

**RIGHTS OF INDIVIDUALS RECEIVING SERVICES FROM
STATE CENTERS FOR THE DEVELOPMENTALLY DISABLED
UNDER FEDERAL LAW &
DHS 134, WISCONSIN ADMINISTRATIVE CODE**

Introduction

Individuals receiving services from the state Centers for the Developmentally Disabled in Wisconsin have rights guaranteed to them by several different sources. These individuals are referred to in various laws and rules as “residents,” “clients” and even “patients.” This document uses the terms that the particular law or rule uses.

Individuals receiving services from a licensed facility for the developmentally disabled (FDD) have “client” rights guaranteed to them under the Code of Federal Regulations (CFR). [42 CFR ss. 483.420]

Also, as "patients" in Wisconsin, Center residents have rights guaranteed to them in Chapter 51, Wisconsin Statutes. Section 51.61 grants Center residents "patient rights" and Section 51.30 gives residents rights to confidentiality of and access to their treatment records. These rights are outlined in the brochure you have received along with this document. A full copy of Section 51.61, Wis. Statutes, is available upon request from the Center’s Client Rights Specialist.

The state laws under Chapter 51 are interpreted in two sets of administrative rules—DHS 94, Wisconsin Administrative Code, “Patient Rights” and DHS 92, Wisconsin Administrative Code, “Confidentiality of Treatment Records.” Copies of these rules are available at all state Centers for review.

Further, a set of state administrative rules was adopted for Facilities Serving People with Developmental Disabilities—DHS 134, Wisconsin Administrative Code. These rules integrate the rights of Center “residents” under state and federal law. Copies of this document are also available at all state Centers for review.

Complaints about any violations of resident rights under the *federal law* or *DHS 134* may either be submitted to the Division of Quality Assurance (DQA), PO Box 2969, Madison, WI 53701-2969, (608) 266-8481, or to the Center's Client Rights Specialist.

Complaints about any violations of resident rights under *state law* or DHS 94 or DHS 92 may be filed under the Division of Long Term Care (DLTC) Grievance Resolution Procedure (Division Directive 20-01.00). This procedure is outlined in the brochure entitled, "Rights of Patients and Residents and the Grievance Resolution Process" (P-20377). The brochure also identifies the Center’s Client Rights Specialist to whom you may address questions about resident rights and with whom complaints may be filed. A copy of the Grievance Resolution Process rules is available from the Center's Client Rights Specialist upon request.

Rights under the various laws and rules are not identical, but may overlap. If there is any question about which right applies, a complaint may be filed with the Center’s Client Rights Specialist and the Division of Quality Assurance at the same time.

**RIGHTS OF CENTER RESIDENTS
UNDER FEDERAL LAW**

Following is a list of rights of individuals receiving services from state Centers taken from the Federal Code of Regulations (CFR). This law uses the term “clients.”

PROTECTION OF CLIENTS' RIGHTS

42 CFR 483.420(a)

The facility must ensure the rights of all clients. Therefore, the facility must...

- (1) *Inform* each client, parent (if the client is a minor), or legal guardian, of the client's rights and the rules of the facility;

- (2) *Inform* each client, parent (if the client is a minor), or legal guardian, of the client's medical condition, developmental and behavioral status, attendant risks of treatment, and the right to refuse treatment;
- (3) *Allow* and encourage individual clients to exercise their rights as clients of the facility, and as citizens of the United States, including the right to file complaints, and the right to due process;
- (4) *Allow* individual clients to manage their financial affairs and teach them to do so to the extent of their capabilities;
- (5) *Ensure* that clients are not subjected to physical, verbal, sexual, or psychological abuse or punishment;
- (6) *Ensure* that clients are free from unnecessary drugs and physical restraints and are provided active treatment to reduce dependency on drugs and physical restraints;
- (7) *Provide* each client with the opportunity for personal privacy and ensure privacy during treatment and care of personal needs;
- (8) *Ensure* that clients are not compelled to perform services for the facility and ensure that clients who do work for the facility are compensated for their efforts at prevailing wages and commensurate with their abilities;
- (9) *Ensure* clients the opportunity to communicate, associate, and meet privately with individuals of their choice, and to send and receive unopened mail;
- (10) *Ensure* that clients have access to telephones with privacy for incoming and outgoing local and long distance calls except as contraindicated by factors identified within their individual program plans;
- (11) *Ensure* clients the opportunity to participate in social, religious, and community group activities;
- (12) *Ensure* that clients have the right to retain and use appropriate personal possessions and clothing, and ensure that each client is dressed in his or her own clothing each day; and
- (13) *Permit* a husband and wife who both reside in the facility to share a room.

CLIENT FINANCES

42 CFR 483.420(b)

- (1) The facility must establish and maintain a system that...
 - (i) *Assures* a full and complete accounting of clients' personal funds entrusted to the facility on behalf of the clients; and
 - (ii) *Precludes* any commingling of client funds with facility funds or with the funds of any person other than another client.
- (2) The client's financial record must be available on request to the client, parents (if the client is a minor) or legal guardian.

COMMUNICATION WITH CLIENTS, PARENTS AND GUARDIAN

42 CFR 483.420(c)

The facility must...

- (1) *Promote* participation of parents (if the client is a minor) and legal guardians in the process of providing active treatment to the client unless their participation is unobtainable or inappropriate;
- (2) *Answer* communications from clients' families and friends promptly and appropriately;
- (3) *Promote* visits by individuals with a relationship to the client (such as family, close friends, legal guardians and advocates) at any reasonable hour, without prior notice, consistent with the right of that client's or other clients' privacy, unless the interdisciplinary team determines that the visit would not be appropriate;

- (4) *Promote* visits by parents or guardians to any area of the facility that provides direct client care services to the client, consistent with that client's and other clients' privacy;
- (5) *Promote* frequent and informal leaves from the facility for visits, trips, or vacations; and
- (6) *Notify* promptly the client's parents or guardian of any significant incidents, or changes in the client's condition including, but not limited to, serious illness, accident, death, abuse, or unauthorized absence.

STAFF TREATMENT OF CLIENTS

42 CFR 483.420(d)

- (1) The facility must develop and implement written policies and procedures that prohibit mistreatment, neglect or abuse of the client.
 - (i) Staff of the facility must not use physical, verbal, sexual or psychological abuse or punishment.
 - (ii) Staff must not punish a client by withholding food or hydration that contributes to a nutritionally adequate diet.
 - (iii) The facility must prohibit the employment of individuals with a conviction or prior employment history of child or client abuse, neglect, or mistreatment.
- (2) The facility must ensure that all allegations of mistreatment, neglect or abuse, as well as injuries of unknown source, are reported immediately to the administrator or to other officials in accordance with State law through established procedures.
- (3) The facility must have evidence that all alleged violations are thoroughly investigated and must prevent further potential abuse while the investigation is in progress.
- (4) The results of all investigations must be reported to the administrator or designated representative or to other officials in accordance with State law within five working days of the incident and, if the alleged violation is verified, appropriate corrective action must be taken.

ACTIVE TREATMENT

42 CFR 483.440(a)

- (1) Each client must receive a continuous active treatment program, which includes aggressive, consistent implementation of a program of specialized and generic training, treatment, health services and related services described in this subpart that is directed toward...
 - (i) The acquisition of behaviors necessary for the client to function with as much self determination and independence as possible; and
 - (ii) The prevention or deceleration of aggression or loss of current optimal functional status.
- (2) Active treatment does not include services to maintain generally independent clients who are able to function with little supervision or in the absence of a continuous active treatment program.

**RESIDENT RIGHTS AND PROTECTIONS
UNDER DHS 134
WISCONSIN ADMINISTRATIVE CODE**

The following is a list of rights of individuals receiving services from state Centers taken from DHS 134, Wisconsin Administrative Code. They apply to all individuals except those in the legal custody of the Department of Health Services for correctional purposes. This law uses the term "resident."

Communications.

[Every resident has a right to:] Have private and unrestricted communications, unless medically contraindicated as documented by the resident's physician in the resident's medical record, except that receipt of mail from any source and communication with public officials or with the resident's attorney may not be restricted in any event. The right to private and unrestricted communications includes the right to:

1. Receive, send and mail sealed, unopened correspondence. No resident's incoming or outgoing correspondence may be opened, delayed, held or censored, except that a resident or guardian may direct in writing that specified incoming correspondence may be opened, delayed or held;
2. Use a telephone for private communications, unless medically contraindicated in which case the resident shall be informed in writing of the grounds for withdrawal of the right and shall have the opportunity for a review of the withdrawal of the right;
3. Have private visits, pursuant to a reasonable written visitation policy, unless medically contraindicated in which case the resident shall be informed in writing of the grounds for withdrawal of the right and shall have the opportunity for a review of the withdrawal of the right. The facility shall ensure that individuals allowed to visit under this paragraph do not infringe on the privacy and rights of other residents;
4. Communicate with staff in regard to all aspects of the treatment program. To facilitate this communication, the facility shall:
 - a. Keep the resident's legal guardian or, if there is no guardian, family or next of kin, informed of resident activities and significant changes in the resident's condition;
 - b. Answer communications from resident's relatives or guardians promptly and appropriately;
 - c. Allow close relatives and guardians to visit at any reasonable hour, without prior notice, unless an interdisciplinary team determines that this would not be appropriate; and
 - d. Allow parents and guardians to visit any part of the facility that provides services to residents.

Grievances

[Every resident has a right to:] Present grievances on the resident's own behalf or through others to the facility's staff or administrator, to public officials or to any other person without justifiable fear of reprisal and to join with other residents or individuals within or outside of the facility to work for improvements in resident care.

Finances

[Every resident has a right to:] Manage one's own financial affairs, including any personal allowances under federal or state programs. No resident funds may be held or spent except in accordance with the following requirements:

1. A facility may not hold or spend a resident's funds unless the resident or another person legally responsible for the resident's funds authorizes this action in writing. The facility shall obtain separate authorizations for holding a resident's funds and for spending a resident's funds. The authorization for spending a resident's funds may include a spending limit. Expenditures that exceed a designated spending limit require a separate authorization for each individual occurrence;
2. Any resident funds held or controlled by the facility and any earnings from them shall be credited to the resident and may not be commingled with other funds or property except that of other residents;
3. The facility shall furnish a resident, the resident's guardian or a representative designated by the resident with at least an annual statement of all funds and properties held by the facility for the resident and all expenditures made from the resident's account, and a similar statement at the time of the resident's permanent discharge. If the resident has authorized discretionary expenditures by the facility and the facility has accepted

responsibility for these expenditures, upon written request of the resident, the resident's guardian or a designated representative of the resident, the facility shall issue this statement monthly;

4. The facility shall maintain a record of all expenditures, disbursements and deposits made on behalf of the resident; and
5. The facility shall provide training and counseling to residents in the management and use of money as necessary to meet each resident's needs.

Admission information

[Every resident has a right to:] Be fully informed in writing, prior to or at the time of admission, of all services and charges for those services, and be informed in writing, during the resident's stay, of any changes in services or in charges for services.

Courteous Treatment

[Every resident has a right to:] Be treated with courtesy, respect and full recognition of one's dignity and individuality by all employees of the facility and by all licensed, certified and registered providers of health care and pharmacists with whom the resident comes in contact.

Privacy

[Every resident has a right to:] Have privacy in treatment, living arrangements and caring for personal needs, including:

1. If both spouses are residents of the same facility, they shall be permitted to share a room unless medically contraindicated as documented by either resident's physician in the resident's medical record;
2. Case discussion, consultation, examination and treatment shall be conducted discreetly. Persons not directly involved in the resident's care shall require the resident's permission to be present; and
3. Confidentiality of health and personal records, and the right to refuse their release to any individual outside the facility except in the case of the resident's transfer to another facility or as required by Section 146.81 to 146.83, Wisconsin Statutes, Section 51.30, Wisconsin Statutes, and Chapter DHS 92, Wisconsin Administrative Code, or other statutes or rules or third party payment contracts.

Work

[Every resident has a right to:] Not be required to perform work for the facility unless the work is included for therapeutic purposes in the resident's plan of care.

Outside Activities

[Every resident has a right to:] Meet with and participate in activities of social, religious and community groups at the resident's discretion and with permission of the resident's parents, if the resident is under 18 years of age, or guardian, if any, unless contraindicated as documented by the QMRP in the resident's record.

Leaves

[Every resident has a right to:] Take frequent and informal leaves from the facility for visits, trips, or vacations. The facility shall encourage residents to take these leaves and shall assist the resident in making arrangements for the leaves.

Personal Possessions

[Every resident has a right to:] Retain and use clothing and personal belongings and retain, as space permits, other personal possessions in a reasonably secure manner.

Transfer or Discharge

[Every resident has a right to:] Be transferred or discharged, and be given reasonable advance notice of any planned transfer or discharge and an explanation of the need for and alternatives to the transfer or discharge except where there is a medical emergency. The facility, agency, program or person to which the resident is transferred shall have accepted the resident for transfer in advance of the transfer, except in a medical emergency.

Abuse and Restraints

[Every resident has a right to:] Be free from mental and physical abuse, and be free from physical restraints except as authorized in writing by a physician for a specified and limited period of time and documented in the resident's medical record.

Care

[Every resident has a right to:] Receive adequate and appropriate care and treatment that is within the capacity of the facility to provide as indicated under s. DHS 134.51.

Choice of Provider

[Every resident has a right to:] Use the licensed, certified or registered provider of health care and pharmacist of the resident's choice.

Care Planning

[Every resident has a right to:] Be fully informed of one's treatment and care and participate in the planning of that treatment and care, which includes the right to refuse medications, treatments and rehabilitative therapies.

Religious Activities

[Every resident has a right to:] Engage in religious worship within the facility if the resident desires such an opportunity and a member of the clergy of the resident's religious denomination or society is available to the facility. Provisions for worship shall be available to all residents on a nondiscriminatory basis. No resident may be forced to take part in any religious activity.

Nondiscriminatory Treatment

[Every resident has a right to:] Be free from discrimination based on the source from which the facility's charges for the resident's care are paid...

Least Restrictive Conditions

[Every resident has a right to:] The least restrictive conditions necessary to achieve the purposes of admission, commitment or placement, except in the case of a resident who is admitted or transferred under s. 51.35(3) or 51.37, Stats., or under ch.971 or 975, Stats.

Drastic Treatment, Experimental Research and Behavior Modification using Aversive Stimuli.

[Every resident has a right to:] Not be subjected to drastic treatment, experimental research procedures or behavior modification using aversive stimuli without the expressed and informed consent of the resident and the resident's legal guardian, if any, and after consultation with individual specialists and the patient's legal counsel, if any.