or arranging for the provision of training for persons who have been designated to act as client rights specialists and county directors or staff designated to carry out administrative reviews under s.HSS 94.42.

HSS 94.54 UNITS OF TIME. All time limits in this subchapter are expressed in calendar days unless otherwise noted.

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

Wisconsin Department of Health and
Social Services

Dated: May 7, 1996

By: 
Joseph Lee
Secretary

SEAL:

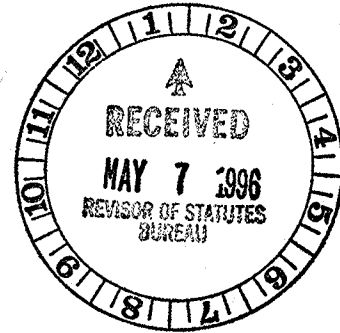


State of Wisconsin
Department of Health and Social Services

Tommy G. Thompson, Governor
Joe Lekan, Secretary

May 7, 1996

Mr. Bruce E. Munson
Revisor of Statutes
131 W. Wilson St., Suite 800
Madison, WI 53703




Dear Mr. Munson:

As provided in s. 227.20, Stats., there is hereby submitted a certified copy of ch. HSS 94, administrative rules relating to the rights of persons receiving services for mental illness, a developmental disability, alcohol abuse or dependency or other drug abuse or dependency, and standards for grievance procedures.

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

Sincerely,


Joseph Lekan
Secretary

Enclosure