



wisconsin department of  
**children & families**

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Division of Safety and Permanence

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Child Welfare Licensing Memo Series 2012-02L

Replaces Child Welfare Licensing Memo Series 2011-08L

To: Private Child Placing Agencies  
Residential Care Center Providers  
Group Home Providers  
Child Placing Agency Directors  
Shelter Care

From: Ron Hermes   
Bureau Director

RE: Resident's Rights

The purpose of this memo is to clarify resident's rights in residential care centers, group homes, foster homes and shelter care. It is the licensee's responsibility to be knowledgeable of and to ensure that staff members and volunteers observe the patient rights and grievance resolution procedures in s. 51.61, Stats., and Ch. DHS 94. Patient rights apply to any resident who receives services for treatment of mental illness, a developmental disability, and alcoholism or drug dependency. Residents that are not specifically identified as coming under s. 51.61, Stats., and Ch. DHS 94 shall have rights and grievance resolution procedures that are comparable to those found in s. 51.61, Stats., and Ch. DHS 94.

This is not an exhaustive list of resident's rights, although special attention should be paid to the following. To obtain the entire list of residents' rights, go to the Client Rights website at:

<https://www.dhs.wisconsin.gov/clientrights/index.htm>:

- **Least restrictive treatment and conditions.**  
Each resident shall be provided the least restrictive treatment and conditions which allow for the maximum amount of personal and physical freedom.
- **Prompt and Adequate Treatment.**  
Each resident shall be provided prompt and adequate treatment, habilitation or rehabilitation, supports, community services and educational services.
- **Labor Performed by Residents.**  
Any labor performed by residents which is of financial benefit to the provider shall be conducted according to the following requirements:
  - Residents may only be required to perform tasks that are equivalent to personal housekeeping chores performed in the common or living areas of an ordinary home. Personal housekeeping tasks may include light cleaning of shared living quarters if all residents sharing those quarters participate as equally as possible in the cleaning chores. Residents may perform extra chores to earn additional money for themselves.

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- Payment for therapeutic labor authorized under s. 51.61(1)(b), Stats., shall be made in accordance with wage guidelines established under state and federal law.
- Documentation shall be made in the treatment record of any compensated, uncompensated, voluntary or involuntary labor performed by any resident.
- **Religious Worship.**
  - All residents shall be provided with opportunities for voluntary religious expression and participation in religious education (except for documented security reasons) and attendance at services compatible with the religious preference of the resident, or a parent or guardian of the resident.
  - A resident whose disruptive behavior interferes with other residents' right to worship may be removed from worship services.
- **Confidentiality of Records.**
  - All resident records are to remain confidential. Staff must ensure that other residents and unauthorized individuals do not have access to the records.
- **Filming and Taping.**

No resident may be recorded, photographed, or filmed for any purpose except for a specific treatment purpose or project during a specific time frame and there are signed consents.

  - A photograph may be taken without the consent of the resident for the treatment record.
  - Any consent shall specify that the resident may view the photograph or film or recording which includes the specific purpose of the photograph, film, or recording prior to any release and that the resident or guardian may withdraw the consent at any time.
  - Audio and visual monitoring of common areas (without taping) is allowed. Cameras may both monitor and tape or film exit doors and exterior public areas such as parking lots. Residents must be made aware of the monitoring.
- **Mail.**

Each resident shall be allowed to send and receive mail.

  - If a staff member has probable cause to believe that a piece of mail contains contraband, the resident may open the mail in front of the staff member and shake the item to determine if there is contraband.
  - The staff member may not read any of the resident's mail, unless the resident or resident's parent or guardian requests that staff read the mail to the resident.
  - The only way that a resident may not receive or send mail to a particular person is if there is a court order stating the circumstances.
- **Telephone Calls.**

Each resident shall be allowed reasonable access to a telephone to make and receive a reasonable number of telephone calls.

  - Residents are allowed to make and to receive unlimited private calls to legal counsel.
- **Clothing.**

Residents have a right to wear their own clothing.

  - Whenever possible, residents shall participate in the selection and purchase of their own clothing.
  - Regarding cross-dressing of a resident, this issue should be thoroughly examined on a case by case situation. Residents should be allowed to wear whatever clothing they chose. One reason not to allow the resident to cross-dress would be if there are associated safety concerns. A less restrictive alternative, in some cases, would be to allow the resident to cross-dress in their own room.
  - Residents have a right to their own clothing, which includes shoes. Facilities may not take away the shoes of the resident if they believe the resident may leave without permission (run away). This is a safety issue, especially in winter months.

▪ **Personal Search**

Staff members may conduct a personal search of a resident if the staff member has probable cause to believe that there could be a security or safety issue in the facility.

- A personal search is defined in DHS 94 as the search of a resident's pockets, frisking his or her body (referred to as a "pat down" of the resident), an examination of the resident's shoes and hat and a visual inspection of the resident's mouth. However, a resident's body should not be touched directly.
- A wand to search for metal items is acceptable.
- Many of our facilities, due to the nature of their residents, have "just cause" to search residents and backpacks/purses when the resident is entering the facility. In such situations, a facility may search every resident. The facility must keep a search log to document which resident is searched, the time and date of the search, and the results of the search.
- If contraband is found on a resident, that documentation should also be logged in the resident's treatment record.
- If contraband is confiscated, it should be given to the legal guardian or if it is illegal contraband, the police should be called.

**Limitation or Denial of Resident Rights:**

No resident may be denied their rights or have them limited, except for the following rights and only when medically or therapeutically contraindicated:

- Right to make telephone calls.
- Right to wear one's own clothing.
- Use of personal possessions.
- To have access to secure storage space.
- To have privacy in toileting and bathing.
- To have visitors daily.

If the resident's rights are going to be limited or denied, the facility must document the denial or limitation and put the documentation in the resident's treatment record. Form F-26100, Client Rights Limitation or Denial Documentation may be used. (See the Client Rights website, which includes a link to the form at: <https://www.dhs.wisconsin.gov/clientrights/limitdenial.htm>)

As stated above, no other resident rights may be limited or denied.

**Informed consent**

All treatment of the resident requires consent unless there is a court order requiring specific treatment.

- Consent for treatment may be obtained from the resident's guardian or parent if the resident is younger than 14 years old or at any age if consent is for AODA treatment.
- If the resident is 14 years old or older, any consent for treatment (except for AODA treatment) must be given by the resident **and** the resident's parent or guardian.
- Voluntary residents 14 years old or older who refuse consent may be removed from the facility if the facility is then rendered unable to provide appropriate treatment.

If you have any further questions or comments, please contact your licensing specialist.

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