

**WISCONSIN  
ADMINISTRATIVE CODE**

**HFS 57  
GROUP FOSTER CARE  
Annotated**

*January, 2006*

**Bureau of Early Care Regulation  
Division of Early Care and Education  
Department of Children and Families**

**PREFACE**

**HFS 57**

**GROUP FOSTER CARE**

**ANNOTATED**

**EFFECTIVE DATE JANUARY 1, 2006**

Section 48.625(1), Wisconsin Statutes requires any person who receives, with or without transfer of legal custody, 5 to 8 children, to provide care and maintenance for those children, to obtain a license to operate a group home from the department. The statutes also require the department to establish rules which must be met in order to qualify for a license to operate a group home and which protect and promote the health, safety and welfare of children.

Chapter 57 is the rule governing Group Foster Care, which will be known as a Group Home. Group Home means a facility operated by a person licensed by the department pursuant to s.48.625, Stats., to provide 24-hour care for 5 to 8 residents.

The purpose of this document Group Foster Care-Annotated is to help users of HFS 57 understand the intent and application of the rule.

The portion of this document that is numbered and in regular print is the administrative rule HFS 57 and was prepared using the Wisconsin Administrative Code, No. 597, dated September 2005, effective January 1, 2006. The portion of the document that is in italicized print on the right hand side of each page is the annotated language that was prepared by staff in the Department of Children and Families.

There is a header on each page that contains the rule cite for the section of the rule beginning on that page. A table of contents and an index are also included in this document as are appendices that contain key statutes related to the group home rule, a copy of HFS 12 (administrative rules governing caregiver background checks), and other appendices that provide additional valuable information and guidance.

This publication may be duplicated. It is available from the Department's web page <http://def.wisconsin.gov/> and additional copies may be purchased from any regional office listed in Appendix A or:

Department of Children and Families  
P.O. Box 8916  
Madison, WI 53708-8916

Effective July 1, 2008, "Department" means the Department of Children and Families. Contact information will remain unchanged.

## TABLE OF CONTENTS

<b>SUBCHAPTER I GENERAL PROVISIONS.....</b>	<b>1</b>
HFS 57.01 Authority and purpose .....	1
HFS 57.015 Compliance with administrative rules and laws .....	1
HFS 57.02 Exceptions to rules.....	1
HFS 57.03 Inspections .....	1
HFS 57.04 Definitions .....	1
HFS 57.05 Group home program and policies .....	7
HFS 57.06 Emergency planning and preparation.....	9
HFS 57.07 Rates and bookkeeping.....	10
HFS 57.08 Insurance.....	11
HFS 57.09 Weapons.....	12
HFS 57.10 Pets and animals.....	12
HFS 57.11 Telephone .....	12
HFS 57.12 Transportation.....	13
HFS 57.13 Licensee Reporting requirements to the department .....	14
HFS 57.135 Responsibility to placing agencies .....	19
<b>SUBCHAPTER II PERSONNEL.....</b>	<b>19</b>
HFS 57.14 Personnel requirements.....	19
HFS 57.15 Hiring and employment.....	22
HFS 57.16 Training .....	24
HFS 57.17 Personnel policies and records .....	26
HFS 57.18 Staff member and volunteer responsibilities .....	28
<b>SUBCHAPTER III ADMISSION AND DISCHARGE.....</b>	<b>29</b>
HFS 57.19 Admissions .....	29
HFS 57.20 Discharge.....	31
<b>SUBCHAPTER IV RESIDENT CARE .....</b>	<b>32</b>
HFS 57.205 Principles for nurturing care .....	32
HFS 57.21 Staff to resident ratios and supervision.....	33
HFS 57.22 Resident activities.....	33
HFS 57.23 Treatment planning and assessment .....	34
HFS 57.24 Resident rights .....	36
HFS 57.25 Medical care .....	37
HFS 57.26 Dental care.....	44
HFS 57.27 Behavior intervention .....	44
HFS 57.28 Clothing .....	49
HFS 57.29 Hygiene.....	49
HFS 57.30 Household duties .....	49
HFS 57.305 Spending money .....	49
HFS 57.31 Food and nutrition .....	50
HFS 57.32 Education.....	50
HFS 57.33 Sleeping arrangements.....	51
HFS 57.34 Non-ambulatory residents.....	51
HFS 57.35 Additional requirements - respite care.....	51
HFS 57.36 Additional requirements - custodial parents and expectant mothers.....	52
HFS 57.37 Additional requirements for care of children 6 years of age or younger.....	55
HFS 57.38 Resident records .....	59
HFS 57.39 Confidentiality .....	61

<b>SUBCHAPTER V PHYSICAL ENVIRONMENT AND SAFETY .....</b>	<b>61</b>
HFS 57.40 Physical plant and environment.....	61
HFS 57.41 General safety precautions.....	65
HFS 57.42 Fire safety .....	66
HFS 57.43 Furnishings and appliances.....	68
HFS 57.44 Sanitation .....	68
<b>SUBCHAPTER VI LICENSING .....</b>	<b>69</b>
HFS 57.45 Group home location .....	69
HFS 57.46 Other licenses and uses.....	69
HFS 57.47 Group home capacity limits.....	69
HFS 57.48 General conditions for approval of application .....	69
HFS 57.49 License application .....	70
HFS 57.50 Licensure prohibited.....	72
HFS 57.51 Probationary and regular license .....	74
HFS 57.515 License provisions.....	75
HFS 57.52 Corporate licensure.....	75
HFS 57.53 Transferability of license .....	75
HFS 57.54 Posting of license and citations .....	76
HFS 57.55 Sanctions and penalties.....	76
HFS 57.56 License revocation.....	76
HFS 57.57 Summary suspension of a license.....	78
HFS 57.58 Appeal procedure.....	79
HFS 57.59 Complaints.....	80
<b>APPENDIX A    FIELD OFFICES OF THE DIVISION OF CHILDREN AND FAMILY SERVICES.....</b>	<b>81</b>
<b>APPENDIX B    CHILD AND ADULT CARE FOOD PROGRAM MEAL PATTERN REQUIREMENTS—AGES 1 TO 12.....</b>	<b>82</b>
<b>APPENDIX C    CHILD AND ADULT CARE FOOD PROGRAM MEAL PATTERN REQUIREMENTS—BIRTH THROUGH 11 MONTHS.....</b>	<b>83</b>
<b>APPENDIX D    STAFF TO CHILD RATIO WORKSHEET .....</b>	<b>84</b>
<b>APPENDIX E    KEY STATUTES RELATED TO LICENSING GROUP FOSTER HOMES .....</b>	<b>85</b>
<b>APPENDIX F    HFS 12 CAREGIVER BACKGROUND CHECKS .....</b>	<b>121</b>
<b>APPENDIX G    HFS 92 CONFIDENTIALITY OF TREATMENT RECORDS.....</b>	<b>130</b>
<b>APPENDIX H    HFS 94 PATIENT RIGHTS AND RESOLUTION OF PATIENT GRIEVANCES.....</b>	<b>135</b>
<b>APPENDIX I    INSTRUCTIONS FOR ORDERING FORMS SHELTER CARE &amp; GROUP FOSTER HOMES.....</b>	<b>148</b>
<b>APPENDIX J    SUGGESTED PROCEDURE FOR MICROWAVE HEATING OF REFRIGERATED INFANT FORMULA .....</b>	<b>149</b>
<b>INDEX .....</b>	<b>150</b>



## SUBCHAPTER I GENERAL PROVISIONS

**HFS 57.01 Authority and purpose.** This chapter is promulgated under the authority of s. 48.67, Stats., to carry out licensing duties authorized under s. 48.66, Stats. The purpose of this chapter is to protect and promote the health, safety and welfare of children placed in group homes.

**HFS 57.015 Compliance with administrative rules and laws.** A person who is licensed under this chapter shall operate the group home in compliance with this chapter, the provisions of the license, and applicable state, federal, and local law.

**HFS 57.02 Exceptions to rules.** (1) The department may grant an exception to a non-statutory requirement of this chapter if the department determines that the exception will not jeopardize the health, safety, or welfare of any child served by the group home.

*Form CFS-297 Request For Exception is the preferred format for the request; a request in the form of correspondence will be accepted as an alternative. The request must include the rule number to which an exception is being requested; the signature of the licensee or other person or persons within the agency to whom the authority to sign official documents or correspondence has been delegated in writing; the alternative proposal that meets the intent of the rule. Action on implementation of the request may not be taken until an approved response is received from the department.*

(2) A request for an exception to a non-statutory rule requirement shall be made in writing to the department and shall justify each reason for requesting an exception. The request shall also describe an alternative that meets the intent of the requirement.

**Note:** Requests for an exception should be sent to the regional licensing office listed in Appendix A that serves the group home.

**HFS 57.03 Inspections.** (1) The department may visit and inspect a group home and for such purpose shall be given unrestricted access to the premises.

(2) At the request of the department or a placing agency the licensee shall make available for inspection all records on foster care children received by the group home.

**HFS 57.04 Definitions.** In this chapter:

**57.04(1)**

(1) "Agency-operated group home" means a group home for which the licensee is a public agency other than the department.

*A public agency is any government agency such as county department of social or human services; city; township or state agency.*

(2) "Background information disclosure form" means the department's form HFS 64, on which a person provides certain information concerning the person's background.

(3) "Behavior intervention" means any containment, management or treatment technique or procedure used to intervene in a resident's behavior when that behavior poses a clear and present danger of serious physical harm to the resident or to others.

*Containment is defined as limiting of a person's movement or holding immobile.*

(4) "Caregiver" has the meaning given in s. 48.685(1)(ag), Stats.

(5) "Caregiver background check" means the search required by s. 48.685(2), Stats.

(6) "Child" means a person under 18 years of age or a person age 18 years of age or older who remains under the jurisdiction of the juvenile court or who is being provided services by a child welfare or juvenile justice agency. For the purposes of this chapter, "child" includes a "juvenile" as defined in s. 938.02(10m), Stats.

(7) "Child abuse" means abuse as specified in s. 48.02(1), Stats.

(8) "Child neglect" has the meaning given in s. 48.981(1)(d), Stats.

(9) "Corporation-operated group home" means a home for which the licensee is a non-profit or proprietary corporation that operates one or more group homes.

(10) "Custodial parent" means a resident whose child resides in the group home with the resident.

(11) "Department" means the department of health and family services.

*Effective July 1, 2008, "department" means the Department of Children and Families.*

(12) "Emergency" means serious medical incidents, fire, tornadoes, flooding, and loss of services to the group home such as electricity, heat, water or telephone, or threats to the premises or its occupants.

## 57.04(13)

(13) "EPSDT" means early and periodic screening, diagnosis and treatment of persons under s. HFS 107.22.

(14) "Family-operated group home" means a home for which the licensee is one or more individuals who operate not more than one group home.

(15) "Fit and qualified" means displaying the capacity to successfully nurture and care for children and shall not include a history of a civil action, criminal conviction or administrative rule violation that substantially relates to the care of a child; a history of exercising unsound judgment or abuse of alcohol or drugs.

**Note:** For help in determining whether a civil action, criminal conviction, or administrative rule violation substantially relates to the care of children consult s. HFS 12.06.

(16) "Group home" means a facility operated by a person licensed by the department pursuant to s. 48.625, Stats., to provide 24-hour care for 5 to 8 residents.

(17) "Group home manager" means a person who is responsible for the day-to-day operations of a group home.

(18) "Guardian" means a person or agency appointed by a court to have the duties and authority of guardianship as described under s. 48.023, Stats.

(19) "HealthCheck provider" means a provider certified under ch. HFS 105, to provide EPSDT health assessment and evaluation services.

*Copies of HFS 107 Covered Services may be obtained from the Internet at:*  
<http://www.legis.state.wi.us/rsb/code/hfs/hfs107.pdf>

*Examples of charges and offenses the department will consider in making a determination under this paragraph that an act substantially relates to the care of children are: abuse or neglect of a child; sexual assault; abuse of a resident of a facility; a crime against life and bodily security; kidnapping; abduction; arson of a building or of property other than a building; robbery; receiving stolen property from a child; a crime against sexual morality, such as enticing a minor for immoral purposes or exposing a minor to harmful materials; or interfering with the custody of a child. The list is illustrative. Other types of offenses may be considered. Form CFS 2261 may be used as a tool to determine "fit and qualified".*

*The following providers are eligible for certification as providers of EPSDT health assessment and evaluation services:*

**57.04(19) continued**

1. *Physicians;*
2. *Outpatient hospital facilities;*
3. *Health maintenance organizations;*
4. *Visiting nurse associations;*
5. *Clinics operated under a physician's supervision;*
6. *Local public health agencies.*
7. *Home health agencies;*
8. *Rural health clinics;*
9. *Indian health agencies;*
10. *Neighborhood health centers;*
11. *Doctor of Osteopathy, M.D., D.O., P.A.*

*The professional identification of the person signing the form should be clearly stated on the form, i.e. M.D., R.N., P.A., etc. The professional affiliation should also be stated if other than a M.D. or P.A. working under the supervision of an M.D.*

*Copies of HFS 105 Provider Certification may be obtained from the Internet at:*  
<http://www.legis.state.wi.us/rsb/code/hfs/hfs105.pdf>

(20) Household member” means any person who resides, or is expected to reside, at the group home, who is not a resident of the group home and who has or may have direct contact with group home residents, whether or not related to the licensee.

(21) "House rules" means a summary of the group home's standards related to resident conduct, responsibilities, expectations, and daily activities.

(22) "Law enforcement agency" has the meaning given in s. 165.83(1)(b), Stats.

(23) "Legal custodian" means a person, other than a parent or guardian, or an agency to whom legal custody of a child has been transferred by a court, but does not include a person who has only physical custody of a child.

(24) “Legal custody” has the meaning given in s. 48.02(12), Stats.

(25) "Licensee" means a person licensed by the department pursuant to s. 48.66, Stats., to operate a group home.

(26) "Parent" has the meaning specified in s. 48.02(13), Stats., or in s. 938.02(13), Stats.

(27) "Permanency plan" means the plan required under s. 48.38(2), Stats., that is designed to ensure that a child placed in a group home is safely reunified with the child's family whenever appropriate, or that the child quickly attains a safe placement in a home providing long-term stability.

(28) "Physical custody" means actual custody of the person in the absence of a court order granting legal custody to the physical custodian.

(29) "Physician" has the meaning given in s. 448.01(5), Stats.

*Physician means an individual possessing the degree of doctor of medicine or doctor of osteopathy or an equivalent degree as determined by the board and holding a license granted by the board. A chiropractor or physician assistant does not meet the definition of a physician.*

(30) "Placing agency" means an agency that is licensed under s. 48.60, Stats., and ch. HFS 54, to place children into adoptive homes, foster homes or group homes, to accept guardianship of children or to license foster homes, a county department with powers and duties as defined under s. 48.57, Stats., the department, the Wisconsin department of corrections or any other authorized placement authority.

(31) "Premises" means the physical plant of the group home, the tract of land on which the group home is situated and any other building or structure on that land.

(32) "Program director" means a person that is either on staff or under contract with the group home to provide program oversight and case management for residents of the group home.

(33) "Relief help" means an individual that is used by the licensee on an irregular and infrequent basis for brief periods of time to provide care for residents.

**Note:** An individual regularly scheduled to replace a resident care staff on days off or for prolonged periods is considered a resident care staff.

**57.04(34)**

(34) "Resident" means a child placed for care and maintenance in a group home under a court order or by a voluntary agreement.

(35) "Resident care staff" means an individual employed by a licensee to be the usual and primary caregiver of residents.

(36) "Resident rights" means the rights specified in s. 51.61, Stats., and ch. HFS 94, of a resident who receives a service for alcohol or drug abuse, a mental illness, or a developmental disability or for residents not receiving those services, rights and grievance procedures that are comparable to those found in s. 51.61, Stats., and ch. HFS 94.

(37) "Respite care" means maintenance and care of a child with emotional, behavioral, cognitive, physical, or other condition including being at risk of abuse or neglect, placed in a group home for a period of 15 consecutive days or less.

**Note:** Respite care can be used to relieve a parent or other care provider from the demands of ongoing care when a child is at risk of abuse or neglect or in other crisis situations or both.

(38) "Serious juvenile offender" means a person to whom the court has given the disposition specified in s. 938.34(4h), Stats.

(39) "Sponsoring agency" means a child welfare agency licensed to place children in group homes, a county agency specified in ch. 48.56(1), Stats., or the department; which enters into a written contract with the licensee.

(40) "Staff member" means a group home director or manager, resident care staff, or relief help.

(41) "Supervision" means guidance of the behavior and activities of a resident by a staff member who is within sight or sound of a resident.

(42) "Treatment plan" means a written plan of services to meet the specific treatment goals and care needs of a resident.

(43) "Universal precautions" means measures taken to prevent transmission of infection from contact with blood or other potentially infectious materials as recommended by the U.S. public health service's centers for disease control and adopted by the U.S. occupational safety and health administration (OSHA) as 29 CFR 1910.1030.

*OSHA Standards CFR 29 1910.1030 Bloodborne Pathogens may be obtained from the Internet at:*  
[http://www.osha.gov/pls/oshaweb/owadisp.sho\\_w\\_document?p\\_table=STANDARDS&p\\_id=10051](http://www.osha.gov/pls/oshaweb/owadisp.sho_w_document?p_table=STANDARDS&p_id=10051)

(44) "Volunteer" means an individual who provides services to a group home but is not paid for those services.

**Note:** This definition does not mean that a volunteer cannot be reimbursed for expenses.

**HFS 57.05 Group home program and policies.** (1) PROGRAM STATEMENT. Each group home shall have a written program statement that shall include all of the following:

*Form CFS-2378 Policy/Procedure Checklist – Group Foster Homes for Children must be submitted with a copy of the group home's current policy and procedures. It is the licensee's responsibility to ensure the department has the most current copy of the facility's policies and procedures.*

(a) A description of the group home's purpose and philosophy.

(b) A description of the services available through or provided by the group home.

(c) A description of the type, age, and sex of the resident population served by the group home.

**Note:** Types of resident population refers to a description of the population served by the group home, for example whether the group home serves children with developmental disabilities; emotional or behavioral disorders; alcohol, drug or other substance abuse problems; juvenile delinquents; correctional aftercare placements; custodial parents; expectant mothers; respite care; or children under 6 years of age.

(d) A description of the daily activities available to residents.

*Emphasis shall be given to learning and growth. Indoor and outdoor activities should include but are not limited to sports, games, music, reading, field trips, etc. Activities should be geared toward the emotional, social and cognitive abilities of the children.*

(e) A description of house rules for expected resident conduct.

**57.05(1)(f)**

(f) A non-discrimination statement that indicates that the group home does not discriminate against a resident because of race or cultural identification, sex, age, color, creed, ancestry, national origin, disability, political affiliations, or religious beliefs.

(2) POLICIES AND PROCEDURES. In addition to the emergency planning and personnel policies and procedures required under ss. HFS 57.06 and 57.17, a group home shall have written policies and procedures that include all of the following:

(a) Criteria for levels of supervision of on-premise and off-premise activities of residents.

(b) Confidentiality of resident records.

(c) Medication administration, storage and disposal.

(d) Prohibiting from the premises any person whose behavior gives reasonable concern for the safety of residents.

(e) The use of universal precautions.

(f) Behavior intervention.

(g) Suicide prevention.

(h) Serious incident reporting requirements.

(i) Notifying the appropriate local law enforcement agency if a resident leaves the group home without permission or fails to return to the group home after an approved leave.

(j) Resident access to confidential family planning services.

(k) House rules that shall include all of the following:

1. A description of acceptable and unacceptable resident conduct.

2. Curfew requirements.

3. A description of the consequences for violations of house rules.

*It is the licensee's responsibility to ensure the department has the most current copy of the facility's policies and procedures that reflect practices.*

*Form CFS 2378 should be used to meet this requirement.*

*This may include, but is not limited to, displaying lack of capacity to successfully nurture or care for children; exercising unsound judgment; abusing alcohol or drugs; or having a history of a statute or rule violation substantially related to the care of a child.*

*Reference HFS 57.13(1)*

4. Procedures related to a resident's absence from the group home without permission.

(L) Prohibiting smoking on the group home premises and in vehicles used to transport residents.

(m) For group homes that serve custodial parents, policies on visitation between a child of a resident and that child's non-custodial parent.

(n) Prohibiting the use of resident labor as a substitute for employment of a sufficient number of competent persons to operate and maintain the group home.

(o) A workable plan for contacting the licensee or a staff member when necessary.

**HFS 57.06 Emergency planning and preparation.** (1) The licensee shall have written procedures for all of the following:

(a) In case of emergency, contacting the placing agency, parent, guardian, or legal custodian, emergency service providers, a resident's health care provider, the licensee, and staff members.

(b) Fire safety, evacuation drills and response, including evacuation of residents with limited mobility, limited understanding, or hearing impairment in case of fire as specified in s. HFS 57.42(2)(c), or other emergency.

(2) The telephone number of each of the following emergency service providers shall be posted by each telephone on the premises. If the emergency service providers listed below can be reached by dialing the emergency number "911", then the emergency telephone number "911" may be posted in place of separate emergency provider numbers.

- (a) Ambulance service.
- (b) Fire department.
- (c) Police department.
- (d) Hospital.

(2m) The telephone number of the poison control center shall be posted by each telephone on the premises.

*It is the licensee's responsibility to ensure the department has the most current copy of the facility's policies and procedures that reflect practices.*

*Reference HFS 57.11*

*Poison Control Number: 1-800-222-1222*

**57.06(3)**

(3) Each group home and vehicle used to transport residents shall have a first aid kit or first aid supplies including gauze and adhesive bandages, tape and latex or vinyl gloves; and that will provide care to the maximum number of residents allowed under the group home license. The first aid kit or first aid supplies shall be inventoried and re-supplied after each use.

(4) Phone numbers of staff members to be notified in case of an accident, the name, address, and telephone number of each resident's health care provider and written consent from the resident's parent, guardian, or legal custodian for emergency medical treatment shall be carried in a vehicle when transporting a resident.

**HFS 57.07 Rates and bookkeeping.** (1)(a) CORPORATION-OPERATED GROUP HOMES. A corporation-operated group home shall establish a per client rate for services pursuant to department budget guidelines. The licensee shall arrange for an annual audit report for the group home from a certified public accountant pursuant to s. 46.036(4)(c), Stats.

**Note:** Department budget guidelines can be obtained by calling or writing any one of the regional licensing offices listed in Appendix A.

*Rates must be submitted every year to Division of Enterprise Services, Bureau of Fiscal Services, P.O. Box 7850, Madison, WI 53707-7850. Before a group home may change their rate, the modified rate must be submitted to the address above.*

*An annual audit prepared by a certified public accountant in accordance with accepted audit standards must be submitted to Division of Enterprise Services, Single Audit Section, P.O. Box 7850, Madison, WI 53707-7850. The audit must also be sent to the licensing specialist.*

*Forms are available from the Internet at: [http://dhfs.wisconsin.gov/rl\\_dcfs/forms.htm](http://dhfs.wisconsin.gov/rl_dcfs/forms.htm): DMT-974 Instructions; DMT-975 Schedule A, Federal Reimbursement Budget; DMT-97 Schedule B, Operating Statement; DMT-978 Schedule C, Rate computation Report; DMT-97 Schedule D, Physical Plant Utilization - Square Footage Allocation; DMT-982 Schedule E, Allocation of Expenses by Function.*

(b) The corporation shall be responsible for the secure and judicious use of the funds of the group home. Policies and practices shall be in accord with sound budgeting, disbursement and audit control procedures.

(c) The corporation shall maintain a system of business management and staffing to ensure maintenance of complete and accurate accounts, books, and records.

(d) Upon request the corporation shall provide the department with financial information about the corporation or about any group home operated by the corporation.

(2) FAMILY-OPERATED GROUP HOMES. A family-operated group home shall establish and maintain a bookkeeping system that accurately identifies income and disbursements for each resident by categories as defined in the uniform foster care rate setting standards. Resident funds shall not be commingled with the funds or property of the licensee or household members, or others.

**Note:** Uniform foster care rate setting standards are available from county social service or human service departments.

(3) AGENCY-OPERATED GROUP HOMES. An agency-operated group home shall establish a per client rate for services according to department budget guidelines. The licensee shall arrange for an annual audit report for the group home from a certified public accountant in accordance with s. 46.036(4)(c), Stats.

**Note:** Department budget guidelines can be obtained by calling or writing any one of the regional licensing offices listed in Appendix A.

**HFS 57.08 Insurance.** (1) A corporation-operated or an agency-operated group home shall purchase and maintain insurance that provides coverage of the premises and of the risks of the group home in the provision of services as identified by an insurer licensed by the office of the commissioner of insurance.

*Reference HFS 57.07(1)(a)Note:*

*Reference HFS 57.13(6)*

**57.08(2)**

(2) Unless waived by the department under s. 48.627(2)(b), Stats., a family-operated group home shall purchase and maintain homeowner's or renter's liability insurance that provides coverage for negligent acts or omissions by children placed in the group home that results in bodily injury or property damage to third parties pursuant to s. 48.627(2)(a), Stats.

*Reference HFS 57.13(6)*

(3) The licensee shall purchase and maintain motor vehicle bodily injury and property damage liability insurance that provides coverage on each motor vehicle used to transport residents. The amount of motor vehicle insurance purchased under this subsection shall be consistent with the amounts specified under s. 121.53(1), Stats.

*The licensee must carry liability insurance on owned and non-owned vehicles used to transport residents.*

**HFS 57.09 Weapons.** No weapons, firearms, or ammunition may be on the premises.

**HFS 57.10 Pets and animals.** (1) Any animal that is kept on the premises as a pet shall be vaccinated against rabies as determined appropriate by a veterinarian and shall be tolerant of residents.

*Rabies vaccination is available and required for dogs, cats and ferrets. A current veterinary record or certificate of the vaccination must be maintained at the group home.*

(2) A pet suspected of being ill or infected shall be treated immediately for its condition or removed from the group home.

(3) Pens, cages, litter boxes and outside areas used by pets shall be kept clean.

(4) Each pet shall be kept and handled in a manner that protects the safety and well-being of residents and the pet.

*Reference HFS 57.04(41)*

(5) No pet may be allowed in any area while food is being prepared.

**HFS 57.11 Telephone.** A telephone that is operational shall be available on the premises at all times.

*A land line telephone is recommended. Cell phones and cordless phones may be used as the only phone in a facility if the phone is fully charged and there are no dead spots in the facility that would prohibit calls from being received or made. If a cell phone or cordless phone is used as the only working phone in a facility, the emergency numbers need to be conspicuously near any phone base or recharging unit and on the back of the phone.*

**HFS 57.12 Transportation.** (1) The licensee shall provide safe transportation of residents.

(2) Except as provided in sub. (3) each staff member or volunteer that transports a resident shall be at least 21 years of age, have at least one year of experience as a licensed driver, and hold a current Wisconsin operator's license for the type of vehicle driven.

(3) Before any staff member or volunteer may transport a resident, the person's driving record shall be obtained, reviewed by the licensee and kept on file at the group home. A person's whose driving record shows any one of the violations specified in ss. 346.62 or 346.63, Stats., having occurred in the last 12 months may not transport a resident.

**Note:** To obtain a copy of a driving record, contact the Bureau of Driver Services, Department of Transportation, P.O. Box 7918, Madison, WI 53707.

(4) The number of residents transported in a vehicle at any one time may not exceed the passenger limit specified by the vehicle's manufacturer.

(5) Any vehicle used by a staff member or volunteer to transport residents shall be in safe operating condition. At 12-month intervals the licensee shall provide the department with evidence of a vehicle's safe operating condition on a form CFS-0052.

**Note:** Form CFS-0052, Vehicle Safety Inspection, provides instructions on who may conduct the inspection and is used to record evidence of a vehicle's safe operating condition. The form may be obtained from the Department's website at [www.dhfs.wisconsin.gov/forms/index.htm](http://www.dhfs.wisconsin.gov/forms/index.htm) or from the Forms Center, DCFS, P.O. Box 8916, Madison, WI 53707-8916.

*These statutes refer to reckless driving and operating while intoxicated (OWI) violations.*

*Department of Transportation website is:*  
<http://www.dot.wisconsin.gov/drivers/records.htm>

*If facilities use 10+ passenger vans to transport children, facilities must be aware of and follow the safety risk reduction procedures issued by National Highway Traffic Safety Administration (NHTSA).*

*See PFS-4088, Use of 10+ Passenger Vans to Transport Children To and From Schools located on the Internet at:*  
[http://dhfs.wisconsin.gov/rl\\_dcfs/FORMS.htm](http://dhfs.wisconsin.gov/rl_dcfs/FORMS.htm)

*Any motor vehicle used to transport residents including vehicles owned by staff/volunteers must comply with inspection requirements for safe operations.*

**57.12(6)**

(6) Vehicles shall be clean, uncluttered, and free of obstructions on the floors, aisles and seats.

(7) Vehicles shall have seat belts as prescribed under s. 347.48(1), Stats. Seat belts shall be worn by vehicle occupants as required under s. 347.48(2m), Stats. Seat belts shall not be shared.

(8) Each child who is 4 years of age or younger or whose weight is 40 pounds or less shall be transported in accordance with the requirements under s. HFS 57.37(11).

*2005 Wisconsin Act 106 regarding child safety seats went into effect June 1, 2006.*

*Under the new law, a child who is:*

- 1. Less than one year old or who weighs less than 20 pounds must be properly restrained in a rear-facing child safety seat in the back seat of the vehicle.*
- 2. At least one year old and weighs at least 20 pounds but is less than four years old or weighs less than 40 pounds must be properly restrained in a forward-facing child safety seat in the back seat of the vehicle.*
- 3. At least four years old but less than eight years old, weighs at least 40 but not more than 80 pounds, and is no more than 57 inches tall must be properly restrained in a "child booster seat".*
- 4. Under the age of eight and exceeds the weight or height limits specified in item 3., above must be properly restrained in a seat belt.*

*A list of currently approved child safety restraints and recalls may be obtained from the Wisconsin Information Network for Safety, 1007 Ellis St., Stevens Point, WI 54481, or from the web site [www.safekids.org](http://www.safekids.org).*

*A list of child safety seat inspection stations may be obtained from the web site [www.nhtsa.dot.gov](http://www.nhtsa.dot.gov).*

(9) Each motor vehicle used to transport residents shall be insured as required under s. HFS 57.08(3).

*Each motor vehicle used to transport residents includes vehicles owned by staff/volunteers.*

**HFS 57.13 Licensee Reporting requirements to the department.** A licensee shall report all of the following to the department: (1) **SERIOUS INCIDENTS.** The licensee shall report a serious incident by telephone, mail or facsimile to the regional office that serves the group home within 72 hours after each occurrence including all of the following:

**57.13(1)(a)**

(a) Any incident of suspected child abuse or neglect by an employee of the group home, volunteer of the group home or household member of the group home; including a report made to a law enforcement agency, a county department of social or human services, or a child welfare agency.

*Reporting to the department is in addition to reporting any suspected abuse or neglect of a child to child protective services and/or law enforcement.*

(b) Each incident requiring law enforcement services at the group home or that involves a resident.

**Note:** Examples of serious incidents requiring law enforcement services include acts such as physical or sexual assault, drug related offenses, damage or theft of property or weapons offenses. Serious incidents also include incidents in which a runaway resident is held by law enforcement for an offense such as assault, theft or weapons violations.

*It is not necessary to report a runaway resident that has not been charged with a crime even though law enforcement was contacted to report the runaway resident.*

(c) The use of a restraint on a resident. A report on the use of a restraint shall be made following the requirements in s. HFS 57.27(3)(c).

(d) Any injury or trauma to a resident or staff member for which the resident or staff member requires the services of a licensed medical professional including all of the following:

*Injury or trauma other than those listed may require reporting.*

1. A broken bone.
2. A burn.
3. A concussion.
4. A wound requiring stitches.
5. The ingestion of poison or drug overdose.
6. A traumatic incident such as a resident who nearly drowns or suffocates or who goes into shock.

(e) An error in medication administration by either a resident or staff member.

*An error is defined as a failure to follow directions for administration of one or more medications.*

(f) The death of a resident.

(g) A suicide attempt by a resident.

(h) Outbreak of a reportable communicable disease as defined in ch. HFS 145.

*Administrative Code HFS 145 Control of Communicable Diseases are available from:*  
<http://www.legis.state.wi.us/rsb/code/hfs/hfs145.pdf>

**57.13(1)(h)Note:**

**Note:** Information regarding reportable communicable diseases can be obtained from local county public health departments.

(i) A condition or situation that requires the removal of residents from the group home or the closure of the group home.

(j) Any physical damage to the premises that would affect compliance with this chapter including any structural damage that would affect the safe shelter of children or any failure in the heating, cooling, electrical, plumbing, or smoke or fire detection system that is not repaired or that cannot be repaired within 24 hours after the failure occurs or becomes known.

(k) A fire on the premises that requires the services of a fire department.

**Note:** Form CFS 2146, Serious Incident Report, may be used to report serious incidents. The form can be obtained from the Department's website [www.dhfs.wisconsin.gov](http://www.dhfs.wisconsin.gov) or by writing or telephoning any one of the regional offices listed in Appendix A.

*If Form CFS-2146 is not used, any report submitted must include all information identified and requested on the Form CFS-2146.*

(2) DISCHARGE OF RESIDENTS FROM OUT-OF-STATE. At the end of each month, the licensee shall report in writing to the department's interstate compact office of each resident from out-of-state that is discharged from the group home that month. The report shall include all of the information specified in s. HFS 57.20(1)(a) to (e).

**Note:** Reports of discharged residents from out-of-state may be mailed or faxed to Interstate Compact on Placement of Children, Division of Children and Family Services, 1 West Wilson St., P.O. Box 8916, Madison, WI 53708-8916. The facsimile number is (608) 266-5144.

(3) VEHICLE ACCIDENTS. Within 7 calendar days after an accident involving a vehicle transporting a resident, the licensee shall submit a copy of any resulting police report to the department.

(4) **PLACEMENT OF JUVENILE OFFENDERS.** The group home shall notify the regional licensing office that serves the group home in writing, by phone or facsimile within 48 hours of the admission of each serious juvenile offender as defined in s. HFS 57.04(38) unless that is the primary client group served by the group home.

(5) **BEHAVIOR INTERVENTION.** A licensee shall report to the department each incident of physical restraints used with a resident within 72 hours of each occurrence.

**Note:** Form CFS 2146, Serious Incident Report, may be used to report physical restraints. The form can be obtained from the Department's website at [www.dhfs.wisconsin.gov](http://www.dhfs.wisconsin.gov) or by writing or telephoning any one of the regional offices listed in Appendix A.

*If Form CFS-2146 is not used, any report submitted must include all information identified and requested on the Form CFS-2146.*

(6) **PROOF OF INSURANCE.** The licensee shall annually submit to the department proof of insurance purchased and maintained pursuant to s. HFS 57.08.

*Submission of a certificate of insurance or an insurance binder meets this requirement. Identifying the department as the certificate holder is recommended.*

(7) **DISCONTINUING OR CHANGING OPERATIONS.** (a) The licensee shall notify the department in writing at least 30 calendar days before discontinuing operation of a group home. The notice shall include the discharge summary specified in s. HFS 57.20(1) and the post-discharge plan required under s. HFS 57.23(3)(b), for each resident.

(b) The licensee of a corporation-operated group home shall notify the department within 30 calendar days of any change in the executive responsible for the group home, the chairperson of the board or in the corporate structure.

*The executive responsible for the group home is the chief executive officer or executive director.*

*Notifying the department of a change in program director or program manager is recommended.*

(8) **PLANS OF CORRECTION.** If requested by the department, the licensee shall submit a plan of correction for cited violations of this chapter or ch. 48, Stats., in a format provided by the department. The plan of correction must be received by the date specified by the department and be approved by the licensing representative.

*Plans of correction are submitted on the Form CFS-294 Noncompliance Statement and Correction Plan.*

**57.13(8)Note:**

**Note:** The licensing representative will notify the licensee at the conclusion of a licensing visit or within 10 working days after the licensing visit, if a plan of correction is required, the date the plan of correction is to be received by the Department, and format.

(9) FIRE SAFETY INSPECTION. The licensee shall submit annually to the department, the results of the fire safety inspection required under s. HFS 57.42(4).

(10) BACKGROUND INFORMATION REPORTING. (a) When an individual that is not a client becomes a household member or is expected to become a household member, the licensee, as soon as possible, but no later than the department's next business day, shall submit to the department a background information disclosure form for the individual.

**Note:** The background information disclosure form (form HFS 64) may be obtained from the Department's website at [www.dhfs.wisconsin.gov](http://www.dhfs.wisconsin.gov) or by writing or telephoning any regional licensing office listed in Appendix A.

(b) As soon as possible but no later than the department's next business day, the licensee shall report to the department for the licensee and each household member who is 10 years old or older all of the following background changes:

1. The person has been convicted of any crime.
2. The person has been or is being investigated by any governmental agency for any act, offense or omission, including an investigation related to the abuse or neglect, or threat of abuse or neglect, to a resident or other individual; or an investigation related to misappropriation of a client's property.
3. The person has a governmental finding substantiated against them of abuse or neglect of a client or of misappropriation of property.
4. In the case of a position for which the person must be credentialed by the department of regulation and licensing, the person has been denied a license or the person's license has been restricted or otherwise limited.

*Form CFS-909 Fire Safety Inspection – Group Foster Homes may be used to meet this requirement.*

*Form HFS-64 Background Information Disclosure is required for non-client household members age 10 and over to be submitted with the appropriate fee to the assigned regional office. A fee is not required for non-client household members age 10 – 17 years if all items in Section A and items 1, 2 and 6 of Section B contain a “no” response.*

**57.13(10)(b)5.**

5. The person has pending criminal charges.

**(11) WELL WATER NITRATE LEVELS.**

For group homes with expectant mothers or infants under 6 months old, the licensee shall report water nitrate levels as required in ss. HFS 57.36(8) and 57.37(8).

**Note:** Reports submitted under this section should be submitted to the regional licensing office listed in Appendix A that serves the group home.

**HFS 57.135 Responsibility to placing agencies.** (1) The licensee shall notify the placing agency as soon as possible of any emergency involving the resident. This includes serious illness or injury requiring medical treatment, death of a resident or child, unauthorized absence from the home, use of physical restraint, physical intervention, or any other similar crisis related to a group home resident. This requirement does not relieve the licensee from first taking whatever action is necessary to protect the health, safety and welfare of the resident.

(2) The licensee shall keep the placing agency informed of the resident's progress while in care and shall consult with the agency regarding treatment plans and treatment plan reviews, care, training, and plans for the resident whenever more than the day-to-day routine is involved.

*Examples of "more than the day-to-day routine" include involvement in extracurricular school and/or community activities; employment; school suspensions; uncooperative response to treatment plans; disregard for house rules; aggressive outbursts; safety risks, medication refusal; AWOL episodes; etc.*

**SUBCHAPTER II PERSONNEL**

**HFS 57.14 Personnel requirements.** (1) **DEFINITIONS.** In this section, "college" or "university" means an institution which is accredited on a degree granting level by an accrediting agency which is listed by the United States department of education as a nationally recognized accrediting agency.

(2) **AGE REQUIREMENT.** A staff member hired or contracted for on or after January 1, 2006, shall be at least 21 years old. Except as provided in sub. (4)(a), a staff member who is 19 or 20 years old may be hired or employed, if during the individual's course of employment the individual is enrolled in and regularly attends a college or university with a major in any of the following:

**57.14(2)(a)**

- (a) Social work.
- (b) Sociology.
- (c) Special education.
- (d) Psychology.
- (e) Counseling and guidance.
- (f) Criminal justice.

(g) Any other area in the human services field as approved by the department.

(3) HEALTH (a) Each staff member and volunteer shall be physically, mentally and emotionally able to provide responsible care for residents and shall not pose an imminent threat of harm to residents or to the quality and manner of their care.

(b) If the department has reason to believe that the physical or mental health of a staff member or an applicant for employment may endanger a resident, the department may require that a written statement be submitted by a physician or, if appropriate, by a licensed mental health professional that certifies the condition of the individual and the possible effect of that condition on the group home or the residents in care.

(4) REQUIRED STAFF. A licensee shall staff each group home with all of the following personnel:

(a) A program director. The program director shall be at least 21 years old, have a 4-year college degree in one of the major fields of study specified in sub. (2), and 2 years of supervised child welfare work experience. The program director function can be provided by a sponsoring agency. The program director or sponsoring agency shall oversee program operation and development and do all of the following:

1. Review the appropriateness of admission of each child to the group home.

2. Participate in developing, reviewing, and updating resident assessments and treatment planning.

3. Provide technical assistance to the resident care staff and agencies.

4. Periodically review and update group home policies and procedures.

**Note:** A sponsoring agency is defined in s. HFS 57.04(39) to mean a child welfare agency licensed to place children in group homes; county agency specified in ch. 48.56(1), Stats.; or the department, which enters into a written contract with the licensee.

(b) A group home manager. The group home manager shall oversee the day-to-day operations of the group home. The group home manager shall have the qualifications specified in par. (c). A group home manager may also function as the program director if the group home manager meets the requirements specified in par. (a).

(c) The licensee shall employ at least 2 resident care staff. Additional resident care staff shall be employed in numbers sufficient to meet the staff to resident ratios specified in ss. HFS 57.21 and 57.36(5) and for any off-premise activities. Resident care staff shall be responsible for the day to day care and supervision of residents and shall have at least one of the following qualifications:

1. A bachelor or associate degree from a college or university in any one of the majors specified in sub. (2).

2. At least one year of full-time experience working in a formal program with the type of resident population served by the group home.

3. Certification as a child and youth care worker under the standards of the Wisconsin Association of Child and Youth Care Professionals or other department-recognized certifying authority.

*The 40 hour Youth Work Professional Program (from University of Wisconsin- Milwaukee) also meets this requirement. Contact [www.sce-youthwork.uwm.edu](http://www.sce-youthwork.uwm.edu) or 414-227-3354 for more information.*

**Note:** A copy of the standards of the Wisconsin Association of Child and Youth Care Professionals can be obtained from the [www.wacycp.org/](http://www.wacycp.org/) or by contacting WACYCP at 161 W. Wisconsin Avenue, Milwaukee, WI 53202; telephone (414) 227-3130. Information regarding other recognized certifying authorities may be obtained by contacting any regional licensing office listed in Appendix A.

**57.14(4)(c)4.**

4. Completion of a traineeship program in which the resident care staff has worked with qualified, experienced resident care staff for at least the first 80 hours of employment and received orientation training as specified under s. HFS 57.16(1), before working independently with residents.

(5) RELIEF HELP. The licensee may use relief help to temporarily provide care and supervise residents when the number of resident care staff is not sufficient to meet the staff to resident ratios specified under ss. HFS 57.21 or 57.36(5).

(6) VOLUNTEERS. Each volunteer used by the group home shall be supervised by a staff member. Before a volunteer may begin performing activities, the licensee shall do all of the following:

(a) Orient the volunteer to the activities that the volunteer may perform as specified in the group home's personnel policies and procedures.

(b) Provide each volunteer with the confidentiality requirements specified under s. HFS 57.39 and the child abuse and neglect reporting requirements specified under s. HFS 57.18(1).

**HFS 57.15 Hiring and employment.** (1) In this section a "physician's assistant" has the meaning in s. 448.01(6), Stats.

(2) Before an applicant begins employment, the licensee shall do all of the following:

(a) Conduct and document a caregiver background check pursuant to s. 48.685, Stats., and ch. HFS 12, on each applicant.

*Reference HFS 57.04(33)*

*Relief help is included in the definition of staff member; therefore, relief help must meet all requirements in the rule regarding staff members unless otherwise noted.*

*Form CFS-2380 Staff / Volunteer Orientation Documentation – Group Foster Homes may be used to document compliance.*

*Form CFS-2380 Staff / Volunteer Orientation Documentation – Group Foster Homes may be used to document compliance.*

*A complete caregiver background check (CBC) consists of review and documentation of the following:*

- *Completed HFS-64 Background Information Disclosure (BID) form. If BID contains NO answers to all questions in Section A, the person may work in your group home under supervision until complete CBC is received and evaluated. A YES answer to a question in Section A may indicate the person is barred from non-client residence or employment unless rehabilitation review approval is obtained. A YES answer to a question in Section B may indicate that additional information must be obtained.*

**57.15(2)(a) continued**

- *Report from the WI Department of Justice (DOJ) within 60 days of beginning employment. Employees that have resided outside of WI in the past 3 years will need to have a criminal background check completed in that state or document a good faith effort.*
- *Letter from the Department referred to as an Integrated Background Information System (IBIS) within 60 days of beginning employment.*
- *Any subsequent investigation such as police / court reports, final disposition, etc.*
- *Employment justification in writing if crimes or substantiated investigation findings are involved. Form CFS-2261 Caregiver Background Check Substantially Related Investigation Report may be used to document findings.*

*Consult DOJ website for further instruction on background checks [www.doj.wi.gov](http://www.doj.wi.gov).*

**Note:** Forms for conducting a caregiver background check, including the background information disclosure form (form HFS 64) may be obtained from the Department's website at [www.dhfs.wisconsin.gov](http://www.dhfs.wisconsin.gov) or by writing or telephoning any regional field office listed in Appendix A.

(b) Obtain favorable references from at least 3 non-relatives, with documentation by letter from the reference or by documentation in the record of verbal contact with a reference. Documentation shall include the date contact was made, the name of the individual conducting the reference, the name of the individual contacted, and a summary of the response.

(c) Upon hire and before working with residents, require each staff member, except relief help to have a tuberculosis test and provide certification from a physician, physician assistant, or a HealthCheck provider that the staff member meets the minimum physical requirements of the position and that the staff member is in general good health.

**Note:** A HealthCheck form may be obtained by contacting the local public health department. Physical examination report forms can be obtained by contacting the regional licensing office listed in Appendix A.

*Physical examinations that were completed one year prior to the date of hire will meet the requirement.*

*Form CFS-384 Staff Health Report – Child Welfare Facilities may be used to document the results of a physical examination.*

**57.15(2)(d)**

(d) Make a determination of whether the applicant is fit and qualified.

**Note:** The term "fit and qualified" is defined in s. HFS 57.04(15) to mean a person who displays the capacity to successfully nurture and care for children and who does not have a history of a civil action or criminal conviction or administrative rule violation that substantially relates to the care of a child, or who exercises unsound judgment or who abuses alcohol or drugs. For help in determining whether a civil action, criminal conviction, or administrative rule violation substantially relates to the care of children, consult s. HFS 12.06.

(e) Nothing in this section requires a licensee to hire an applicant for employment or to retain any staff member.

(3) The licensee shall require each staff member to complete a background information disclosure form and shall conduct a caregiver background check on each staff member every 4 years or at any time within that period.

(4) A licensee may not hire or employ a person who has had a group home license revoked or denied within the last 2 years.

**HFS 57.16 Training.** (1) **ORIENTATION** Within the first week of hire, the licensee shall provide the staff member with all of the following:

(a) A job description created under s. HFS 57.17(1)(a). The job description shall be signed and dated by each staff member upon receipt by the staff member.

(b) The group home's program statement and policies and procedures, including the personnel policies and procedures created under s. HFS 57.17(1).

(c) Requirements of child abuse and neglect reporting specified under s. 48.981(2) and (3), Stats., and information on how to identify and report abuse or neglect situations.

(d) Instruction on how to use fire extinguishers, and on emergency and evacuation procedures.

(e) Any other information that would orient the staff member to the group home.

*Form CFS-2380 Staff / Volunteer Orientation Documentation – Group Foster Homes may be used to document orientation.*

*Review of PFS-101 "It Shouldn't Hurt to be a Child" will meet this requirement. Copies are available from the DHFS/DCFS/BRL website [http://dhfs.wisconsin.gov/rl\\_dcfs/INDEX.HTM](http://dhfs.wisconsin.gov/rl_dcfs/INDEX.HTM)*

## 57.16(2)

## (2) CPR AND FIRST AID TRAINING.

Within 6 months after the date of hire, each staff member shall successfully complete first-aid training and cardio-pulmonary resuscitation training from an American Red Cross or a program certified by the American Red Cross or American Heart Association. The certification shall be renewed in accordance with training guidelines.

*CPR training expires after one year from date of issuance unless indicated otherwise on the certificate.*

*After the September 1, 2008, all new and/or renewed CPR training must be a Department approved course that includes Automatic External Defibrillator (AED) training.*

(3) FIRE SAFETY AND EVACUATION TRAINING. Within 6 months after the date of hire, each staff member hired or contracted for on or after January 1, 2006, shall successfully complete fire safety and evacuation training provided by the Wisconsin Technical College System or a comparable course approved by the department.

*Documentation received at any time prior to hire is acceptable.*

## (4) INFANT AND TODDLER CARE.

Before a staff member or volunteer may provide care and supervision for an infant or toddler as defined under s. HFS 57.37(2)(a) and (b), the staff member or volunteer used to meet staff to child ratios shall complete the training specified under s. HFS 57.37(4).

*Reference HFS 57.37(4)*

## (5) CONTINUING EDUCATION. A

licensee shall provide or arrange for at least 24 hours of continuing education annually to each staff member. The training shall pertain to caring for the resident population served by the group home. Types of training that may be acceptable to the department to meet continuing education requirements include all of the following:

*Reference 57.17(2)(i).*

*Education hours in excess of the 24 hours required per year may be carried over one year.*

*Form CFS-2142 Staff Continuing Training Record - Child Welfare Programs may be used to document continuing education.*

(a) Formal courses resulting in credits or continuing education units.

*The following is the translation of credit courses into Continuing Education hours:*

*Four Year College – One credit = 15 hours*

*Technical College – One credit = 18 hours*

(b) Training provided by the licensee, a staff member, or a volunteer. A summary of the training syllabus shall be kept on file at the group home.

(c) Workshops, conferences, seminars, lectures, correspondence courses, or home study courses.

**57.16(5)(d)**

(d) Time spent reading and viewing educational materials pertaining to the resident population served by the group home may be counted for up to 5 hours of continuing education per year.

**HFS 57.17 Personnel policies and records.** (1) **POLICIES.** A licensee shall have written personnel policies and procedures. The policies and procedures shall include all of the following:

(a) The creation and use of job descriptions that describe the staff member's roles, responsibilities and duties.

(b) An orientation plan that shall include how and when orientation of new hires and volunteers will be conducted and documented.

(c) Work schedules of each staff member and policies on the use of relief help.

(d) Continuing education and training requirements.

(e) Designation of the chain of command or supervisory structure in the group home.

(f) A requirement that each staff member notify the licensee as soon as possible, but no later than the staff member's next working day of the circumstances listed in s. HFS 57.18(3).

(g) A description of the activities that a volunteer may perform for the group home, orientation of the volunteer, supervision and assurance that the volunteer is following group home policies and procedures, and the information to be provided on the laws of confidentiality and reporting of abuse and neglect.

(h) Handling of emergencies.

(2) **PERSONNEL RECORDS.** The licensee shall establish and maintain on the premises a personnel record for each staff member. Each personnel record shall contain all of the following for the staff member for which the record was created:

*Form CFS-2114 Continuing Education Record Independent Reading – Video Viewing may be used to document continuing education.*

*Form CFS-2378 Policy / Procedure Checklist – Group Foster Homes for Children must be submitted with a copy of the group home's current policy and procedures. It is the licensee's responsibility to ensure the department has the most current copy of the facility's policies and procedures.*

*Form CFS-383 Personnel Record Checklist - Group Foster Homes may be used as a tracking tool.*

**57.17(2)(a)**

(a) A completed application for employment that shall include the staff member's name, address, date of birth, training, education, work experience, and date of hire.

*A job resume may meet the requirements for an application as long as all the requirements of HFS 57.17(2)(a) are included in the resume.*

(b) Current address.

(c) Addresses and telephone numbers of references and reference checks results.

(d) A completed and current HFS 64 background information disclosure form.

(e) The results of the caregiver background check conducted under s. HFS 57.15(2)(a) and (3), and the results of any subsequent investigation related to information obtained from each background check.

(f) A job description that is signed and dated by the staff member.

(g) A completed physical examination or HealthCheck form, including tuberculosis test results.

*Physical examinations that were completed one year prior to the date of hire will meet the requirement.*

(h) The staff member's driver's record, if the staff member is assigned to transport children.

(i) A training record that shall include documentation of the staff member's receipt of the orientation, training, and continuing education required under s. HFS 57.16. Documentation shall include all of the following:

*Form CFS-2142 Staff Continuing Training Record - Child Welfare Programs may be used to document continuing education.*

1. Date and time of orientation and each training session.

2. Name of each person that conducted each orientation and training.

3. Total hours of training or continuing education received.

4. Whether the staff member completed the requirements of the training or continuing education session.

(j) Documentation of all first aid and CPR certifications.

*Volunteers only need documentation of first aid and CPR if they are used in the staff to child ratio. However, the Department does recommend that all volunteers complete first aid and CPR training.*

(k) Any disciplinary actions issued to the employee.

**57.17(2m)**

(2m) EXEMPTION. Relief help are exempt from providing a physical examination or HealthCheck form to the licensee.

(3) VOLUNTEER PERSONNEL RECORD. The licensee shall establish and maintain on the premises a volunteer personnel record for each volunteer used by the licensee. Each record shall contain all of the information required in sub. (2) except the physical examination or HealthCheck form and caregiver background check results.

**HFS 57.18 Staff member and volunteer responsibilities.** (1) Pursuant to s. 48.981(2) and (3), Stats., a licensee, staff member, or volunteer who knows or has reasonable cause to suspect that a child has been abused as defined in s. 48.02(1) Stats., or neglected as defined in s. 48.981(1)(d), Stats., shall immediately inform by telephone or in person, a county department of human or social services or a local law enforcement agency.

(2) Staff members and volunteers shall keep information and records on residents confidential pursuant to the requirements in s. HFS 57.39.

(3) Each staff member shall notify the licensee as soon as possible, but no later than the staff member's next working day of all of the following:

*Reference HFS 57.17(1)(f)*

(a) A conviction of any crime.

(b) A current or past investigation by any governmental agency for any act, offense, or omission, including an investigation related to the abuse or neglect, or threat of abuse or neglect, to a child or other client, or an investigation related to misappropriation of a client's property.

(c) A governmental finding substantiated against them of abuse or neglect of a client or of misappropriation of a client's property.

(d) A denial, restriction, or other limitation of a license or credential from the department of regulation and licensing.

(4) The staff member shall demonstrate competency in the group home's program statement, policies and procedures, roles and responsibilities, and resident rights.

### SUBCHAPTER III ADMISSION AND DISCHARGE

**HFS 57.19 Admissions.** (1) A child may not be admitted to a group home except under a written voluntary agreement or court order.

(2) Except as provided in sub. (2m), admission of a child under a voluntary agreement may not exceed 15 days from the date the child was removed from the home and may not be extended.

(2m) An admission of a custodial parent or expectant mother may be under a voluntary placement agreement for no longer than 180 days from the date on which the child was removed from the home under the agreement. A placement agreement under this subsection may be extended if an independent reviewing agency, such as an agency licensed under s. 48.61(3), Stats., or a county department, determines that the extension would be in the best interests of the resident and if the resident and the resident's parent or guardian consent to the extension.

*This refers to facilities that are designated by the department and licensed pursuant to State Statute 48.625 as Second Chance Homes.*

(3) If a placing agency places a child in a group home, the agency shall enter a written agreement with the licensee. The agreement shall include all of the following pursuant to s. 48.64(1m), Stats.:

(a) That the agency shall have access at all times to the child and the group home.

(b) That the child will be released to the placing agency whenever the agency or the department finds that the best interest of the child requires it.

(4) Admission decisions shall be in accordance with the group home program statement, the compatibility of the child with the group home and the policies and procedures of the group home, and this chapter.

**57.19(5)(a)**

(5)(a) Except as provided in par. (b), there shall be no more than 4 years difference in the ages of the children admitted to the group home as residents.

*The four-year age difference is determined by subtracting 4 years from the age of the oldest resident to determine the youngest age that can be admitted. For example:*

*17 years minus 4 years = 13 years*

*16 years minus 4 years = 12 years*

*If a resident turns 18 while residing in the group home, the resident may remain in the group if the resident is a full-time student at a secondary school or its vocational, or technical equivalent, and the resident is reasonably expected to complete the program before he/she turns 19 years of age.*

(b) The age difference limitation stated in par. (a) does not apply to children admitted to a group home licensed for respite care or for homeless and runaway youth.

*The age difference limitation does not apply to a group home licensed solely for respite care or solely for homeless and runaway youth.*

(6) Admission of an 18 year old may only occur if the individual is under a Wisconsin original, extended, or serious juvenile offender delinquency disposition. Such placements may continue until the resident reaches age 19 only as part of a correctional aftercare placement. Up to two 18 year old residents may reside in the group home at any one time.

*Residents age 18 and over may not share a bedroom with residents under 18 years. Two 18 year old residents may share a bedroom.*

*An exception must be submitted and approved by the Department for 18 year olds since licenses are only valid for residents up to 17 years of age. The facility should include in the exception how the facility will accommodate the 18 year old in the group home (For example, bedroom space, identify age of all residents, planned date of 18 year old discharge and any other programming needs for all residents)*

(7) Each child admitted to a group home as a resident shall have had a health examination performed by an individual licensed to perform the examination no more than one year before being admitted to the group home or shall have the examination within 30 days after the date of admission if the consent required under s. HFS 57.25(1) has been obtained. Documentation of the examination shall be maintained in the resident's record as required in s. HFS 57.38(1)(i)3.

*HealthCheck forms may be used to document the resident examination.*

*Form CFS-2379 Medical Services Consent – Child Welfare Facilities may be used to meet requirements under HFS 57.25(1)*

(8) Before or upon admission to a group home each resident shall be provided with all of the following:

*Form CFS-2381 Resident Orientation Documentation – Group Foster Homes may be used to document compliance.*

(a) Information on exits and evacuation routes.

(b) Oral notification and a written copy of the resident rights specified in s. HFS 57.24. If the resident is 17 years of age or younger, a copy shall also be made available to the resident's parent or guardian, and legal custodian, if available.

(c) A copy of the house rules developed under s. HFS 57.05(2)(k). A copy of the house rules shall also be provided to the resident's parent, guardian, or legal custodian, as appropriate.

(9) Upon receipt of a notice of revocation of the group home license and during any revocation proceedings that may result, the licensee may not admit a child as a resident except as provided in s. HFS 57.56(2).

**HFS 57.20 Discharge.** (1) Except as provided in sub. (3), the licensee shall complete and send to the appropriate placing agency a discharge summary for each resident discharged from the group home within 30 days of the resident's discharge. A copy of the summary shall be placed in the resident's record. The discharge summary shall include all of the following:

(a) Dates of the resident's stay.

(b) Reason for discharge.

(c) Summary of incidents involving the resident as described in HFS 57.13(1).

(d) Description of type of admission.

(e) Any other relevant information.

(2) The discharge summary developed for a respite care or other placement under a voluntary agreement shall be provided to the parent, guardian, legal custodian, or placing agency, as appropriate upon discharge. A copy of the summary shall be placed in the resident's record.

(3) Thirty days before a discharge of a resident whose placement is court ordered for reasons other than revocation or denial of a license, the post-discharge plan developed under s. HFS 57.23(3) shall be provided to the resident, the resident's parent, guardian or legal custodian, if available.

**57.20(4)**

(4) The licensee shall allow the placing agency at least 15 days to make plans for a resident whom the licensee requests that the placing agency remove from the group home unless both parties agree to earlier removal.

(5) All of the resident's personal belongings, including medical equipment, shall accompany the resident upon discharge. A complete accounting of these items shall be placed and maintained in the resident's record required under s. HFS 57.38. Medication shall be handled as required under s. HFS 57.25(6)(e) to (g).

(6) By the effective date of a license revocation the licensee shall have arranged for alternative placement for each resident. Arrangements for alternative placement shall be made in cooperation with each resident's parent or guardian, and legal custodian or placing agency, if not the same. The licensee shall share the placement information with the licensing representative at least one week before the effective date of the revocation.

**SUBCHAPTER IV RESIDENT CARE****HFS 57.205 Principles for nurturing care.**

The group home shall do all of the following:

(1) Provide a safe, stable, and humane environment.

(2) Encourage a resident's autonomy, respect a resident's need for privacy and consider a resident's preferences and choices while providing care, supervision, and training.

(3) Provide care that is respectful toward the beliefs, interpersonal styles, attitudes and behaviors of residents and families of various cultures.

**HFS 57.21 Staff to resident ratios and supervision.** (1)(a) In a shift-staffed group home, during hours other than sleep, there shall be at least one staff member on duty whenever 5 or fewer residents are present. At least 2 staff, or one staff and one qualified volunteer shall be on duty if there are 6 or more residents present. Whenever residents are asleep, at least one resident care staff or relief help shall be awake unless an alternate means of assuring the safety of residents is provided by the group home and approved by the department. The group home must assure that residents are responded to if needed. The number of resident care staff shall be increased as necessary to provide the care and services identified in the group home's program statement and plan of activities.

(b) Volunteers may be used to meet the staff to resident ratio requirement when 6 or more residents are in care provided they meet staff qualifications under s. HFS 57.14(4)(c).

**Note:** Some staffing alternatives for night time hours that may be approved by the department include but are not limited to: use of door alarms, motion detectors, laser or lights.

(2) No resident may be in the group home without supervision by a staff member.

(3) A resident shall receive supervision appropriate to the resident's age, maturity, behavior and developmental level and sufficient to ensure the safety of all residents in the group home.

**HFS 57.22 Resident activities.** (1) **ACTIVITY PLANNING AND SCHEDULING.** The licensee shall establish and implement a written plan of general activities for residents that shall include all of the following:

- (a) Leisure-time activities.
- (b) Opportunities to engage in social and community activities.
- (c) Self-expression and communication.
- (d) Opportunities for physical exercise to encourage gross and fine motor development.
- (e) Guidance and assistance in the development of daily living skills.

**57.22(1)(f)**

(f) Activities appropriate to a resident's ethnic culture.

(g) Opportunities for activities geared towards the individual interests of residents.

(2) **RELIGIOUS TRAINING AND PRACTICE.** Each resident shall be provided with opportunities for voluntary religious expression and participation in religious education and attendance at services compatible with the religious preference of the resident, or a parent or guardian of the resident.

(3) **RECREATION.** A variety of indoor and outdoor recreational activities and developmentally appropriate play equipment shall be offered.

(4) **TELEPHONE USAGE.** Telephone usage by a resident shall be governed by the resident rights under s. HFS 57.24 and the resident's treatment plan or placement agreement.

**HFS 57.23 Treatment planning and assessment.** (1) **ASSESSMENT.** (a) *Residents.* Within 30 calendar days after the date a resident is admitted to the group home, a staff member shall perform a comprehensive written assessment of the resident for use in the development of a treatment plan. If the child is admitted to the group home under a voluntary agreement for respite care, the assessment shall be completed by the date of admission to the group home and shall include all of the following:

1. Information about the resident's developmental, behavioral, educational and medical history; family and significant relationships; legal history; substance abuse history and any past treatment.

2. A description of the resident's current status, including mental status, medical needs, current activities, educational status, any current and recent substance abuse usage and personal strengths.

(b) *Children of residents.* Assessments of children of residents are not required.

*Form CFS- 2382B Intake Information – Group Foster Home Resident Under Age 6 may be completed and used as a written assessment in the development of a treatment plan for children under 6 years of age only.*

(2) TREATMENT PLAN. (a) Upon completion of the assessment required under sub. (1), the program director shall develop a written treatment plan with the participation of the resident, a parent or guardian and the legal custodian, if available, and the persons who will provide the required services to the resident. A completed treatment plan for each resident shall be placed in the resident's record maintained by the group home under s. HFS 57.38, and shall include all of the following:

1. A description of the resident's strengths, needs, and preferences.
2. Treatment goals for the resident and the time frames for achieving those goals.
3. A description of behavior interventions to be utilized with the resident. The licensee shall ensure that methods of behavior intervention are positive, based on the resident's needs, stage of development and behavior and promote self control.
4. Specific services and supports to be provided to achieve the treatment goals, and names of persons, agencies or position titles responsible for providing services and implementing any of the treatment goals.
5. Permanency planning goals.
6. Goals related to independent living skills, if the resident is 15 years of age or older.
7. Specific indicators that treatment goals have been achieved.
8. Any court ordered conditions.
9. Projected length of stay and conditions for discharge.
10. Visits to the resident by parents and other family members with the approval of the placing agency and in accordance with clients' right standards to ensure that an appropriate relationship is maintained between the resident and family members.
11. Arrangements for public school attendance.

*A treatment plan is required for respite care residents. Treatment goals should reflect the needs identified in the assessment.*

**57.23(2)(a)12.**

12. Consideration of the additional requirements for care of custodial parents and expectant mothers under s. HFS 57.36 and care for children under 6 years of age under s. HFS 57.37, as applicable.

(b) Each treatment plan shall be reviewed at least once every 3 months. The review shall be conducted by all of the persons included in the initial development of the plan, if possible. All of the following shall be reviewed and documented:

1. Progress made toward achieving the goals established in the treatment plan and any barriers encountered in achieving the goals.

2. Any changes in the treatment plan, including any changes to specific indicators of revised goals, time frames for achievement of treatment goals, and service providers.

(3) **DISCHARGE PLANNING.** (a) Preparation for discharge shall begin at the time of admission with the outlining of goals to be achieved and ongoing modification as progress towards goals dictates. The group home shall document in the resident's record efforts made by staff members to prepare the resident and the resident's family for discharge.

(b) The resident; the parent, guardian, or legal custodian; and the placing agency shall be given an opportunity to participate in developing a post-discharge plan. The plan shall include recommendations for continuing or additional services upon discharge and the name of the person or agency to receive the resident upon discharge, if applicable.

**HFS 57.24 Resident rights.** (1) The licensee shall be knowledgeable of and ensure that staff members and volunteers observe the patient rights and grievance resolution procedures in s. 51.61, Stats., and ch. HFS 94, for each resident who receives services for treatment of mental illness, a developmental disability, alcoholism or drug dependency. Residents that are not specifically identified as coming under s. 51.61, Stats., and ch. HFS 94 shall have rights and grievance resolution procedures that are comparable to those found in s. 51.61, Stats., and ch. HFS 94.

(2) A copy of the HFS 94 patient's rights and the group home grievance procedure shall be posted in each group home in a prominent place accessible to residents, staff members and visitors.

**Note:** Patients' rights information and posters can be obtained at the Department's website at [www.dhfs.wisconsin.gov/bqaconsumer/publications/ClientsRtsPubs.htm](http://www.dhfs.wisconsin.gov/bqaconsumer/publications/ClientsRtsPubs.htm).

**HFS 57.25 Medical care.** (1) CONSENT.

(a) Any medical examination or service provided to a resident shall be provided only by an individual licensed to perform the examination or service being provided. Before an examination or service is provided, written consent to perform the examination or service shall be obtained as follows:

1. For a resident who is under 14 years of age, written consent of a resident's parent or guardian.
2. For a resident who is between 14 and 18 years of age, consent of the resident's parent or guardian with the consent of the resident whenever feasible.
3. For a resident who is 18 years of age or older, consent of the resident is required unless the resident has been deemed incompetent by a court and has a court appointed guardian or legal custodian, in which case the consent of the guardian or legal custodian is required.

(b) Consent shall include consent to administer emergency medical services including surgery for life threatening situations when a parent, cannot immediately be reached. Verbal consent may be obtained in an emergency situation where time or distance precludes obtaining written consent. Both the written consent and any verbal consent shall be documented in the resident's record, by indicating who obtained the consent, who gave the consent and that person's relationship to the resident, and what specific services are authorized by the consent. A verbal consent shall be valid for 10 calendar days, during which time there shall be a good faith effort to obtain written consent.

*Form CFS-2379 Medical Services Consent – Child Welfare Facilities may be used to meet this requirement.*

*Reference HFS 57.19(7).*

**57.25(2)****(2) MEDICATION ADMINISTRATION.**

(a) *Information required to administer medication.* No staff member may administer medication to a resident unless the staff member has received the group home's policies established under s. HFS 57.05(2)(c) for administering and monitoring medication use.

(am) After receiving the information described in sub. (2)(a), staff shall receive the following:

1. Procedure for administering the medication being given as described by the physician, pharmacist or as indicated on the label of an over the counter medication or a prescribed medication or both. If the label on prescribed medication is not clear, a staff member shall contact the pharmacy that filled the prescription for clarification.

2. Procedures for documenting the administration of medication as specified under sub. (3).

3. The purpose of the medication.

4. Any potential adverse side effects of the medication being administered.

5. Procedure to follow if a resident refuses medication, including refusal of psychotropic medication as described in sub. (7).

6. Known drug allergies of the resident.

7. Any other information that may be relevant to administration of the medication.

(b) *Limitation on who can administer medication.* Medication may be administered to a resident only in the presence of a staff member that has been authorized in writing by the program director or the group home manager, to administer medication.

(c) *Self administration.* Medication may be self-administered by a resident only under all of the following conditions:

1. Self-administration is authorized in writing from the prescribing practitioner.

2. There is no demonstrated history of risk that the resident may harm self through abuse or overdose.

3. The resident's treatment plan includes an evaluation by the program director of the resident's capability to self-administer medication.

4. The resident recognizes and distinguishes the medication or treatment and knows the condition or illness for which the medication or treatment is prescribed, the correct dosage, and when the medication or treatment is to be taken.

5. The medication is not a psychotropic medication as defined in sub. (7)(a).

(3) **MEDICATION ADMINISTRATION DOCUMENTATION.** (a) Immediately upon administering medication to a resident or a resident self-administering medication, the staff member administering or supervising the administration of medication shall write all of the following in the resident's record:

*Form CFS-2338 Medication Administration Record – Group Foster Homes for Children may be used to document compliance.*

1. Full name of the resident to whom the medication was administered.

2. Date and time the medication was administered.

3. Name and dosage of the medication administered or medical treatments received.

4. Signature of the staff member who administered or supervised the administration of medication.

5. Any refusal of medication.

6. Any adverse reaction to the medication and steps taken to notify the resident's health care provider, parent, guardian, or legal custodian.

7. Any error in medication administration and the steps taken to notify the resident's physician as required in sub. (5).

(b) Each entry made under this subsection shall be written in ink.

(4) **ADVERSE REACTION TO MEDICATION.** In the event of an adverse reaction to any medication, a staff member shall immediately notify the resident's parent or guardian and the attending physician.

**57.25(5)**

(5) **MEDICATION ERRORS.** The attending physician shall be notified in the event of a medication error. The department and placing agency shall be notified as required in ss. HFS 57.13(1)(e) and 57.135.

*A medication error is defined as a failure to follow directions for administration of one or more medications including missed medication.*

*A resident refusal of medication does not reflect a medication error and does not need to be reported to the Department. The refusal should be documented and appropriate contacts made as indicated in HFS 57.25(7)3.a. and b.*

*Form CFS-2146 Serious Incident Report may be used to report to the department a medication error. If the CFS-2146 is not used, the report submitted must include all information identified and requested on the Form CFS-2146.*

(6) **MEDICATION STORAGE AND DISPOSAL.** The licensee shall comply with all of the following requirements for storing medication:

(a) Medication including over-the-counter medication, shall be kept in the container in which it was purchased or prescribed. No person may transfer medication that has been prescribed or purchased over-the-counter to another container or change the label on any medication, unless the person is a pharmacist as defined in s. 450.01(15), Stats.

(b) Medication shall be locked and stored in a location that is inaccessible to children. Only staff members who are designated in writing by the program director shall have access to keys to the medication. Prescription and over-the-counter medication shall not be stored next to chemicals or other contaminants.

(c) Medication shall be kept under acceptable conditions of sanitation, temperature, light, moisture, and ventilation according to the requirements of each medication. Medication that requires refrigeration shall be stored in a separate locked compartment or container that is properly labeled, stored separately from food items, and kept inaccessible to children.

(d) Medication for internal consumption shall be stored separately from medication for external application.

(e) Within 72 hours of the medication's expiration date, the date the medication is no longer in use by the resident for whom the medication was prescribed or purchased, or the date the resident is discharged, unused medication shall be returned to a parent, guardian, or legal custodian of the resident, for removal from the group home or shall be destroyed by the group home manager or returned to the prescribing pharmacy to be destroyed.

(f) The group home shall maintain a log of medication destroyed. The information logged shall be written in ink and shall include the amount of medication destroyed, the name of the staff member who destroyed the medication, and the name of the resident to whom the medication belongs. Whenever medication is released to a resident's parent, guardian or legal custodian, that information, including the name of the person receiving the medication, shall be documented in the resident's record.

(g) The group home shall contact the local police to destroy the medications or contact the Division Officer at the U.S. Drug Enforcement Agency (DEA) for instructions for destroying controlled substances.

**Note:** The address and phone number for the U.S. Drug Enforcement Agency is 1000 North Water Street, Milwaukee, WI 53202, or call (414) 297-3395, extension 5300.

*The DEA website is:*

<http://www.usdoj.gov/dea/pubs/scheduling.html>

*Substances in Schedule II have a high abuse potential with severe psychological or physical dependence liability, have an accepted medical use in the United States, and are available for practitioners to prescribe, dispense and administer.*

*Some examples of single entity Schedule II narcotics include morphine, codeine, hydrocodone, and opium. Other Schedule II narcotic substances and their common name brand products include: hydromorphone (Dilaudid®), methadone (Dolophine®), meperidine (Demerol®), oxycodone (Percodan®) and fentanyl (Sublimaze®).*

**57.25(6)(g)Note: continued**

*Some examples of Schedule II stimulants include amphetamine (Dexedrine®), Adderall®), methamphetamine (Desoxyn®) and methylphenidate (Ritalin®).*

*Other Schedule II substances include cocaine, amobarbital, glutethimide, pentobarbital and secobarbital.*

(7) PSYCHOTROPIC MEDICATION. (a) Definitions. In this subsection, "psychotropic medication" means any drug that affects the mind and is used to manage inappropriate resident behavior or psychiatric symptoms and may include an anti-psychotic, an antidepressant, lithium carbonate or a tranquilizer.

(b) Rights of patients. A group home shall comply with the provisions of s. 51.61(1)(g) and (h), Stats., for each resident who is prescribed psychotropic medication.

(c) Non-emergency procedures. A group home serving a resident for whom psychotropic medication is newly prescribed shall ensure that all of the following requirements are met:

*Newly prescribed is defined as a medication prescribed by a physician for the resident for the first time. Newly prescribed does not include refills from the 'same' prescribing physician.*

1. A medical evaluation of the resident is completed by a physician detailing the reason for the type of psychotropic medication prescribed. The evaluation or screening shall be documented in the resident's record within the first 45 days after the resident has first received a psychotropic medication. Subsequent evaluations of the resident related to the administration of psychotropic medications shall be completed as recommended by the prescribing physician and the results documented in the resident's record.

2. The resident, if 14 years of age or older, and a parent, or guardian of the resident, have signed written consent forms as required under s. HFS 94.03, unless psychotropic medications are administered per court order. If the medication is administered per court order, there shall be a copy of the order in the resident's record.

3. All group home staff understand the potential benefits and side effects of the medication and have received information relating to contraindicated medications.

(d) Emergency procedures. For emergency administration of a psychotropic medication to a resident, a group home shall do all of the following:

1. Have authorization from a physician.
2. Whenever feasible, obtain written informed consent from a parent, or guardian, and the resident, if the resident is 14 years old or older, before using the medication unless the medication is administered per court order.
3. Comply with the group home's emergency medical procedures.
4. If written informed consent of a parent or guardian of a the resident was not obtained before administration of the medication notify the parent or guardian by phone as soon as possible following emergency administration and document the dates, times, and persons notified in the resident's treatment record.
5. Document the physician's reasons for ordering emergency administration of psychotropic medication in the resident's treatment record.

(e) *Revocation of consent or refusal to take.*

1. A resident's parent or guardian may revoke consent for non-emergency use of psychotropic medications at any time, as provided under s. HFS 94.03.

2. When a consent is revoked, the group home shall do all of the following:

a. Administer the medication pursuant to a court order or as prescribed by a physician to avoid serious physical harm to the resident or others.

b. Inform the prescribing physician and the placing person or agency of the consent revocation and document the revocation in the resident's treatment record.

**57.25(7)(e)3.**

3. When a resident refuses to take a prescribed psychotropic medication, the group home shall do all of the following:

a. Document the resident's reasons for refusal in the resident's treatment record.

b. Notify the resident's physician, the parent or guardian or legal custodian and the resident's placing person or agency. Notification shall be immediate if the resident's refusal threatens the resident's well-being and safety.

(f) *Administration standards.* In administering psychotropic medication, a group home shall comply with requirements for administration of prescription medication in this section and clinically acceptable standards for good medical practice. Conformance to guidelines of the department's division of disability and elder services for use and monitoring of the effects of psychotropic medications satisfies the requirement for clinically acceptable standards and for good medical practice.

**Note:** For a copy of the guidelines for use and monitoring of psychotropic medications, write: Bureau of Regulation and Licensing, P.O. Box 8916, Madison, WI 53708.

*HFS 94.03 and Wisconsin Statute, Chapter 51.61(1)(g)&(h), & (6) should be referenced as guidelines.*

**HFS 57.26 Dental care.** Within 30 days after admission to a group home, each resident over the age of 3 years old who is admitted to the group home for other than respite care shall receive a dental examination unless an examination has been performed within 6 months before the resident's admission. Subsequent dental examinations shall occur at intervals not exceeding 6 months after the last examination or completion of treatment.

**HFS 57.27 Behavior intervention.** (1) **PROHIBITED MEASURES.** No licensee, staff member, or volunteer may do any of the following:

(a) Hit, shake, pinch, push, twist or use any other means that the staff member or volunteer knows or should know may inflict mental or physical harm or actions that may be psychologically, emotionally or physically painful to a resident.

(b) Verbally abuse a resident or use profanity, or any language that the staff member or volunteer knows or should know may ridicule a resident.

(c) Lock a resident in a room or any other place.

(d) Use any item to cover a resident's head or face or wrap the resident's body with sheets, blankets, or any other material.

(e) Require a resident to march, stand, kneel, or assume and remain in any fixed position or assign work that is not therapeutic and not a part of the resident's treatment plan.

*Assigning consequences that are not related to the resident's behavior is not considered therapeutic. Examples of consequences that may not be therapeutic include writing assignments that don't address the resident's negative behavior, repetitive sentence writing, early bedtimes; tasks that don't address positive alternatives for undesired behavior; etc.*

(f) Release any noxious, toxic or otherwise unpleasant substances near the eyes or face of a resident.

(g) Authorize, direct or ask a resident to discipline another resident.

(h) Discipline one resident for the behavior or action of another resident.

(i) Employ any measure that the staff member or volunteer knows or should know is aversive, cruel, humiliating or that may be psychologically, emotionally, or physically painful, discomforting, dangerous, or potentially injurious to a resident.

(2) TIME-OUTS. (a) As used in this subsection, "time-out" means a behavior intervention technique that involves brief periods of physical separation of a resident from others.

(b) A time-out may not be used for the convenience of staff members or volunteers, as a substitute for supervision of a resident, or for a child under 3 years old.

(c) Areas used for time-outs shall be free of objects with which a resident could self-inflict bodily harm, shall provide a staff view of the resident at all times and shall be equipped with adequate ventilation and lighting.

*Resident must be within sight and sound of a staff person.*

*Reference HFS 57.27(2)(f).*

**57.27(2)(d)**

(d) The use of time-outs shall be appropriate to the developmental level and the age of the resident and may not be for a period longer than the period of time necessary for the resident to regain control. The maximum length of time that a resident may be in a time-out on each occurrence of a time-out is as follows:

1. For a child 3 through 6 years of age, a time-out may not exceed 10 minutes.

2. For a child 7 through 10 years of age, a time-out may not exceed 15 minutes.

3. For a child over 11 years of age, a time-out may not exceed 30 minutes. The need for continued use of a time-out shall be reviewed at least every 10 minutes and documented in the resident's record.

(e) A resident that is in a time-out shall be permitted use of the toilet if requested.

(f) Any resident that is in a time-out shall be within hearing of a staff member.

*Resident must be within sight and sound of a staff person.*

*Reference HFS 57.27(2)(c)*

(g) Within 12 hours of occurrence, there shall be documentation in the resident's record of each time-out, including the name of each staff member involved, the length of the time-out, and rationale for use.

(3) USE OF RESTRAINTS (a) *Definitions.*  
As used in this subsection:

1. "Mechanical restraint" means any physical device or equipment that restricts the movement of an individual or a portion of the individual's body.

2. "Physical restraint" means any action or physical contact that immobilizes or reduces the ability of an individual to move any part of his or her body.

3. "Prone restraint" means placing an individual in a face down position on the floor.

*The use of prone restraints in a face down position on any surface is prohibited.*

(b) *Limitations.* 1. A physical restraint shall be used only to ensure the immediate physical safety of the resident, a staff member, or others and only as a last resort. Efforts to de-escalate the situation must be made or proven ineffective before a physical restraint may be utilized. At least two staff members shall be present during the use of a physical restraint, except in a life-threatening situation.

2. If a physical restraint is used, the restraint shall be applied with the minimum amount of force and in the least restrictive manner necessary to control the resident's behavior.

3. No restraint may be used to coerce, discipline, or to retaliate against a resident.

4. A restraint or action that is contraindicated by a prescribed medication regimen or that interferes with or may interfere with or restrict a resident's breathing, circulation, or cardiac activity may not be used. The use of mechanical and prone restraints is not permitted.

5. The use of a physical restraint shall cease as soon as the danger of harm has been averted and the resident has gained control.

6. A physical restraint may only be used by staff members who have received training by recognized or qualified crisis intervention experts in verbal and physical crisis intervention techniques, de-escalation techniques, recognizing signs of distress and in the application and use of physical restraints. Staff shall receive updates of such training at least annually.

7. After an episode of physical restraint, a de-briefing shall take place with the resident and staff that were involved in the physical restraint.

**57.27(3)(c)**

(c) *Documentation and reporting.* Each staff member who uses a physical restraint or who witnesses the use of a physical restraint shall, within 24 hours of each incident, give the group home manager a written description of the incident. The group home manager shall document each incident, including date, time and a description of the circumstances of the incident in a log book and report the incident to the regional licensing office that serves the group home and the placing agency as required under s. HFS 57.13(1)(c) and (5). Entries shall be made in ink. Each description shall include all of the following:

1. The name, age, and sex of each resident involved.
2. The date, time, and location of the incident.
3. The name and job title of each staff member involved in the restraint and each staff member or volunteer who witnessed the use of the restraint.
4. Circumstances leading up to the use of restraint, the behavior that prompted the restraint, efforts made to de-escalate the situation and the alternatives to restraint that were attempted.
5. A description of the administration of the restraint, including the holds used and the reasons such holds were necessary.
6. The beginning and ending time of the restraint and how the restraint ended.
7. Behavior of the resident during and after the use of the restraint.
8. Any injuries sustained by a resident or staff member and any medical care provided, including the name and title of the person providing the care.
9. Any follow-up debriefing provided to residents and staff.

*Form CFS-2146 Serious Incident Report may be used to report to the department the use of a physical restraint. If Form CFS-2146 is not used, any report submitted must include all information identified and requested on the Form CFS-2146.*

**HFS 57.28 Clothing.** (1) The licensee shall ensure that funds allocated by the placing agency for the purchase of clothing for residents are used in such a manner that residents are provided with clothing that is individually selected and fitted, appropriate to the season, and comparable to that of others in the community.

(2) Whenever possible, each resident shall be given an opportunity to participate in the selection and purchase of his or her clothing.

(3) Each resident's clothing shall be regularly laundered and in good repair.

(4) Clothing purchased for a resident shall be the property of that resident. The group home shall keep a log in each resident's record of clothing purchases.

**HFS 57.29 Hygiene.** Each resident shall be provided with sufficient amounts of individually dispensed soap, clean towels, toilet paper, toothpaste, shampoo, deodorant, and other personal hygiene products that are gender specific to the resident population.

**HFS 57.30 Household duties.** (1) Residents shall have opportunities to share in responsibility for household duties or chores appropriate to the resident's age, developmental level, health, and ability.

(2) Household duties of residents may not interfere with school attendance, family visits, sleep, study, or religious practice and may not violate the principles of nurturing care described in s. HFS 57.205.

**HFS 57.305 Spending money.** (1) Each resident shall be given a regular, base amount of spending money appropriate to his or her age and maturity. Older residents can be given opportunities to earn extra money above and beyond the base allowance.

*Base pay should be defined in policies/procedures and house rules (if base pay is determined per level achieved, this also should be addressed in policy). Base pay should be comparable to what other similar aged children are receiving to be able to mainstream the child's participation in community/school activities.*

*Children in group homes may be given opportunities to earn extra money that is over and above the base allowance.*

**57.305(2)**

(2) A resident's spending money may not be withheld as a disciplinary action.

**HFS 57.31 Food and nutrition.** (1) Food shall be available and provided to residents in sufficient quantities and varieties, and shall provide for nutritional and dietary needs. Food or modified diets ordered by a physician shall be provided for those residents who have special needs. In planning menus, the religious practices and cultural patterns of the residents shall be considered and foods offered accordingly. Menus shall meet the minimum nutritional requirements as found in Appendix B.

(2) At no time shall food be withheld from a resident.

(3) Daily menus shall be written, kept on file and available for at least 30 days after meals have been served.

(4) Spoiled or deteriorated food shall be disposed of immediately.

(5) Prepared food shall be covered and stored at temperatures that protect against spoilage. Dry foods shall be dated and stored in rigid, covered containers or single use food storage plastic bags with a zip top closure. Food in dented, bulging or leaking cans, or in cans without labels, may not be used.

(6) Leftover food that is not served shall be marked with the date of preparation and refrigerated or frozen immediately for later use.

**HFS 57.32 Education.** (1) School age residents shall be enrolled in school as soon as possible after admission to the group home. The licensee shall ensure that each resident meets the school attendance requirements under chs.115 and 118 Stats., unless otherwise excused by school officials.

*Excluding restitution, fines are considered a disciplinary action and may not be imposed by the group home.*

*There should be an adequate amount of food in the group home to evidence compliance with this rule. Food served should be reflective of the written menus.*

*In Appendix B- Children over 12 years of age may be served larger portions of the requirements for 12 year olds based on their greater food needs. They may not be served less than the minimum quantities listed for 12 year olds. For additional information for children over 12, please review the guidelines on pages I-7 to I-15 at the following website: [http://www.fns.usda.gov/tn/Resources/fbguide\\_I ntroduction.pdf](http://www.fns.usda.gov/tn/Resources/fbguide_I ntroduction.pdf)*

*To obtain copies of the publication "Keeping Food Safe" see the website <http://learningstore.uwex.edu/index.aspx> or call 877-947-7827 and request publication B3474. For copies of "Community & School Nutrition Programs, Food Safety" see the website <http://dpi.wisconsin.gov/fns/index.html>*

*Copies of chs. 115 and 118, Wis. Stats., may be obtained from the Revisor of Statutes Bureau website <http://www.legis.state.wi.us/rsb/Statutes.html>*

(2) A group home may not provide a home-based private educational program to residents unless the program is approved by the department of public instruction as a private school under s. 118.165, Stats.

*Copies of ch. 118, Wis. Stats., may be obtained from the Revisor of Statutes Bureau website*  
<http://www.legis.state.wi.us/rsb/Statutes.html>

**HFS 57.33 Sleeping arrangements. (1)**

Each resident shall be provided with a separate bed. A child of a custodial parent who resides in the group home shall also have his or her own crib, bed, or bassinet as appropriate for the needs of the child and may not routinely share a bed with his or her parent.

(2) A resident who is 18 years of age or older may not share a bedroom with a resident who is under 18 years of age.

*Reference HFS 57.19(5) & (6).*

(3) No resident may share a bedroom with a licensee, staff member, volunteer, household member, or with a visitor to the premises.

(4) Male and female residents may not share the same bedroom.

(5) No more than 4 residents shall occupy any bedroom. For a group home initially licensed after January 1, 2006, no more than 2 residents shall occupy a bedroom.

(6) A room that others must pass through to get to another part of the group home shall not be used as a bedroom for a resident.

(7) Regular sleeping provisions for residents may not be in any building, apartment, or other structure that is separate from the group home structure or in an unfinished attic, unfinished basement, in a hall or in any other room that is not typically used for sleeping purposes. No household member may be permitted to regularly sleep in any of these areas in order to accommodate a resident.

**HFS 57.34 Non-ambulatory residents.**

The licensee shall ensure that non-ambulatory residents receive care and services according to that resident's treatment plan.

**HFS 57.35 Additional requirements for group homes providing respite care. (1)**

APPLICABILITY. If a group home is licensed under s. HFS 57.51 or approved under s. HFS 57.515 to provide respite care, the licensee shall meet the additional requirements of this section.

**57.35(2)**

(2) STAFF. (a) Each staff member who provides care for a respite care resident shall have training or work experience related to any specific condition or need of the resident for whom care is provided. Staff members with no previous training or experience working with the specific condition or need of a respite care resident shall receive at least 8 hours of supervised experience or more if necessary to provide competent care.

(b) The group home shall designate by name or position a staff member who will have primary responsibility for oversight of respite care residents.

(3) PROGRAM STATEMENT AND POLICIES. The program statement required under s. HFS 57.05(1), shall address the purpose for which respite care is provided, compatibility of children with diverse needs and how the respite care program relates to other program components of the group home. The policies and procedures established under s. HFS 57.05(2), shall include procedures on assessing the medical and dietary needs and behavioral and emotional concerns of a child admitted to the group home for respite care.

*Form CFS-2378 Policy / Procedure Checklist – Group Foster Homes for Children must be submitted with a copy of the group home’s current policy and procedures. It is the licensee’s responsibility to ensure the department has the most current copy of the facility’s policies and procedures that reflect practices.*

*The 4-year age span applies to all group homes except for group homes licensed solely for respite care or runaway and homeless youth as stated in 57.19(5)(b).*

**HFS 57.36 Additional requirements for group homes providing care for custodial parents and expectant mothers. (1)**

APPLICABILITY. If a licensee is licensed under s. HFS 57.51 or approved under s. HFS 57.515 to provide care to custodial parents or expectant mothers, the licensee shall meet the additional requirements of this section.

(2) TREATMENT PLANNING. The treatment plan developed under s. HFS 57.23 shall include goals and approaches for all of the following:

(a) *Parenting skills*. Parenting skills instruction that includes all of the following:

1. Prenatal and other health care services.
2. Child development.
3. Bathing and hygiene.
4. Child safety.

5. Child guidance and behavior management.

6. Domestic violence issues, sudden infant death syndrome, shaken baby syndrome, and mental health and alcohol and other drug abuse counseling as appropriate.

7. Nutrition and meal preparation.

8. Childcare options.

(b) *Life skills*. Life skills instruction that includes all of the following:

1. Family planning and relationships.

2. Independent living skills, economic self-sufficiency, budgeting and job skills.

3. Accessing community resources, transportation, and transitional housing.

(3) **MEDICAL CARE FOR EXPECTANT MOTHERS**. An expectant mother shall be provided prenatal and postnatal care from a physician or a nurse-midwife licensed under s. 441.15(3), Stats. The licensee shall ensure that the expectant mother gives birth in a medical facility.

(4) **HEALTH SAFETY AND WELFARE OF CHILDREN OF RESIDENTS**. The licensee shall ensure the health, safety, and welfare of the children of residents and provide care to those children in compliance with this chapter.

(5) **CHILD CARE FOR CHILDREN OF CUSTODIAL PARENT**. (a) If the resident is not on the premises or is otherwise unable to care for his or her child, childcare may be provided on the premises only as follows:

**57.36(5)(a)1.**

1. The staff to child ratio may not be less than that specified in Table HFS 57.36. If care is provided to a mixed-age group of children, the staff-to-child ratio in Table HFS 57.36 shall be adjusted on a pro-rata basis pursuant to Appendix D.

TABLE HFS 57.36	
Age of Children	Minimum Number of Staff Members or Volunteers to Children
Birth to 2 Years	1:4
2 Yrs. to 2½ Yrs	1:6
2 ½ Yrs. to 3 Yrs	1:8
3 Yrs. to 4 Yrs	1:10
4 Yrs. to 5 Yrs	1:13
5 Yrs. to 6 Yrs	1:17
6 Yrs. and Over	1:18

2. The staff member or volunteer used to meet staff to child ratios as defined in subd. 1. shall have completed the training requirements as set forth under s. HFS 57.37(4).

3. If childcare is provided for payment, reimbursement or other compensation to 4 or more children under 7 years of age, the child care program must be licensed under ch. HFS 45 or 46.

(b) Childcare may be provided off premises only by a child care provider that is licensed or certified under ch. HFS 45, HFS 46, or DWD 55, as applicable.

*Administrative Code HFS 45 and HFS 46 may be obtained from the Internet at [http://dhfs.wisconsin.gov/rl\\_dcfs/RULEREKS.H TM](http://dhfs.wisconsin.gov/rl_dcfs/RULEREKS.H TM).*

*Administrative Code DWD 55 Day Care Certification may be obtained from the Internet <http://www.legis.state.wi.us/rsb/code/dwd/dwd05 5.pdf>.*

(6) NON-CUSTODIAL PARENTS. The licensee shall give children of residents the opportunity and encouragement to maintain involvement with non-custodial parents.

(7) SPACE REQUIREMENTS. In addition to the floor space required for bedrooms under s. HFS 57.40(6)(b)3., there shall be at least 35 square feet of additional floor space in a bedroom for each child sharing a bedroom with a parent.

**57.36(8)**

(8) **WATER SUPPLY.** The annual test of private well water under s. HFS 57.40(3)(a)2. shall include testing for nitrate levels. If nitrate levels are determined to be over 10 milligrams per liter, the licensee shall give notice to the regional licensing office that serves the group home within 48 hours.

*If water continues to test high for nitrate levels, an exception may be granted for permanent use of bottled water for expectant mothers and infants under 6 months of age.*

*Drinking water with nitrate levels over 10mg/liter is a health hazard to infants 0-6 months of age and may cause "blue-baby syndrome".*

*Wisconsin standard is 10 milligrams per liter (10 mg) for nitrate.*

*Recommended procedure if the nitrate level is over 10 mgs:*

*Do not give this water to expectant mothers. Do not give this water to infants under 6 months of age either directly or in formula.*

*Do not boil high nitrate water since boiling increases the nitrate level.*

*Water samples may be tested at private laboratories or the State Lab of Hygiene, 463 Henry Hall, Madison, WI 53706; (608) 262-1293. Refer to [www.dnr.state.wi.us](http://www.dnr.state.wi.us) for list of certified labs.*

*If the test indicates that the water is bacteriologically unsafe, contact the Public Health Department or DNR to come up with a suitable plan of correction.*

**HFS 57.37 Additional requirements for care of children 6 years of age or younger.** (1) **APPLICABILITY.** If a group home is licensed under s. HFS 57.51 or approved under s. HFS 57.515 to admit children under 6 years of age as residents or if the group home provides care to a resident who is the custodial parent of a child under the age of 6, the group home shall meet the additional requirements of this section.

(2) **DEFINITIONS.** In this section:

(a) "Infant" means a child under one year of age.

(b) "Toddler" means a child at least one year of age but less than 2 years of age.

(c) "SIDS" means Sudden Infant Death Syndrome.

**57.37(3)**

(3) TREATMENT PLAN. A treatment plan is not required for children of residents. The treatment plan developed under s. HFS 57.23(2) for a resident under 6 years of age shall include:

(a) Schedule of meals and feeding and types of food introduced.

(b) Toileting and diapering procedures.

(c) Sleep and nap schedule.

(d) Communication methods and comforting techniques.

(e) Developmental history.

(f) Medical history and medication management.

(4) STAFF TRAINING. Each staff member who provides care to a child under this section shall successfully complete at least 10 hours of training in infant and toddler care; at least 40 hours or 3 credits of early childhood training and training in infant and child CPR within 6 months after beginning employment, unless the staff member has previously received such training and certification is current. The training in infant and toddler care shall include instruction on SIDS risk reduction and shall be approved by the department.

(5) DIAPERING. Wet or soiled diapers and clothing shall be changed promptly. Each child shall be changed on a surface that is cleaned with soap and water and a disinfectant solution after each use. Soiled diapers shall be placed in a plastic-lined, covered container, which shall be emptied, washed and disinfected daily.

*Reference HFS 57.17(2) & (3).*

*Volunteers are recommended to be oriented on SIDS using at a minimum the Back To Sleep brochure available by contacting the Back to Sleep Campaign at 1/800-505-CRIB or at: [http://www.nichd.nih.gov/publications/pubs\\_details.cfm?from=sids&pubs\\_id=287](http://www.nichd.nih.gov/publications/pubs_details.cfm?from=sids&pubs_id=287)*

*The 10 hours of infant and toddler care needs to be completed before a staff member provides care to a child under this section.*

*The 10 hours in infant and toddler care is covered in the Fundamentals of Infant and Toddler Care Course and the 40 hours or 3 credits of early childhood education is covered in the Introduction to the Child Care Profession Course. The list of Department approved courses can be found at [http://dhfs.wisconsin.gov/rl\\_dcfs/ApprovedEntryLevelTraining.htm](http://dhfs.wisconsin.gov/rl_dcfs/ApprovedEntryLevelTraining.htm)*

(6) FURNISHINGS AND BEDDING. (a)

Each child shall be provided with a bassinet, crib, or bed that is safe and appropriate to the needs of the child. Cribs shall have crib slats that are securely fastened in place and are spaced no more than 2 3/8 inches apart. Crib mattresses shall fit snugly. Bassinets and cribs shall be washed and disinfected between changes in occupancy. The top bunk of a bunk bed shall not be used for a child under 4 years of age. The top bunk shall have a safety rail if occupied by a child under 8 years of age.

(b) Pillows and sheepskins shall not be used with infants.

(c) The group home shall provide eating utensils and cups, infant seats, high chairs, car seats, strollers, rocking chairs, tables and seating and other furnishings and equipment appropriate for size and developmental level and the needs of children under 6 years of age.

(7) SAFETY MEASURES. (a) Strings and cords long enough to encircle a child's neck shall not be accessible to children.

(b) When infants and toddlers are present, open stairways shall be protected at the top and bottom with child safety gates. Gates shall have latching devices that adults can open easily in an emergency. Pressure gates or accordion gates shall not be used.

(c) Steam radiators, fireplaces, wood-burning stoves, electric fans, electric outlets, electric heating units and hot surfaces, such as pipes, shall be protected by screens or guards.

(d) Differences of elevation, including platforms, walkways, balconies and open sides of stairways shall be protected by railing at least 36 inches in height and with bars no greater than 4 inches apart.

*Safety gates shall be installed at the bottom and/or top of stairs, depending on where children are. Gates may be installed a maximum of 18" from the bottom step, or about 3 steps up, taking into consideration the landing surface.*

*Railings are required when the difference in levels exceed 18".*

*Differences in elevation on outside decks and porches must meet this requirement if accessible to children.*

*When the elevation of an outside deck is deemed to constitute a hazard, railings that meet specifications in the rule above should be required.*

*Bars in a railing exceeding 4 inches may be closed off with fabric, mesh netting or coated wire.*

**57.37(7)(d) continued**

(8) WATER. If an infant under 6 months old is in care, the annual test of private well water required under s. HFS 57.40(3)(a)2., shall include testing for nitrate levels. If nitrate levels are determined to be over 10 milligrams per liter, the licensee shall give notice to the regional licensing office that serves the group home within 48 hours.

(9) NUTRITION AND FEEDING. (a) Food shall be available to infants and toddlers in accordance with the meal patterns consistent with those specified in Appendices B and C, as applicable.

(b) If a microwave is used to heat or prepare food, procedures for heating and cooking infant formula, milk, or food in a microwave oven shall be posted near the microwave.

(c) Bottles shall not be propped. A child unable to hold a bottle shall be held whenever a bottle is given.

(d) Infants and toddlers shall not be put to bed with a bottle.

(10) MEDICAL CARE. Each child shall receive routine physical examinations and immunizations pursuant to s. 252.04, Stats., and ch. HFS 144, by a licensed medical professional.

(11) TRANSPORTATION. Whenever a child who is under 4 years of age or whose weight is 40 pounds or less is transported in a vehicle, the child shall be restrained in a car safety seat in accordance with the manufacturer's recommendations.

*Where access to a different level of a home is by a spiral staircase with openings between each stair tread, and with openings, side bars or grates in excess of 4 inches, the different level may not be used, and a license may not be granted unless a method is found to prevent children from accessing the staircase.*

*Hand railings are recommended for enclosed staircases.*

*Platforms on play equipment must also meet this requirement.*

*Reference HFS 57.36(8)*

*Refrain from heating breastmilk in a microwave oven.*

*See Appendix J, Suggested Procedure for Microwave Heating of Infant Formula and Food.*

*Administrative Code HFS 144 Immunization of Students may be obtained from the Internet <http://www.legis.state.wi.us/rsb/code/hfs/hfs144.pdf>.*

*Reference HFS 57.12(1) and HFS 57.12(8).*

*2005 Wisconsin Act 106 regarding child safety seats went into effect from June 1, 2006. Under the new law, a child who is:*

*1. Less than one year old or who weighs less than 20 pounds must be properly restrained in a rear-facing child safety seat in the back seat of the vehicle.*

**57.37(11) continued**

2. *At least one year old and weighs at least 20 pounds but is less than four years old or weighs less than 40 pounds must be properly restrained in a forward-facing child safety seat in the back seat of the vehicle.*
3. *At least four years old but less than eight years old, weighs at least 40 but not more than 80 pounds, and is no more than 57 inches tall must be properly restrained in a "child booster seat".*
4. *Under the age of eight and exceeds the weight or height limits specified in item 3., above must be properly restrained in a seat belt.*

**HFS 57.38 Resident records.** (1) The licensee shall maintain on the premises a record for each current resident. Each record shall contain all of the following information:

- (a) Resident's first name, last name, and alias, if any, date of birth, and gender.
- (b) Recent photograph of the resident.
- (c) Voluntary placement agreement or court order or both as appropriate.
- (d) Referral information such as court reports and assessments from the placing agency.
- (e) Name, address and telephone number of the placing agency, parent, guardian, or legal custodian that is responsible for the resident.
- (f) Name, address, and telephone number of the person or placing agency and physician to be called in an emergency.
- (g) If the group home is a family-operated group home, a completed form CFS-872A, Information for Foster Parents -Part A and a completed form CFS-872B, Information for Foster Parents -Part B.

*Form CFS-379 Child Record Checklist – Group Foster Homes may be used to assist the group home in meeting resident requirements.*

*Form CFS-2382A Intake Information – Group Foster Home Resident may be used to assist in meeting this requirement.*

*The group home should request a copy of the original court order to identify any specific conditions placed on the court order.*

*A copy of the change of placement document that has been filed with the courts will be accepted in lieu of the original court order.*

**57.38(1)(g)Note:**

**Note:** Form CFS 872A, Information for Foster Parents -Part A and form CFS 872B, Information for Foster Parents –Part B can be found on the department's website at [www.dhfs.wisconsin.gov/forms/index.htm](http://www.dhfs.wisconsin.gov/forms/index.htm) or by telephoning any regional field office listed in Appendix A.

(h) Treatment plan and reviews and post-discharge plan.

(i) Current medical information including all of the following:

1. Medical consent and signed releases.
2. Name of physician and dentist.
3. Dates of medical and dental examinations and recommendations for follow-up care.
4. Immunizations.
5. Illnesses and accidents and dates of each.
6. Medications and treatments received and dates of each.
7. Allergies, including allergies to food or medication.
8. Physical limitations.

(j) Name of school and current grade.

(k) Religious preference.

(L) Incident reports involving the resident for whom the record was made.

(m) Description of any resident rights that are denied or limited and disposition of any grievances.

*Form DDE-6100 Client Rights Limitation or Denial Documentation may be used to meet this requirement for any denial or limitation of client rights. It may be obtained from the Internet at <http://dhfs.wisconsin.gov/forms/DDEnum.asp>.*

(n) Inventory of the resident's clothing and other possessions.

(o) Non-medical signed releases and consents.

(p) Discharge summary.

(q) Any other information as appropriate.

(2) Resident records shall be maintained in a secure location pursuant to the confidentiality requirements in s. HFS 57.39. The record required in sub. (1) shall be maintained by the licensee until the resident reaches the age of 19 or 7 years after the resident is discharged from the group home, whichever is later. The record of a resident that has been discharged may be stored off the premises, but must be made available to the department upon request.

**HFS 57.39 Confidentiality.** Information and records on residents shall be kept confidential and shall be protected from unauthorized examination pursuant to s. 48.78 and 48.981(7), Stats., or where applicable s. 51.30(4), Stats., and ch. HFS 92.

*Use of locked, fire-proof cabinets is recommended.*

*Group home policies and procedures are recommended to include storage and availability of discharged resident files.*

## SUBCHAPTER V PHYSICAL ENVIRONMENT AND SAFETY

### **HFS 57.40 Physical plant and environment.** (1) GENERAL

**REQUIREMENTS.** (a) In addition to maintaining the premises in compliance with state and local building code requirements, the licensee shall maintain the premises in a state of good repair and in a clean, safe and sanitary condition.

(b) The department may require a licensee to obtain an inspection of the premises and of the heating, electrical, plumbing, water and sewage systems to determine if any safety or health problems exist.

(2) **EXITS.** (a) Halls leading to exits shall be clear and unobstructed at all times. At least one exit door shall be at least 3 feet in width.

(b) All stairways serving 3 or more levels shall have a door at either the bottom or top of the stairway which shall be kept closed at all times.

(c)1. Habitable rooms on the second floor shall have access to at least 2 exits. At least one of the exits shall be a stairway to the first floor or to grade.

**57.40(2)(c)2.**

2. If a child 6 years of age or over occupies a room on the second floor a window may be used as an exit if the window can be opened from the inside without the use of tools, is at least 22 inches in the smallest dimension, is at least 5 square feet in area, and has a lower sill not more than 4 feet from the floor and a window escape ladder for use in an emergency evacuation.

3. If a child under 6 years of age occupies a room on the second floor, the second exit may be an additional stairway to the first floor or grade or an exit to a balcony that is not more than 15 feet above grade with a floor that measures at least 3 feet by 3 feet and a rail that is not more than 36 inches high.

(d) Habitable rooms above the second floor shall have at least 2 exits that are both stairways to the second floor or to grade or that are to one stairway to the second floor and one stairway to grade. Windows and balconies may not be designated as exits.

(e) Habitable rooms below grade shall have at least 2 exits. At least one exit shall be a stairway to grade or a door that is below grade level that leads to grade level by an outdoor stairway. The second exit may be either a stairway leading to a first floor above grade or a window that meets the requirements in par. (c)2.

(3) WATER AND SEWER. (a) *Water supply.* 1. The group home shall have an adequate and safe water supply.

2. If the group home's water supply is from a private well, the well shall be approved by the department of natural resources. Water samples from an approved well shall be tested at least annually for lead and bacteria by a laboratory certified under ch. HSS 165. If the group home population includes children under 6 years old or expectant mothers the water shall be tested as required in ss. HFS 57.36(8) or 57.37(8), as applicable.

(b) *Sewage.* The group home shall have an adequate sewage disposal system. If the group home has a private sewage disposal system, the system shall be approved by the appropriate governmental approving authority.

*Jump platforms will meet intent of rule with written approval from the fire department.*

*Grade level means that the exit will lead to either ground or street level.*

*Administrative Code HSS 165 Laboratory Certification may be obtained from the Internet <http://www.legis.state.wi.us/rsb/code/hss/hss165.pdf>.*

*Group home policies and procedures are recommended to include septic system pumping and inspections on a routine basis.*

## 57.40(3)(c)

(c) *Water temperature.* The group home shall be equipped with a water heater sufficient to meet the needs of all residents. The hot water delivered to the group home's sinks, tubs, and showers shall not exceed 110 ° Fahrenheit.

*Temperature is measured at the faucet.*

*Scald prevention devices (tempering valves) providing water temperature not to exceed 110 degrees F. are acceptable alternatives at sink, tubs and showers used by residents.*

(4) HEATING, COOLING AND VENTILATION. (a) The group home shall be equipped with a heating system that is capable of maintaining a temperature of at least 68 ° Fahrenheit.

(b) All rooms, including bedrooms must be provided with adequate heating, cooling and ventilation.

(c) If the temperature inside the group home exceeds 80 ° Fahrenheit during summer months, the licensee shall provide for air circulation with fans or by other means.

(d) The heating unit shall be maintained in a safe condition as determined by an annual inspection by an individual professionally qualified to conduct such inspections.

*A (HVAC) Heat, Vent, Air Conditioning company would meet this requirement.*

(e) Portable space heaters shall not be used.

(f) Bath and toilet rooms shall have either a window that opens or be equipped with exhaust ventilation to the outside.

(5) LIGHTING. All habitable rooms shall have electric lighting sufficient to meet the needs of the group home and its residents.

(6) SPACE REQUIREMENTS. There shall be at least 200 square feet of living space for each resident of the home. "Living space" includes any area that is used by a resident in daily living and excludes unfinished basement, attic, attached garage or similar areas, not usually occupied by a resident in daily living. The licensee shall ensure compliance with all of the following space requirements:

*The square footage for living space inside the home would not include bathrooms, hallways or any other space where residents use the space to get from one living area to another or the intended use of space is not large enough to engage in any meaningful activities.*

(a) *Bathroom requirements.* 1. Bathrooms shall be indoors.

**57.40(6)(a)2.**

2. A group home serving only males or only females shall have at least one full bathroom that contains a toilet, sink, and a tub or shower available for use by residents. A group home initially licensed on or after January 1, 2006, serving males and females shall have 2 full bathrooms that are gender specific, each containing a toilet, sink and a tub or shower, unless the department grants an exception under s. HFS 57.02.

3. A bathroom that can be accessed only through a room used as a bedroom may not be counted as being available for use by residents who do not occupy that bedroom.

4. If the total number of residents and children of residents over the age of 2 years exceeds 10, there shall be 2 full bathrooms.

(b) *Bedroom requirements.* 1. Each bedroom shall have a door that allows for privacy and a window that allows natural light to enter.

2. At least one wall of each room used as a bedroom by a resident shall be an outside wall.

3. For group homes licensed before January 1, 2006, the floor space of each bedroom shall be as follows:

a. A bedroom that is used by one resident shall have at least 55 square feet of floor space.

b. A bedroom that is occupied by 2 residents shall have at least 50 square feet of floor space for each resident.

c. A bedroom that is occupied by 3 or more residents shall have at least 45 square feet of floor space for each resident.

d. A bedroom that is occupied by a custodial parent and that parent's child or children shall have the additional square footage required in s. HFS 57.36(7).

4. For a group home that is licensed after January 1, 2006, all of the following shall apply:

a. A bedroom that is used by one resident shall have at least 80 square feet of floor space. If the resident is non-ambulatory or uses adaptive devices for ambulating, the bedroom shall have at least 100 square feet of floor space.

**57.40(6)(b)4.b.**

b. A bedroom that is used by more than one resident shall have a minimum of 60 square feet of floor space for each resident. If either or both of the residents are non-ambulatory or uses adaptive devices for ambulation, the bedroom shall have at least 80 square feet of floor space for each resident.

5. The minimum space between beds, cribs, and bassinets shall be at least 2 feet. There shall be at least 5 feet of space between bunk beds. The top deck of a bunk bed shall be at least 3 feet below the lowest point of the ceiling and there shall be at least 3 feet between upper and lower bunks.

(c) *Dining areas.* Dining areas shall be of sufficient size to permit all residents and staff to sit down for meals at one time.

(d) *Kitchen.* 1. The kitchen shall be equipped with a stove, refrigerator, cooking and eating utensils, and any other appliance or utensil that may be required to meet the needs of each resident.

2. Each refrigerator and freezer shall be equipped with a clearly visible, accurate thermometer. Refrigerators shall be maintained at 40 ° Fahrenheit or lower. Freezers shall be maintained at 0 ° Fahrenheit or lower.

(e) *Storage space.* A group home shall have storage space to accommodate clothing and other personal items of each resident of the group home.

(f) *Study areas.* There shall be a quiet area in the group home suitable for study.

*If a resident bedroom is the only space used for this purpose, the bedroom shall be adequately equipped for study.*

(g) *Laundry.* Laundry facilities shall be available to meet the needs of all residents. Any laundry equipment in the group home shall be installed and vented in accordance with the manufacturer's recommendations.

**HFS 57.41 General safety precautions.** (1) Windows and doors that are used for ventilation shall be properly screened.

*If a window that is not used for ventilation is locked or sealed shut and is not capable of being opened, it does not need a screen.*

(2) Electrical systems and appliances shall be in good repair and properly protected.

**57.41(3)**

(3) Tubs and showers shall have safety strips or other non-slip surfaces applied to prevent slipping.

(4) Group homes constructed on or after January 1, 2006, shall provide ground fault outlets for any electrical outlet within 6 feet of a water source in bathrooms, kitchens, laundry rooms, basements, in the garage and on the exterior of the group home.

(5) Staff members and volunteers shall use universal precautions when exposed to blood and blood containing body fluids and tissue discharges.

(6) The indoor and outdoor premises shall be free of hazards.

*Reference HFS 57.41(2).*

(7) There shall be no flaking or deteriorating paint on exterior or interior surfaces.

(8) No lead based paint or other toxic finishing material may be used on the premises of the group home.

(9) Stairways, halls, and aisles shall be maintained in good repair, adequately lighted and free from obstacles.

(10) Stairs shall have a non-slip surface.

(11) Exterior stairs, walks, ramps and porches shall be maintained in a safe condition and free from the accumulation of water, ice, or snow.

(12) Dangerous equipment and harmful substances unnecessary for the operation of the group home may not be kept on the premises. All necessary but potentially dangerous equipment, toxic substances and medications shall be kept inaccessible to residents.

*Determine safety based upon the resident population the group home serves. Group home staff should be aware of and read the labels on any substances to which residents have access, to determine its safety. Examples include products containing alcohol, aerosol cans, household cleaners, paint thinner, insecticides, gasoline, etc.*

**HFS 57.42 Fire safety. (1) SMOKE**

**DETECTION** (a) Each group home shall have a smoke detection system. The system shall be an electrically interconnected system listed by Underwriter's Laboratory or a radio signal-emitting system which has at least one centrally mounted alarm horn which, when activated can be heard throughout the premises.

(b) A smoke detector shall be located at each of the following locations in the home:

1. Head of every open stairway.
2. Next to doors leading to every enclosed stairway on each floor level.
3. Every hall. Smoke detectors located in a hall shall not be spaced more than 30 feet apart nor more than 15 feet from any wall.
4. Common use rooms, including living rooms, dining areas, lounges, family rooms and recreation rooms, except the kitchen.
5. Bedrooms.
6. Basement.
7. Attic, if accessible.

(c) The smoke detection system shall be tested at least monthly and results documented and kept on file at the group home.

*Form CFS-2384 Fire Safety and Emergency Response Documentation – Group Foster Homes may be used to document test results.*

(d) A smoke detector that is located in a room used as a bedroom may be battery operated, free-standing and separate from the interconnected system.

(2) FIRE EVACUATION. (a) There shall be a diagrammatic floor plan of the group home posted on each floor level of the group home clearly indicating the direction of each exit for emergency evacuation.

(b) Evacuation drills shall be conducted with residents at least monthly and documented, including the date and time of the drill, the evacuation time and any problems encountered during the drill. An evacuation drill shall be conducted during sleeping hours, or which, simulates sleeping hours at least once every 6 months.

*Form CFS-2384 Fire Safety and Emergency Response Documentation – Group Foster Homes may be used to document test results.*

(c) Staff members shall personally evacuate each resident with limited mobility or having limited understanding regarding evacuation procedures from the group home. If the group home population includes a hearing impaired resident, there shall be written procedures specifying that a staff member shall immediately alert the resident in case of fire.

*Strobe lights are recommended for hearing impaired individuals.*

**57.42(3)**

(3) FIRE EXTINGUISHERS. (a) Each group home shall have a fire extinguisher in the size, type, and location specified by the local fire department. At least one fire extinguisher shall be located in the kitchen and on each floor level of the group home.

(b) Each extinguisher shall be operable at all times, inspected at least once a year by a qualified fire safety expert and have a label indicating its present condition and date of its last inspection.

(4) FIRE SAFETY INSPECTION. The licensee shall have an annual fire safety inspection. The results of the inspection shall be reported to the regional licensing office that serves the group home as required under s. HFS 57.13(9).

*Form CFS-909 Fire Safety Inspection – Group Foster Homes may be used by a qualified inspector.*

**HFS 57.43 Furnishings and appliances.** (1) The living space shall be sufficiently furnished and in a good state of repair, maintained in a clean condition, and shall allow for free and informal use by residents.

(2) Each bed shall be of such size as to ensure comfort of the resident. Each bed shall have suitable springs in good condition, a clean, comfortable mattress that is covered with a mattress pad and a waterproof covering when necessary, a pillow, at least 2 sheets, a bedspread, and blankets adequate for the season.

(3) The top bunk of a bunk bed shall not be used by residents with conditions limiting mobility and shall have a safety rail if used by a child under 8 years of age.

(4) Triple-deck bunk beds shall not be used.

**HFS 57.44 Sanitation.** (1) All garbage containing food waste shall be kept in covered, non-combustible watertight containers. Garbage shall be removed from the group home daily.

(2) Dishes, silverware, and utensils shall be maintained and stored in a clean and sanitary manner. Eating and drinking utensils shall be thoroughly cleaned with detergent and hot water and rinsed after each use.

*There shall be an adequate supply of dishes, silverware and other eating utensils to allow all residents and staff to eat together.*

(3) Single service dinnerware and utensils shall not be used at meals on a regular basis and may not be re-used.

(4) All bed linens shall be changed at least once a week or more often if necessary.

## SUBCHAPTER VI LICENSING

**HFS 57.45 Group home location.** (1) A person who operates a group home shall be licensed by the department pursuant to this chapter and s. 48.625, Stats. Only one group home license may be issued for any one location.

(2) For each location proposed for licensure by an applicant in sub. (1), the individual, corporation, or agency as applicable shall make a good faith effort to establish and maintain a community advisory committee as specified in s. 48.68(4), Stats.

*Form CFS-367 may be used to document establishment of, or a good faith effort to establish, a community advisory committee. DCFS Memo Series 2000-01 discusses the community advisory committee establishment and continuation processes.*

*Involvement of the existing community advisory is required prior to implementing any change in target populations to be served.*

**HFS 57.46 Other licenses and uses.** Upon licensure, a licensee may not accept any other license, including a child welfare or child care license, perform a service, or conduct a business on the premises, or combine group home activities with any service or business owned or operated by the licensee without the written approval of the department.

**HFS 57.47 Group home capacity limits.** The combined total of the number of residents residing in a family-operated group home and the number of children of the licensee shall not exceed 10.

**HFS 57.48 General conditions for approval of application.** (1) Any person licensed to operate a group home shall be a responsible, mature individual who is fit and qualified.

**57.48(1)Note:**

**Note:** The term "fit and qualified" is defined in s. HFS 57.04(15) to mean displaying the capacity to successfully nurture and care for children and shall not include a history of a civil action, criminal conviction or administrative rule violation that substantially relates to the care of a child; a history of exercising unsound judgement; or abuse of alcohol or drugs. For help in determining whether a civil action, criminal conviction, or administrative rule violation substantially relates to the care of children consult s. HFS 12.06.

(1m) In determining whether an applicant is fit and qualified, the department may consider any of the circumstances in ss. HFS 57.50(1), 57.56(1), and 57.57(1)(a) by an owner, agent, staff member, household member, or other individual directly or indirectly participating in the operation of the group home.

(2) If the department has reason to believe that the physical health or mental health of an applicant, licensee, or household member may endanger a resident, the department may issue a denial or revocation of the license or may require that a written statement be submitted by a physician, or if appropriate, by a licensed mental health professional that certifies the condition of the individual and the possible effect of that condition on the group home or the residents in care.

**HFS 57.49 License application.** (1) Except as provided in sub. (3), a person who wishes to operate a group home shall submit to the department an application signed as specified in sub. (2) at least 60 days before the date proposed to begin operating the group home. The application shall be made on the department's form CFS 375 and shall be accompanied by all of the following:

(a) The license fee required under s. 48.625(2)(a), Stats.

(b) A completed HFS 64 background information disclosure form which shall be completed and signed as follows:

*The department shall issue a license to an applicant after receipt and Department approval of a properly completed application. An application is considered complete when all the following have occurred:*

*1. The applicant has submitted the completed application form.*

*2. The applicant has submitted all other required documents and fees.*

*3. The applicant has submitted all documents required to complete the CBC of the applicant.*

**57.49(1)(b)1.**

1. If the applicant is one or more individuals, a background information disclosure form shall be completed and signed by each individual applicant and each household member who is 10 years old or older.

*Household member refers to non-client residents.*

2. If the applicant is a corporation or an agency, a HFS 64 background information disclosure form shall be completed and signed by an authorized representative.

(c) Inspection reports verifying that the proposed group home's physical structure, electrical, heating and plumbing systems have been inspected and are in safe operating condition according to applicable industry standards.

*A completed building inspection form or an occupancy permit will meet this requirement.*

(d) Documentation of efforts to establish and maintain the community advisory committee as required under s. HFS 57.45(2).

(e) Payment of any forfeitures, fees, assessments related to any licenses issued by the Department to the applicant, or a written statement signed by an authorized representative stating that no fees, forfeitures, assessments are owed.

(f) Proof of the insurance required under s. HFS 57.08.

(g) A copy of the personnel policies required under s. HFS 57.17(1) and any revisions as appropriate.

(h) A copy of the group home's policies and procedures required under s. HFS 57.05.

(i) If the applicant for licensure is a corporation, proof of incorporation or authorization to do business in Wisconsin, as required under s. HFS 57.52.

(j) Any other information requested by the department.

**Note:** A copy of the application form CFS 375 may be requested in writing or by phone from the appropriate regional licensing office listed in Appendix A. The completed application and license fee should be returned to the regional office from which the application was received.

**57.49(2)**

(2) If an applicant for licensure is an agency or corporation, an authorized representative of the agency or corporation as applicable shall sign the application. If the applicant for licensure is one or more individuals, the application shall be signed by each individual.

(3) A licensee applying for a license for an additional group home location shall be in compliance with this chapter in the operation of the existing group home and in compliance with regulations for any other facility licensed by the department and operated by the licensee. Any forfeitures due under s. 48.715, Stats., on other facilities licensed by the department shall be paid before the issuance of an additional license.

(4) Except as provided in s. HFS 57.50(3), the department may not process an application for a license from a person who is prohibited from licensure under s. HFS 57.50 or who meets the conditions under s. 48.715(5), Stats., if the applicant has had a license or certification to operate a group home revoked or denied within the last 2 years before the date of the application. A person is deemed ineligible to submit an application for a license within 2 years from the date the person had a group home license revoked or denied.

**HFS 57.50 Licensure prohibited.** (1) The department shall not license a person if any one of the following circumstances exists:

(a) The department has received certification pursuant to s. 49.857(2), Stats., from the department of workforce development that the applicant or licensee has failed to pay court-ordered payments of child or family support or expenses related to the support of a child or former spouse or has failed to comply with a subpoena or warrant by the department of workforce development or a county child support agency related to paternity or child support proceedings.

(b) The department has received certification pursuant to s. 73.0301, Stats., from the department of revenue certifying that the applicant or licensee has a delinquent tax liability.

(c) The licensee or applicant has given false information to a government agency, failed to submit a complete application, withheld relevant information, or failed to pay any fee, forfeiture or assessment due to a government agency.

(2) The department may deny a license if any one of the following circumstances exists:

(a) A person has behavior or a mental or physical condition that gives reasonable concern for the safety of residents.

(b) Another group home operated by the licensee is in substantial non-compliance with the licensing rules or has outstanding fines or forfeitures.

(c) If an applicant, owner, or licensee, a proposed or current staff member, volunteer, household member or any other person who has or will have contact with residents is any of the following:

1. A person who is the subject of a pending criminal charge or who has been convicted of a felony or misdemeanor that substantially relates to the care of children or activities of the group home.

**Note:** Examples of charges and offenses the department will consider in making a determination under this paragraph that an act substantially relates to the care of children are: sexual assault; abuse of a resident of a facility; a crime against life and bodily security; kidnapping; abduction; arson of a building or of property other than a building; robbery; receiving stolen property from a child; a crime against sexual morality such as enticing a minor for immoral purposes or exposing a minor to harmful materials; and interfering with the custody of a child. The list is illustrative. Other types of offenses may be considered.

2. A person who has been determined by a government agency to have abused or neglected a child or who has been determined to have committed an offense that is substantially related to the care of children or activities of the group home.

3. A person against whom a finding of abuse or neglect or of a misappropriation of property of a client has been entered on the Wisconsin caregiver registry maintained by the department pursuant to ch. HFS 13.

*Administrative Code HFS 13 Reporting and Investigation of Caregiver Misconduct may be obtained from the Internet at:*  
<http://www.legis.state.wi.us/rsb/code/hfs/hfs013.pdf>

**57.50(2)(c)4.**

4. A person who is the subject of a court finding that the person has abandoned, abused, or neglected a child.

5. A person who fails to submit an HFS 64 background information disclosure form completed under the requirements of s. 48.685, Stats., and ch. HFS 12, and this chapter, or a person who has made false statements on the background information disclosure form.

(3) If a person's license is denied or revoked under sub. (1), reinstatement of the license is pursuant to ss. 49.857 or 73.0301, Stats., as applicable.

**HFS 57.51 Probationary and regular license.** (1) The initial license granted to an applicant for a group home license shall be a probationary license. A probationary license shall be valid for a period of 6 months from the date of issuance unless sooner revoked or suspended. A probationary license may be renewed for an additional 6-month period.

(2) If a probationary licensee wishes to apply for a regular license, the probationary licensee shall submit to the department, the application and materials specified in s. HFS 57.49, at least 30 days before the date the probationary license expires.

(3) Upon receipt of a complete application for a regular license and except as provided in s. HFS 57.50, the department may issue a regular license which shall be valid and continued for a period of 2 years unless sooner revoked or suspended.

(4) If the licensee wishes to continue a regular license, the licensee shall submit to the department, the application and materials specified in s. HFS 57.49 at least 30 days before the end of the 2 year period. Upon receipt of a complete application to continue a regular license, and except as provided in s. HFS 57.50, the department may continue a regular license for an additional 2 years.

(5) If the department does not receive a complete application to continue a regular license at least 30 days before the end of each 2 year period, the department shall issue a written warning to the licensee. If the licensee fails to apply for a continuance of the license within 30 days after receipt of the warning, the department may revoke the license under s. HFS 57.56 for failure to apply for a continuance of the license as required in sub. (3), or take any other action appropriate to protect the health safety and welfare of the residents.

**HFS 57.515 License provisions.** The licensee may not change a license provision without first receiving approval from the department. The licensee shall submit to the department a written request for approval to amend the license. The request shall identify the provision that the licensee wishes to have amended or included under the license and the specific reasons that the provision should be amended or included under the license. Receipt of an amended license from the department shall be evidence of the department's approval of any requested changes to the license provisions.

**Note:** A request for approval for an amended license may be sent to the regional office that serves the group home.

**HFS 57.52 Corporate licensure.** (1) Before a corporation may be issued a license to operate a group home the corporation shall be incorporated under the laws of Wisconsin or shall have written authorization from the department of financial institutions to do business in Wisconsin.

(2) The corporation shall designate an authorized representative who shall have responsibility for the administration of the group home.

**HFS 57.53 Transferability of license.** A group home license may not be transferred.

*Examples of a license provision include the type of resident population the group home serves, age ranges, etc. Department approval must be obtained prior to implementing any changes.*

*Change in ownership requires new licensure.*

**57.54****HFS 57.54 Posting of license and citations.**

The group home license and any exceptions to the license granted by the department under s. HFS 57.02, citations issued by the department in its most recent inspection on the department's form CFS-294, and any notice of enforcement action including notices of license revocation, non-renewal, or summary suspension shall be posted in a place in the group home where it can be easily viewed by the public.

**HFS 57.55 Sanctions and penalties.** The department may impose an order or penalty as provided in s. 48.715(2) and (3) Stats.

**HFS 57.56 License revocation.** (1) In addition to the reasons for revocation specified under ss. 48.66(5) and 48.715(4) and (4m), Stats., the department may revoke a regular or probationary license under any of the following circumstances:

(a) If an applicant, owner, or licensee, a proposed or current staff member, volunteer, household member or any other person who has or will have contact with residents is any of the following:

1. A person who is the subject of a pending criminal charge or who has been convicted of a felony or misdemeanor that substantially relates to the care of children or activities of the group home.

**Note:** Examples of charges and offenses the department will consider in making a determination under this paragraph that an act substantially relates to the care of children are: sexual assault; abuse of a resident of a facility; a crime against life and bodily security; kidnapping; abduction; arson of a building or of property other than a building; robbery; receiving stolen property from a child; a crime against sexual morality such as enticing a minor for immoral purposes or exposing a minor to harmful materials; and interfering with the custody of a child. The list is illustrative. Other types of offenses may be considered.

2. A person who has been determined by a government agency to have abused or neglected a child or who has been determined to have committed an offense that is substantially related to the care of children or activities of the group home.

*A Stipulation is an agreement between the group home and the department that identifies one or more conditions to the group home license and must be posted near the license certificate.*

**57.56(1)(a)3.**

3. A person against whom a finding of abuse or neglect or of a misappropriation of property of a client has been entered on the Wisconsin caregiver registry maintained by the department pursuant to ch. HFS 13.

*Administrative Code HFS 13 Reporting and Investigation of Caregiver Misconduct may be obtained from the Internet*  
<http://www.legis.state.wi.us/rsb/code/hfs/hfs013.pdf>

4. A person who is the subject of a court finding that the person has abandoned, abused, or neglected a child.

5. A person who fails to submit an HFS 64 background information disclosure form completed under the requirements of s. 48.685, Stats., and ch. HFS 12, and this chapter, or a person who has made false statements on the background information disclosure form.

(b) The licensee or applicant has given false information to a government agency, failed to submit a complete application, withheld relevant information or failed to pay any fee, forfeiture or assessment due to a government agency.

(2) Upon receipt of a notice of revocation, the licensee may not admit any child for care to the group home without written approval of the department. By the effective date of a license revocation, the licensee shall have arranged for discharge of the residents in the manner specified under s. HFS 57.20(6).

(2m)(a) If the department determines not to grant a license or to revoke a license, the department shall notify the applicant or licensee in writing of its decision and the reasons for that decision. Revocation of a license shall take effect either immediately upon notification or 30 days after the date of the notice unless the decision is appealed under s. HFS 57.58. Whether the revocation shall take effect immediately upon notification or 30 days after the date of the notice shall be determined in accordance with the criteria found under s. 48.715(4m)(a) and (b), Stats.

(b) Upon receipt of the notice of revocation, and during any revocation proceedings that may result, the licensee may not accept for care any child not enrolled as of the date of receipt of the notice without written approval of the department's licensing representative.

**57.57**

**HFS 57.57 Summary suspension of a license.** (1)(a) The department may close a group home by summarily suspending a regular or probationary license if the department believes the action is required to protect the health safety, and welfare of residents. Reasons for summary suspension include all of the following:

1. Failure of the licensee to maintain or restore environmental protection for the residents, such as heat, water, electricity or telephone service.
2. The licensee or a person under the supervision of the licensee has committed an action or has created a condition relating to the operation or maintenance of the group home that directly threatens the health, safety or welfare of any child under the care of the licensee.
3. The licensee, an employee, a volunteer or any other person in regular contact with the residents in care has been convicted of, or has a pending charge for a crime against life or a crime of bodily injury.
4. A licensee, staff member, volunteer or any other person in regular contact with the residents in care is the subject of a current investigation for alleged child abuse or neglect under s. 48.981, Stats.
5. The reasons specified under s. HFS 57.56(1)(a).

(b) Notice of summary suspension of a license may be written or verbal and shall specify the reason for the department action and the date the action becomes effective.

(2) If the department determines that circumstances which caused the action in sub. (1) require the immediate relocation of the residents, the department shall order the licensee orally and in writing to relocate the residents to suitable housing and to notify for each resident, the placing agency and parent or guardian within 24 hours after relocating the resident into that housing.

(3) Within 72 hours after the order in sub. (1), the department shall either permit the reopening of the group home or proceed to revoke the group home's license.

(4) The division of hearings and appeals shall hold a preliminary hearing within 10 working days after the effective date of the order in sub. (1) to determine if the license should remain suspended during revocation proceedings. The division of hearings and appeals shall give written notice of the hearing to the licensee and the department.

**HFS 57.58 Appeal procedure.** (1) Except as provided in subs. (3) and (4), a department decision to deny, refuse to renew, or revoke a license or to issue an order or decision affecting the licensee under ss. 48.64 or 48.715, Stats., may be reviewed under ch. 227, Stats.

(2) A request for a hearing shall be in writing and submitted to the department of administration's division of hearings and appeals. The request for a hearing shall be sent to the division of hearings and appeals within 10 days after receipt of the notice of the department's action. A request for hearing that is mailed to the division of hearings and appeals shall be considered filed with the division on the date of the postmark. A request for hearing that is hand-delivered to the division of hearings and appeals shall be considered filed on the date the request is received by the division of hearings and appeals. A request for hearing transmitted by facsimile to the division of hearings and appeals shall be considered filed on the date and time imprinted by the division's facsimile machine on the transaction report that accompanies the document. Documents received by facsimile after midnight local time shall be deemed filed on the first following business day.

**Note:** A request for hearing can be submitted by mail or hand-delivered to the Division of Hearings and Appeals, at 5005 University Ave., Room 201, Madison, WI 53705-5400, or faxed to the Division at (608) 264-9885. A copy of the request should be sent to the regional licensing office listed in Appendix A that serves the group home.

(3) An appeal of a denial or revocation based on a certification by the department of workforce development of failure to pay court-ordered payments of support or failure to comply with a subpoena or warrant issued by the department of workforce development shall be filed pursuant to s. 49.857, Stats.

*Copies of ch. 227, Wis. Stats., may be obtained from the Revisor of Statutes Bureau website*

<http://www.legis.state.wi.us/rsb/Statutes.html>

**57.58(4)**

(4) An appeal of a denial, refusal to renew or revocation of a license based on a certification of tax delinquency from the department of revenue shall be filed within 30 days after the date on which the notice of denial, refusal to renew, or revocation as required under s.73.0301(2)(b)1.b., Stats.

**HFS 57.59 Complaints.** Any person having a complaint about a licensed group home or a group home operating without a license may submit that complaint to the department by telephone, facsimile, electronic mail, letter or personal interview. A department licensing representative shall investigate each complaint. The department shall send a written report of the findings of that investigation to the complainant upon request.

**Note:** A complaint should be sent, phoned or delivered to the regional field office listed in Appendix A that serves the group home.

**APPENDIX A**  
**FIELD OFFICES OF THE DIVISION OF CHILDREN AND FAMILY SERVICES**

**The Department of Health and Family Services licenses group homes for children through five Division of Children and Family Services field offices. Below are addresses and phone numbers of the field offices and related counties.**

**Northeastern Region**

(Green Bay)  
 200 North Jefferson, Suite 411  
 Green Bay, WI 54301-5191  
 (920) 448-5312

Brown, Calumet, Door, Fond du Lac,  
 Green Lake, Kewaunee, Manitowoc,  
 Marinette, Marquette, Menominee,  
 Oconto, Outagamie, Ozaukee,  
 Shawano, Sheboygan, Washington,  
 Waupaca, Waushara, Winnebago

**Northern Region**

(Rhineland)  
 2187 North Stevens Street, Suite C  
 Rhineland, WI 54501  
 (715) 365-2500

Adams, Ashland, Bayfield, Florence,  
 Forest, Iron, Juneau, Langlade, Lincoln,  
 Marathon, Oneida, Portage, Price,  
 Sawyer, Taylor, Vilas, Wood

**Southeastern Region**

(Waukesha)  
 141 N.W. Barstow Street, Room 104  
 Waukesha, WI 53188-3789  
 (262) 521-5100

Kenosha, Milwaukee, Racine,  
 Waukesha

**Southern Region**

(Madison)  
 1 West Wilson Street, Room 655  
 P.O. Box 8947  
 Madison, WI 53708-8947  
 (608) 266-2900

Columbia, Crawford, Dane, Dodge,  
 Grant, Green, Iowa, Jefferson,  
 Lafayette, Richland, Rock, Sauk,  
 Walworth

**Western Office**

(Eau Claire)  
 610 Gibson Street, Suite 2  
 Eau Claire, WI 54701-3696  
 (715) 836-2185

Barron, Buffalo, Burnett, Chippewa,  
 Clark, Douglas, Dunn, Eau Claire,  
 Jackson, LaCrosse, Monroe, Pepin,  
 Pierce, Polk, Rusk, St. Croix,  
 Trempealeau, Vernon, Washburn

**APPENDIX B**  
**CHILD AND ADULT CARE FOOD PROGRAM**  
**MEAL PATTERN REQUIREMENTS—AGES 1 TO 12**

The meal pattern shall contain, as a minimum, each of the following components in the amounts indicated for the specific age group.

	Ages 1 & 2	Ages 3, 4, & 5	Age 6 up to 12
<b>BREAKFAST</b>			
1. Milk	1/2 cup	3/4 cup	1 cup
2. Juice <sup>a</sup> or fruit or vegetable	1/4 cup	1/2 cup	1/2 cup
3. Grains/Breads: <sup>b</sup>			
Bread	1/2 slice	1/2 slice	1 slice
Cereal:			
Cold dry	1/4 cup or 1/3 oz <sup>c</sup>	1/3 cup or 1/2 oz <sup>c</sup>	3/4 cup or 1 oz <sup>c</sup>
Hot cooked	1/4 cup total	1/4 cup	1/2 cup
<b>LUNCH OR SUPPER</b>			
1. Milk	1/2 cup	3/4 cup	1 cup
2. Meat or meat alternate:			
Meat, poultry, fish, cheese	1 oz	1 1/2 oz	2 oz
Yogurt	4 oz or 1/2 cup	6 oz or 3/4 cup	8 oz or 1 cup
Egg	1 egg	1 egg	1 egg
Cooked dry beans or peas	1/4 cup	3/8 cup	1/2 cup
Peanut butter or other nut or seed butter	2 Tbsp	3 Tbsp	4 Tbsp
Peanuts or soynuts or tree nuts or seeds	1/2 oz = 50% <sup>d</sup>	3/4 oz = 50% <sup>d</sup>	1 oz = 50% <sup>d</sup>
3. Vegetable and/or fruit <sup>e</sup> (at least two)	1/4 cup total	1/2 cup total	3/4 cup total
4. Grains/Breads <sup>b</sup>	1/2 slice	1/2 slice	1 slice
<b>SNACK</b>			
Select two of the following four components:			
1. Milk	1/2 cup	1/2 cup	1 cup
2. Juice <sup>a</sup> or fruit or vegetable	1/2 cup	1/2 cup	3/4 cup
3. Grains/Breads: <sup>b</sup>			
Bread	1/2 slice	1/2 slice	1 slice
Cereal:			
Cold dry	1/4 Cup or 1/3 oz <sup>c</sup>	1/3 cup or 1/2 oz <sup>c</sup>	3/4 cup or 1 oz <sup>c</sup>
Hot cooked	1/4 cup	1/4 cup	1/2 cup
4. Meat or meat alternate:			
Meat, poultry, fish, cheese	1/2 oz	1/2 oz	1 oz
Egg	1/2 egg	1/2 egg	1 egg
Cooked dry beans or peas	1/8 cup	1/8 cup	1/4 cup
Peanut butter or other nut or seed butter	1 Tbsp	1 Tbsp	2 Tbsp
Peanuts or soynuts or tree nuts or seeds	1/2 oz	1/2 oz	1 oz
Yogurt, plain, or sweetened and flavored	2 oz or 1/4 cup	2 oz or 1/4 cup	4 oz or 1/2 cup

a Must be full strength fruit or vegetable juice

b Must be whole grain or enriched

c Either volume (cup) or weight (oz), whichever is less.

d No more than 50% of the requirement shall be met with nuts or seeds. Nuts and seeds shall be combined with another meat/meat alternate to fulfill the requirement.

e Serve 2 or more kinds of vegetable(s) and/or fruit(s). Full strength vegetable or fruit juice may be counted to meet not more than one-half of this requirement.

**APPENDIX C  
CHILD AND ADULT CARE FOOD PROGRAM  
MEAL PATTERN REQUIREMENTS—BIRTH THROUGH 11 MONTHS**

The infant meal pattern shall contain, as a minimum, each of the following components in the amounts indicated for the specific age group.

The minimum quantity of food must be provided to the infant, but may be served during a span of time consistent with the infant's eating habits.

**Infant Meal Pattern**

<b>Birth Through 3 Months</b>	<b>4 Through 7 Months</b>	<b>8 Through 11 Months</b>
<b>BREAKFAST</b>		
4 - 6 fl. oz. formula <sup>1</sup> or breast milk <sup>5,6</sup>	4 - 8 fl. oz. formula <sup>1</sup> or breast milk <sup>5,6</sup> 0 - 3 T. infant cereal <sup>2</sup> (optional)	6 - 8 fl. oz. formula <sup>1</sup> or breast milk <sup>5,6</sup> 2 - 4 T. infant cereal <sup>2</sup> 1 - 4 T. fruit and/or vegetable
<b>LUNCH OR SUPPER</b>		
4 - 6 fl. oz. formula <sup>1</sup> or breast milk <sup>5,6</sup>	4 - 8 fl. oz. formula <sup>1</sup> or breast milk <sup>5,6</sup> 0 - 3 T. infant cereal <sup>2</sup> (optional)  0 - 3 T. fruit and/or vegetable (optional)	6 - 8 fl. oz. formula <sup>1</sup> or breast milk <sup>5,6</sup> 2 - 4 T. infant cereal <sup>2</sup> and/or 1 - 4 T. meat, fish, poultry, egg yolk, or cooked dry beans or peas, or 1/2-2 oz. cheese or 1-4 oz. cottage cheese, cheese food, or cheese spread 1 - 4 T. fruit and/or vegetable
<b>SUPPLEMENT</b>		
4 - 6 fl. oz. formula <sup>1</sup> or breast milk <sup>5,6</sup>	4 - 6 fl. oz. formula <sup>1</sup> or breast milk <sup>5,6</sup>	2 - 4 fl. oz. formula <sup>1</sup> , breast milk <sup>5,6</sup> , or fruit juice <sup>3</sup> 0 - 1/2 bread or 0 - 2 crackers (optional) <sup>4</sup>

- 1 Shall be iron-fortified infant formula.
- 2 Shall be iron-fortified dry infant cereal.
- 3 Shall be full strength fruit juice.
- 4 Shall be from whole-grain or enriched meal or flour.
- 5 It is recommended that breast milk be served in place of formula from birth through 11 months.
- 6 For some breastfed infants who regularly consume less than the minimum amount of breast milk per feeding, a serving of less than the minimum amount of breast milk may be offered, with additional breast milk offered if the infant is still hungry.

**Required Guidelines for Infant Meal Pattern**

**Definition of Infant.** Any child less than 12 months of age.

**Definition of Infant Formula.** Infant formula defined by USDA is “any iron-fortified infant formula intended for dietary use as a sole source for food for normal healthy infants served in liquid state at manufacturer’s recommended dilution”.

**Parent Providing Infant Breastmilk.** The decision regarding which infant formula to feed an infant is one for the infant’s doctor and parents/guardian to make together.

**APPENDIX D  
STAFF TO CHILD RATIO WORKSHEET**

(1)	(2)	(3)	(4)
Age of Child	# of Children in Age Group	Numerical Weight for Age Group	Weight in Age Grp. Col. 2 x Col. 3
Birth to 2		0.25	
2 years		0.167	
2 1/2 years		0.125	
3 years		0.10	
4 years		0.077	
5 years		0.059	
6 years & over		0.056	
TOTAL			TOTAL

Total staff required (from column #4)

One staff member is required for a group of children whose individual numerical weights total 1.0.

*HFS 57.36(5)(a)1 specifies the required staff to child ratios for child care for children of custodial residential parents who are not on the premises or who are otherwise unable to care for his or her child. This chart is to be used to determine the staff to child ratio for mixed age groups.*

## APPENDIX E

## KEY STATUTES RELATED TO LICENSING GROUP FOSTER HOMES

This appendix is based upon the unofficial text from Updated Database of 2003-2004 Wisconsin Statutes and Annotations. Only pertinent portions of the statutes are included here and were obtained at <http://folio.legis.state.wi.us>. Action by the legislature may result in changes to these statutes. Only printed volumes are Official Text under s. 35.18(2), Wis. Stats.

**CHAPTER 46 SOCIAL SERVICES**

- **46.036 Purchase of care and services. (4)** For purposes of this section and as a condition of reimbursement, each provider under contract shall:

(c) Unless waived by the department, biennially, or annually if required under federal law, provide the purchaser with a certified financial and compliance audit report if the care and services purchased exceed \$25,000. The audit shall follow standards that the department prescribes. A purchaser may waive the requirements of this paragraph for any family-operated group home, as defined under par. (a), from which it purchases services.

- **46.037 Rates for residential child care centers and group homes. (1)** Subject to sub. (1m), each residential child care center and each group home, as defined in s. 48.02(7), that is licensed under s. 48.625 and incorporated under ch. 180, 181 or 185 shall establish a per client rate for its services and shall charge all purchasers the same rate.

**46.037(1m)** Notwithstanding sub. (1), the department, a county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437, a group of those county departments, or the department and one or more of those county departments, and a residential child care center or group home, as described in sub. (1), may negotiate a per client rate for the services of that residential child care center or group home, if the department, that county department, the county departments in that group of county departments, or the department and one or more of those county departments, agree to place 75% or more of the residents of that residential child care center or group home during the period for which that rate is effective. A residential child care center or group home that negotiates a per client rate under this subsection shall charge that rate to all purchasers of its services.

**46.037(2)** A residential child care center or a group home, as described in sub. (1) or (1m), shall submit to the department the rate it charges and any change in that rate before a charge is made to any purchaser. The department shall provide forms and instructions for the submission of rates and changes in rates under this subsection and a residential child care center or a group home that is required to submit a rate or a change in a rate under this subsection shall submit that rate or change in a rate using those forms and instructions.

**(3)** The department may require an audit of any residential child care center or group home, as described in sub. (1) or (1m), for the purpose of collecting federal funds.

**CHAPTER 48 CHILDRENS CODE**

- **48.02 Definitions.** In this chapter, unless otherwise defined:

**(1)** "Abuse", other than when used in referring to abuse of alcohol beverages or other drugs, means any of the following:

(a) Physical injury inflicted on a child by other than accidental means.

(am) When used in referring to an unborn child, serious physical harm inflicted on the unborn child, and the risk of serious physical harm to the child when born, caused by the habitual lack of self-control of the expectant mother of the unborn child in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree.

(b) Sexual intercourse or sexual contact under s. 940.225, 948.02 or 948.025.

(c) A violation of s. 948.05.

(d) Permitting, allowing or encouraging a child to violate s. 944.30.

(e) A violation of s. 948.055.

(f) A violation of s. 948.10.

(gm) Emotional damage for which the child's parent, guardian or legal custodian has neglected, refused or been unable for reasons other than poverty to obtain the necessary treatment or to take steps to ameliorate the symptoms.

**48.02(7)** "Group home" means any facility operated by a person required to be licensed by the department under s. 48.625 for the care and maintenance of 5 to 8 children, as provided in s. 48.625(1).

**48.02(12)** "Legal custody" means a legal status created by the order of a court, which confers the right and duty to protect, train and discipline the child, and to provide food, shelter, legal services, education and ordinary medical and dental care, subject to the rights, duties and responsibilities of the guardian of the child and subject to any residual parental rights and responsibilities and the provisions of any court order.

**48.02(13)** "Parent" means either a biological parent, a husband who has consented to the artificial insemination of his wife under s. 891.40, or a parent by adoption. If the child is a nonmarital child who is not adopted or whose parents do not subsequently intermarry under s. 767.60, "parent" includes a person acknowledged under s. 767.62(1) or a substantially similar law of another state or adjudicated to be the biological father. "Parent" does not include any person whose parental rights have been terminated.

- **48.023 Guardianship.** Except as limited by an order of the court under s. 48.977(5)(b) or 48.978(6)(b)2., a person appointed by the court to be the guardian of a child under this chapter has the duty and authority to make important decisions in matters having a permanent effect on the life and development of the child and the duty to be concerned about the child's general welfare, including but not limited to:

**48.023(1)** The authority to consent to marriage, enlistment in the U.S. armed forces, major medical, psychiatric and surgical treatment, and obtaining a motor vehicle operator's license.

**48.023(2)** The authority to represent the child in legal actions and make other decisions of substantial legal significance concerning the child but not the authority to deny the child the assistance of counsel as required by this chapter.

**48.023(3)** The right and duty of reasonable visitation of the child.

**48.023(4)** The rights and responsibilities of legal custody except when legal custody has been vested in another person or when the child is under the supervision of the department of corrections under s. 938.183, 938.34(4h), (4m) or (4n) or 938.357(4) or the supervision of a county department under s. 938.34(4d) or (4n).

- **48.345 Disposition of child or unborn child of child expectant mother adjudged in need of protection or services.** If the judge finds that the child is in need of protection or services or that the unborn child of a child expectant mother is in need of protection or services, the judge shall enter an order deciding one or more of the dispositions of the case as provided in this section under a care and treatment plan, except that the order may not place any child not specifically found under chs. 46, 49, 51, 115 and 880 to be developmentally disabled, mentally ill or to have a disability specified in s. 115.76(5) in facilities which exclusively treat those categories of children and the court may not place any child expectant mother of an unborn child in need of protection or services outside of the child expectant mother's home unless the court finds that the child expectant mother is refusing or has refused to accept any alcohol or other drug abuse services offered to her or is not making or has not made a good faith effort to participate in any alcohol or other drug abuse services offered to her. The dispositions under this section are as follows:

**48.345(3)** Designate one of the following as the placement for the child:

(cm) A group home described in s. 48.625(1m) if the child is at least 12 years of age, is a custodial parent, as defined in s. 49.141(1)(b), or an expectant mother, is receiving inadequate care, and is in need of a safe and structured living arrangement.

**48.345(6)(a)** If the child is in need of special treatment or care, as identified in an evaluation under s. 48.295 and the report

under s. 48.33, the judge may order the child's parent to provide the special treatment or care. If the parent fails or is financially unable to provide the special treatment or care, the judge may order an appropriate agency to provide the special treatment or care whether or not legal custody has been taken from the parents. If a judge orders a county department under s. 51.42 or 51.437 to provide special treatment or care under this paragraph, the provision of that special treatment or care shall be subject to conditions specified in ch. 51. An order of special treatment or care under this paragraph may not include an order for the administration of psychotropic drugs.

(b) Payment for the special treatment or care that relates to alcohol and other drug abuse services ordered under par. (a) shall be in accordance with s. 48.361.

(c) Payment for services provided under ch. 51 that are ordered under par. (a), other than alcohol and other drug abuse services, shall be in accordance with s. 48.362.

• **48.38 Permanency planning. (2)** Permanency Plan Required. Except as provided in sub. (3), for each child living in a foster home, treatment foster home, group home, residential care center for children and youth, secure detention facility, or shelter care facility, the agency that placed the child or arranged the placement or the agency assigned primary responsibility for providing services to the child under s. 48.355 shall prepare a written permanency plan, if any of the following conditions exists, and, for each child living in the home of a relative other than a parent, that agency shall prepare a written permanency plan, if any of the conditions specified in pars. (a) to (e) exists:

(a) The child is being held in physical custody under s. 48.207, 48.208 or 48.209.

(b) The child is in the legal custody of the agency.

(c) The child is under the supervision of an agency under s. 48.64(2), under a consent decree under s. 48.32(1)(b), or under a court order under s. 48.355.

(d) The child was placed under a voluntary agreement between the agency and the child's parent under s. 48.63(1) or (5)(b).

(e) The child is under the guardianship of the agency.

(f) The child's care would be paid for under s. 49.19 but for s. 49.19(20).

(g) The child's parent is placed in a foster home, treatment foster home, group home, residential care center for children and youth, secure detention facility, or shelter care facility and the child is residing with that parent.

• **48.56 Child welfare services in counties having populations of less than 500,000. (1)** Each county having a population of less than 500,000 shall provide child welfare services through its county department.

• **48.57 Powers and duties of department and county departments providing child welfare services. (1)** Each county department shall administer and expend such amounts as may be necessary out of any moneys which may be appropriated for child welfare purposes by the county board of supervisors or by the legislature, which may be donated by individuals or private organizations or which may be otherwise provided. The department shall have the authority specified in s. 48.48(17). A county department shall have the authority:

(a) To investigate the conditions surrounding nonmarital children, children in need of protection or services, including developmentally disabled children, and unborn children in need of protection or services within the county and to take every reasonable action within its power to secure for them the full benefit of all laws enacted for their benefit. Unless provided by another agency, the county department shall offer social services to the caretaker of any child, and to the expectant mother of any unborn child, who is referred to it under the conditions specified in this paragraph. This duty shall be discharged in cooperation with the court and with the public officers or boards legally responsible for the administration and enforcement of those laws.

(b) To accept legal custody of children transferred to it by the court under s. 48.355, to accept supervision over expectant mothers of unborn children who are placed under its supervision under s. 48.355 and to provide special treatment or care for children and expectant mothers if ordered by the court. A court

may not order a county department to administer psychotropic medications to children and expectant mothers who receive special treatment or care under this paragraph.

(c) To provide appropriate protection and services for children and the expectant mothers of unborn children in its care, including providing services for those children and their families and for those expectant mothers in their own homes, placing those children in licensed foster homes, treatment foster homes or group homes in this state or another state within a reasonable proximity to the agency with legal custody or contracting for services for those children by licensed child welfare agencies, except that the county department may not purchase the educational component of private day treatment programs unless the county department, the school board as defined in s. 115.001(7) and the state superintendent of public instruction all determine that an appropriate public education program is not available. Disputes between the county department and the school district shall be resolved by the state superintendent of public instruction.

(d) To provide for the moral and religious training of children in its care according to the religious belief of the child or of his or her parents.

(e) If a county department in a county with a population of 500,000 or more and if contracted to do so by the department, to place children in a county children's home in the county under policies adopted by the county board of supervisors, to accept guardianship of children when appointed by the court and to place children under its guardianship for adoption.

(f) To provide services to the court under s. 48.06.

(g) Upon request of the department of health and family services or the department of corrections, to provide service for any child or expectant mother of an unborn child in the care of those departments.

(h) To contract with any parent or guardian or other person for the care and maintenance of any child.

(hm) If a county department in a county with a population of less than 500,000, to accept guardianship, when appointed by the court, of a child whom the county department has placed in a foster home or treatment foster home under a court order or voluntary agreement under s. 48.63 and to place that child under its guardianship for adoption by the foster parent or treatment foster parent.

(i) To license foster homes or treatment foster homes in accordance with s. 48.75.

(j) To use in the media a picture or description of a child in its guardianship for the purpose of finding adoptive parents for that child.

**48.57(2)** In performing the functions specified in sub. (1) the county department may avail itself of the cooperation of any individual or private agency or organization interested in the social welfare of children and unborn children in the county.

**48.57(3)(a)** From the reimbursement received under s. 46.495(1)(d), counties may provide funding for the maintenance of any child who:

1. Is 18 years of age or older;
2. Is enrolled in and regularly attending a secondary education classroom program leading to a high school diploma;
3. Received funding under s. 46.495(1)(d) immediately prior to his or her 18th birthday; and
4. Is living in a foster home, treatment foster home, group home, or residential care center for children and youth.

(b) The funding provided for the maintenance of a child under par. (a) shall be in an amount equal to that which the child would receive under s. 46.495(1)(d) if the child were 17 years of age.

**48.57(3m)(a)** In this subsection:

1. "Child" means a person under 18 years of age or a person 18 years of age or over, but under 19 years of age, who is a full-time student in good academic standing at a secondary school or its vocational or technical equivalent and who is reasonably expected to complete his or her program of study and be granted a high school or high school equivalency diploma.

2. "Kinship care relative" means a stepparent, brother, sister, stepbrother, stepsister, first cousin, nephew, niece, aunt, uncle or any person of a preceding generation as denoted by the prefix of grand, great or great-great, whether by blood, marriage or legal adoption, or the spouse of any person named in this paragraph,

even if the marriage is terminated by death or divorce.

(am) From the appropriation under s. 20.435(3)(kc), the department shall reimburse counties having populations of less than 500,000 for payments made under this subsection and shall make payments under this subsection in a county having a population of 500,000 or more. A county department and, in a county having a population of 500,000 or more, the department shall make payments in the amount of \$215 per month to a kinship care relative who is providing care and maintenance for a child if all of the following conditions are met:

1. The kinship care relative applies to the county department or department for payments under this subsection and the county department or department determines that there is a need for the child to be placed with the kinship care relative and that the placement with the kinship care relative is in the best interests of the child.

2. The county department or department determines that the child meets one or more of the criteria specified in s. 48.13 or 938.13, that the child would be at risk of meeting one or more of those criteria if the child were to remain in his or her home or, if the child is 18 years of age or over, that the child would meet or be at risk of meeting one or more of those criteria as specified in this subdivision if the child were under 18 years of age.

4. The county department or department conducts a background investigation under sub. (3p) of the kinship care relative, any employee and prospective employee of the kinship care relative who has or would have regular contact with the child for whom the payments would be made and any other adult resident of the kinship care relative's home to determine if the kinship care relative, employee, prospective employee or adult resident has any arrests or convictions that could adversely affect the child or the kinship care relative's ability to care for the child.

4m. Subject to sub. (3p)(fm)1. and 2., the kinship care relative states that he or she does not have any arrests or convictions that could adversely affect the child or the kinship care relative's ability to care for the child and that no adult resident, as defined in sub. (3p)(a), and no employee or prospective employee of the kinship care relative who would have regular contact with the child has any arrests or convictions that could adversely affect the child or the kinship care relative's ability to care for the child.

5. The kinship care relative cooperates with the county department or department in the application process, including applying for other forms of assistance for which the child may be eligible.

5m. The kinship care relative is not receiving payments under sub. (3n) with respect to the child.

6. The child for whom the kinship care relative is providing care and maintenance is not receiving supplemental security income under 42 USC 1381 to 1383c or state supplemental payments under s. 49.77.

(ar) The department shall promulgate rules to provide assessment criteria for determining whether a kinship care relative who is providing care and maintenance for a child is eligible to receive payments under par. (am). The rules shall also provide that any criteria established under the rules shall first apply to applications for payments under par. (am) received, and to reviews under par. (d) conducted, on the effective date of those rules.

**Cross Reference:** See also ch. HFS 58, Wis. adm. code.

(b)1. The county department or, in a county having a population of 500,000 or more, the department shall refer to the attorney responsible for support enforcement under s. 59.53(6)(a) the name of the parent or parents of a child for whom a payment is made under par. (am).

2. When any kinship care relative of a child applies for or receives payments under this subsection, any right of the child or the child's parent to support or maintenance from any other person, including any right to unpaid amounts accrued at the time of application and any right to amounts accruing during the time that payments are made under this subsection, is assigned to the state. If a child who is the beneficiary of a payment under this subsection is also the beneficiary of support under a judgment or order that includes support for one or more children who are not the beneficiaries of payments under this subsection, any support

payment made under the judgment or order is assigned to the state in the amount that is the proportionate share of the child who is the beneficiary of the payment made under this subsection, except as otherwise ordered by the court on the motion of a party.

(c) The county department or, in a county having a population of 500,000 or more, the department shall require the parent or parents of a child for whom a payment is made under par. (am) to initiate or continue health care insurance coverage for the child.

(cm) A kinship care relative who receives a payment under par. (am) for providing care and maintenance for a child is not eligible to receive a payment under sub. (3n) or s. 48.62(4) for that child.

(d) A county department or, in a county having a population of 500,000 or more, the department shall review a placement of a child for which the county department or department makes payments under par. (am) not less than every 12 months after the county department or department begins making those payments to determine whether the conditions specified in par. (am) continue to exist. If those conditions do not continue to exist, the county department or department shall discontinue making those payments.

(e) The department shall determine whether the child is eligible for medical assistance under ss. 49.43 to 49.47.

(f) Any person whose application for payments under par. (am) is not acted on promptly or is denied on the grounds that a condition specified in par. (am)1., 2., 5. or 6. has not been met and any person whose payments under par. (am) are discontinued under par. (d) may petition the department under par. (g) for a review of that action or failure to act. Review is unavailable if the action or failure to act arose more than 45 days before submission of the petition for review.

(g)1. Upon receipt of a timely petition under par. (f) the department shall give the applicant or recipient reasonable notice and an opportunity for a fair hearing. The department may make such additional investigation as it considers necessary. Notice of the hearing shall be given to the applicant or recipient and to the county department or subunit of the department whose action or failure to act is the subject of the petition. That county department or subunit of the department may be represented at the hearing. The department shall render its decision as soon as possible after the hearing and shall send a certified copy of its decision to the applicant or recipient and to the county department or subunit of the department whose action or failure to act is the subject of the petition. The decision of the department shall have the same effect as an order of the county department or subunit of the department whose action or failure to act is the subject of the petition. The decision shall be final, but may be revoked or modified as altered conditions may require. The department shall deny a petition for review or shall refuse to grant relief if any of the following applies:

a. The petitioner withdraws the petition in writing.

b. The sole issue in the petition concerns an automatic payment adjustment or change that affects an entire class of recipients and is the result of a change in state law.

c. The petitioner abandons the petition. Abandonment occurs if the petitioner fails to appear in person or by a representative at a scheduled hearing without good cause, as determined by the department.

2. If a recipient requests a hearing within 10 days after the date of notice that his or her payments under par. (am) are being discontinued, those payments may not be discontinued until a decision is rendered after the hearing but payments made pending the hearing decision may be recovered by the department if the contested action or failure to act is upheld. The department shall promptly notify the county department of the county in which the recipient resides or, if the recipient resides in a county having a population of 500,000 or more, the subunit of the department administering of the kinship care program in that county that the recipient has requested a hearing. Payments under par. (am) shall be discontinued if any of the following applies:

a. The recipient is contesting a state law or a change in state law and not the determination of the payment made on the recipient's behalf.

b. The recipient is notified of a change in his or her payments under par. (am) while the hearing decision is pending but the recipient fails to request a hearing on the change.

3. The recipient shall be promptly informed in writing if his or her payments under par. (am) are to be discontinued pending the hearing decision.

**48.57(3n) (a)** In this subsection:

1. "Child" means a person under 18 years of age or a person 18 years of age or over, but under 19 years of age, who is a full-time student in good academic standing at a secondary school or its vocational or technical equivalent and who is reasonably expected to complete his or her program of study and be granted a high school or high school equivalency diploma.

2. "Long-term kinship care relative" means a stepparent, brother, sister, stepbrother, stepsister, first cousin, nephew, niece, aunt, uncle or any person of a preceding generation as denoted by the prefix of grand, great or great-great, whether by blood, marriage or legal adoption, or the spouse of any person named in this paragraph, even if the marriage is terminated by death or divorce.

(am) From the appropriation under s. 20.435(3)(kc), the department shall reimburse counties having populations of less than 500,000 for payments made under this subsection and shall make payments under this subsection in a county having a population of 500,000 or more. A county department and, in a county having a population of 500,000 or more, the department shall make monthly payments for each child in the amount specified in sub. (3m)(am)(intro.) to a long-term kinship care relative who is providing care and maintenance for that child if all of the following conditions are met:

1. The long-term kinship care relative applies to the county department or department for payments under this subsection and provides proof that he or she has been appointed as the guardian of the child under s. 48.977(2).

2. The county department or department inspects the long-term kinship care relative's home, interviews the long-term kinship care relative and determines that long-term placement with the long-term kinship care relative is in the best interests of the child.

4. The county department or department conducts a background investigation under sub. (3p) of the long-term kinship care relative, the employees and prospective employees of the long-term kinship care relative who have or would have regular contact with the child for whom the payments would be made and any other adult resident, as defined in sub. (3p)(a), of the long-term kinship care relative's home to determine if the long-term kinship care relative, employee, prospective employee or adult resident has any arrests or convictions that are likely to adversely affect the child or the long-term kinship care relative's ability to care for the child.

4m. Subject to sub. (3p)(fm)1m. and 2m., the long-term kinship care relative states that he or she does not have any arrests or convictions that could adversely affect the child or the long-term kinship care relative's ability to care for the child and that, to the best of the long-term kinship care relative's knowledge, no adult resident, as defined in sub. (3p)(a), and no employee or prospective employee of the long-term kinship care relative who would have regular contact with the child has any arrests or convictions that could adversely affect the child or the long-term kinship care relative's ability to care for the child.

5. The long-term kinship care relative cooperates with the county department or department in the application process, including applying for other forms of assistance for which the child may be eligible.

5m. The long-term kinship care relative is not receiving payments under sub. (3m) with respect to the child.

5r. The child for whom the long-term kinship care relative is providing care and maintenance is not receiving supplemental security income under 42 USC 1381 to 1383c or state supplemental payments under s. 49.77.

6. The long-term kinship care relative and the county department or department enter into a written agreement under which the long-term kinship care relative agrees to provide care and maintenance for the child and the county department or department agrees, subject to sub. (3p)(hm), to make monthly payments to the long-term kinship care relative at the rate specified in sub. (3m)(am)(intro.) until the earliest of the following:

a. The date on which the child attains the age of 18 years or, if on that date the child is a full-time student in good academic

standing at a secondary school or its vocational or technical equivalent and is reasonably expected to complete his or her program of study and be granted a high school or high school equivalency diploma, the date on which the child is granted a high school or high school equivalency diploma or the date on which the child attains the age of 19 years, whichever occurs first.

b. The date on which the child dies.

c. The date on which the child is placed outside the long-term kinship care relative's home under a court order or under a voluntary agreement under s. 48.63(1) or (5)(b).

d. The date on which the child ceases to reside with the long-term kinship care relative.

e. The date on which the long-term kinship care's guardianship under s. 48.977 terminates.

f. The date on which the child moves out of the state.

(ar) Subject to sub. (3p)(fm)1m. and (hm), a county department or, in a county having a population of 500,000 or more, the department shall enter into an agreement under par. (am) 6. if all of the following conditions are met:

1. All of the conditions in par. (am)1. to 5r. are met.

2. The applicant has expressed a willingness to enter into the agreement.

(b)1. The county department or, in a county having a population of 500,000 or more, the department shall refer to the attorney responsible for support enforcement under s. 59.53(6)(a) the name of the parent or parents of a child for whom a payment is made under par. (am).

2. When any long-term kinship care relative of a child applies for or receives payments under this subsection, any right of the child or the child's parent to support or maintenance from any other person, including any right to unpaid amounts accrued at the time of application and any right to amounts accruing during the time that payments are made under this subsection, is assigned to the state. If a child is the beneficiary of support under a judgment or order that includes support for one or more children who are not the beneficiaries of payments under this subsection, any support payment made under the judgment or order is assigned to the state in the amount that is the proportionate share of the child who is the beneficiary of the payment made under this subsection, except as otherwise ordered by the court on the motion of a party.

(c) The county department or, in a county having a population of 500,000 or more, the department shall require the parent or parents of a child for whom a payment is made under par. (am) to initiate or continue health care insurance coverage for the child.

(cm) A long-term kinship care relative who receives a payment under par. (am) for providing care and maintenance for a child is not eligible to receive a payment under sub. (3m) or s. 48.62(4) for that child.

(d) The county department or, in a county having a population of 500,000 or more, the department shall, at least once every 12 months after the county department or department begins making payments under this subsection, determine whether any of the events specified in par. (am)6.a. to f. have occurred. If any such events have occurred, the county department or department shall discontinue making those payments.

(e) The department shall determine whether the child is eligible for medical assistance under ss. 49.43 to 49.47.

(f) Any person whose application for payments under par. (am) is not acted on promptly or is denied on the grounds that a condition specified in par. (am)1., 2., 5., 5m. or 5r. has not been met and any person whose payments under par. (am) are discontinued under par. (d) may petition the department under par. (g) for a review of that action or failure to act. Review is unavailable if the action or failure to act arose more than 45 days before submission of the petition for review.

(g)1. Upon receipt of a timely petition under par. (f) the department shall give the applicant or recipient reasonable notice and an opportunity for a fair hearing. The department may make such additional investigation as it considers necessary. Notice of the hearing shall be given to the applicant or recipient and to the county department or subunit of the department whose action or failure to act is the subject of the petition. That county department or subunit of the department may be represented at the hearing. The department shall render its decision as soon as possible after

the hearing and shall send a certified copy of its decision to the applicant or recipient and to the county department or subunit of the department whose action or failure to act is the subject of the petition. The decision of the department shall have the same effect as an order of the county department or subunit of the department whose action or failure to act is the subject of the petition. The decision shall be final, but may be revoked or modified as altered conditions may require. The department shall deny a petition for review or shall refuse to grant relief if any of the following applies:

- a. The petitioner withdraws the petition in writing.
- b. The sole issue in the petition concerns an automatic payment adjustment or change that affects an entire class of recipients and is the result of a change in state law.
- c. The petitioner abandons the petition. Abandonment occurs if the petitioner fails to appear in person or by a representative at a scheduled hearing without good cause, as determined by the department.

2. If a recipient requests a hearing within 10 days after the date of notice that his or her payments under par. (am) are being discontinued, those payments may not be discontinued until a decision is rendered after the hearing but payments made pending the hearing decision may be recovered by the department if the contested action or failure to act is upheld. The department shall promptly notify the county department of the county in which the recipient resides or, if the recipient resides in a county having a population of 500,000 or more, the subunit of the department administering the long-term kinship care program in that county that the recipient has requested a hearing. Payments under par. (am) shall be discontinued if any of the following applies:

- a. The recipient is contesting a state law or a change in state law and not the determination of the payment made on the recipient's behalf.
  - b. The recipient is notified of a change in his or her payments under par. (am) while the hearing decision is pending but the recipient fails to request a hearing on the change.
3. The recipient shall be promptly informed in writing if his or her payments under par. (am) are to be discontinued pending the hearing decision.

**48.57(3p)(a)** In this subsection, "adult resident" means a person 18 years of age or over who lives at the home of a person who has applied for or is receiving payments under sub. (3m) or (3n) with the intent of making that home his or her home or who lives for more than 30 days cumulative in any 6-month period at the home of a person who has applied for or is receiving payments under sub. (3m) or (3n).

(b)1. After receipt of an application for payments under sub. (3m) or (3n), the county department or, in a county having a population of 500,000 or more, the department of health and family services, with the assistance of the department of justice, shall conduct a background investigation of the applicant.

2. The county department or, in a county having a population of 500,000 or more, the department of health and family services, with the assistance of the department of justice, may conduct a background investigation of any person who is receiving payments under sub. (3m) at the time of review under sub. (3m)(d) or at any other time that the county department or department of health and family services considers to be appropriate.

3. The county department or, in a county having a population of 500,000 or more, the department of health and family services, with the assistance of the department of justice, may conduct a background investigation of any person who is receiving payments under sub. (3n) at any time that the county department or department of health and family services considers to be appropriate.

(c)1. After receipt of an application for payments under sub. (3m) or (3n), the county department or, in a county having a population of 500,000 or more, the department of health and family services, with the assistance of the department of justice, shall, in addition to the investigation under par. (b)1., conduct a background investigation of all employees and prospective employees of the applicant who have or would have regular contact with the child for whom those payments are being made

and of each adult resident.

2. The county department or, in a county having a population of 500,000 or more, the department of health and family services, with the assistance of the department of justice, may conduct a background investigation of any of the employees or prospective employees of any person who is receiving payments under sub. (3m) who have or would have regular contact with the child for whom those payments are being made and of each adult resident at the time of review under sub. (3m)(d) or at any other time that the county department or department of health and family services considers to be appropriate.

2m. The county department or, in a county having a population of 500,000 or more, the department of health and family services, with the assistance of the department of justice, may conduct a background investigation of any of the employees or prospective employees of any person who is receiving payments under sub. (3n) who have or would have regular contact with the child for whom payments are being made and of each adult resident at any time that the county department or department of health and family services considers to be appropriate.

3. Before a person who is receiving payments under sub. (3m) or (3n) may employ any person in a position in which that person would have regular contact with the child for whom those payments are being made or permit any person to be an adult resident, the county department or, in a county having a population of 500,000 or more, the department of health and family services, with the assistance of the department of justice, shall conduct a background investigation of the prospective employee or prospective adult resident unless that person has already been investigated under subd. 1., 2. or 2m.

(d) If the person being investigated under par. (b) or (c) is a nonresident, or at any time within the 5 years preceding the date of the application has been a nonresident, or if the county department or, in a county having a population of 500,000 or more, the department of health and family services determines that the person's employment, licensing or state court records provide a reasonable basis for further investigation, the county department or department of health and family services shall require the person to be fingerprinted on 2 fingerprint cards, each bearing a complete set of the person's fingerprints. The department of justice may provide for the submission of the fingerprint cards to the federal bureau of investigation for the purposes of verifying the identity of the person fingerprinted and obtaining records of his or her criminal arrest and conviction.

(e) Upon request, a person being investigated under par. (b) or (c) shall provide the county department or, in a county having a population of 500,000 or more, the department of health and family services with all of the following information:

1. The person's name.
2. The person's social security number.
3. Other identifying information, including the person's birthdate, gender, race and any identifying physical characteristics.
4. Information regarding the conviction record of the person under the law of this state or any other state or under federal law. This information shall be provided on a notarized background verification form that the department shall provide by rule.

(fm)1. The county department or, in a county having a population of 500,000 or more, the department of health and family services may provisionally approve the making of payments under sub. (3m) based on the applicant's statement under sub. (3m)(am)4m. The county department or department of health and family services may not finally approve the making of payments under sub. (3m) unless the county department or department of health and family services receives information from the department of justice indicating that the conviction record of the applicant under the law of this state is satisfactory according to the criteria specified in par. (g)1. to 3. or payment is approved under par. (h)4. The county department or department of health and family services may make payments under sub. (3m) conditioned on the receipt of information from the federal bureau of investigation indicating that the person's conviction record under the law of any other state or under federal law is satisfactory according to the criteria specified in par. (g)1. to 3.

1m. The county department or, in a county having a population of 500,000 or more, the department of health and family

services may not enter into the agreement under sub. (3n)(am)6. unless the county department or department of health and family services receives information from the department of justice relating to the conviction record of the applicant under the law of this state and that record indicates either that the applicant has not been arrested or convicted or that the applicant has been arrested or convicted but the director of the county department or, in a county having a population of 500,000 or more, the person designated by the secretary of health and family services to review conviction records under this subdivision determines that the conviction record is satisfactory because it does not include any arrest or conviction that the director or person designated by the secretary determines is likely to adversely affect the child or the long-term kinship care relative's ability to care for the child. The county department or, in a county having a population of 500,000 or more, the department of health and family services may make payments under sub. (3n) conditioned on the receipt of information from the federal bureau of investigation indicating that the person's conviction record under the law of any other state or under federal law is satisfactory because the conviction record does not include any arrest or conviction that the director of the county department or, in a county having a population of 500,000 or more, the person designated by the secretary of health and family services to review conviction records under this subdivision determines is likely to adversely affect the child or the long-term kinship care relative's ability to care for the child.

2. A person receiving payments under sub. (3m) may provisionally employ a person in a position in which that person would have regular contact with the child for whom those payments are being made or provisionally permit a person to be an adult resident if the person receiving those payments states to the county department or, in a county having a population of 500,000 or more, the department of health and family services that the employee or adult resident does not have any arrests or convictions that could adversely affect the child or the ability of the person receiving payments to care for the child. A person receiving payments under sub. (3m) may not finally employ a person in a position in which that person would have regular contact with the child for whom those payments are being made or finally permit a person to be an adult resident until the county department or, in a county having a population of 500,000 or more, the department of health and family services receives information from the department of justice indicating that the person's conviction record under the law of this state is satisfactory according to the criteria specified in par. (g)1. to 3. and the county department or, in a county having a population of 500,000 or more, the department of health and family services so advises the person receiving payments under sub. (3m) or until a decision is made under par. (h) 4. to permit a person who is receiving payments under sub. (3m) to employ a person in a position in which that person would have regular contact with the child for whom payments are being made or to permit a person to be an adult resident and the county department or, in a county having a population of 500,000 or more, the department of health and family services so advises the person receiving payments under sub. (3m). A person receiving payments under sub. (3m) may finally employ a person in a position in which that person would have regular contact with the child for whom those payments are being made or finally permit a person to be an adult resident conditioned on the receipt of information from the county department or, in a county having a population of 500,000 or more, the department of health and family services that the federal bureau of investigation indicates that the person's conviction record under the law of any other state or under federal law is satisfactory according to the criteria specified in par. (g)1. to 3.

2m. A person receiving payments under sub. (3n) may provisionally employ a person in a position in which that person would have regular contact with the child for whom those payments are being made or provisionally permit a person to be an adult resident if the person receiving those payments states to the county department or, in a county having a population of 500,000 or more, the department of health and family services that, to the best of his or her knowledge, the employee or adult resident does not have any arrests or convictions that could

adversely affect the child or the ability of the person receiving payments to care for the child. A person receiving payment under sub. (3n) may not finally employ a person in a position in which that person would have regular contact with the child for whom those payments are being made or finally permit a person to be an adult resident until the county department or, in a county having a population of 500,000 or more, the department of health and family services receives information from the department of justice relating to the person's conviction record under the law of this state and that record indicates either that the person has not been arrested or convicted or that the person has been arrested or convicted but the director of the county department or, in a county having a population of 500,000 or more, the person designated by the secretary of health and family services to review conviction records under this subdivision determines that the conviction record is satisfactory because it does not include any arrest or conviction that is likely to adversely affect the child or the long-term kinship care relative's ability to care for the child and the county department or department of health and family services so advises the person receiving payments under sub. (3n). A person receiving payments under sub. (3n) may finally employ a person in a position in which that person would have regular contact with the child for whom those payments are being made or finally permit a person to be an adult resident conditioned on the receipt of information from the county department or, in a county having a population of 500,000 or more, the department of health and family services that the federal bureau of investigation indicates that the person's conviction record under the law of any other state or under federal law is satisfactory because the conviction record does not include any arrest or conviction that the director of the county department or, in a county having a population of 500,000 or more, the person designated by the secretary of health and family services to review conviction records under this subdivision determines is likely to adversely affect the child or the long-term kinship care relative's ability to care for the child.

(g) Except as provided in par. (h), the county department or, in a county having a population of 500,000 or more, the department of health and family services may not make payments to a person applying for payments under sub. (3m) and a person receiving payments under sub. (3m) may not employ a person in a position in which that person would have regular contact with the child for whom those payments are being made or permit a person to be an adult resident if any of the following applies:

1. The person has been convicted of a violation of ch. 961 that is punishable as a felony or of a violation of the law of any other state or federal law that would be a violation of ch. 961 that is punishable as a felony if committed in this state.

2. The person has had imposed on him or her a penalty specified in s. 939.64, 1999 stats., or s. 939.641, 1999 stats., or s. 939.62, 939.621, 939.63 or 939.645 or has been convicted of a violation of the law of any other state or federal law under circumstances under which the person would be subject to a penalty specified in any of those sections if convicted in this state.

3. The person has been convicted of a violation of ch. 940, 944 or 948, other than a violation of s. 940.291, 940.34, 944.36, 948.45, 948.63 or 948.70, or of a violation of the law of any other state or federal law that would be a violation of ch. 940, 944 or 948, other than a violation of s. 940.291, 940.34, 944.36, 948.45, 948.63 or 948.70, if committed in this state, except that a county department or, in a county having a population of 500,000 or more, the department of health and family services may make payments to a person applying for payments under sub. (3m) and a person receiving payments under sub. (3m) may employ in a position in which the person would have regular contact with the child for whom those payments are being made or permit to be an adult resident a person who has been convicted of a violation of s. 944.30, 944.31 or 944.33 or of a violation of the law of any other state or federal law that would be a violation of s. 944.30, 944.31 or 944.33 if committed in this state, if that violation occurred 20 years or more before the date of the investigation.

(h)1. A person who is denied payments under sub. (3m) for a reason specified in par. (g)1., 2. or 3. or a person who is prohibited from employing a person in a position in which that person would have regular contact with the child for whom payments under sub. (3m) are being made from permitting a person to be an adult

resident for a reason specified in par. (g) 1., 2. or 3. may request that the denial of payments or the prohibition on employment or being an adult resident be reviewed.

2. The request for review shall be filed with the director of the county department or, in a county having a population of 500,000 or more, with the person designated by the secretary of health and family services to receive requests for review filed under this subdivision. If the governing body of a federally recognized American Indian tribe or band has entered into an agreement under sub. (3t) to administer the program under this subsection and sub. (3m), the request for review shall be filed with the person designated by that governing body to receive requests for review filed under this subdivision.

3. The director of the county department, the person designated by the governing body of a federally recognized American Indian tribe or band or, in a county having a population of 500,000 or more, the person designated by the secretary of health and family services shall review the denial of payments or the prohibition on employment or being an adult resident to determine if the conviction record on which the denial or prohibition is based includes any arrests, convictions or penalties that are likely to adversely affect the child or the ability of the kinship care relative to care for the child. In reviewing the denial or prohibition, the director of the county department, the person designated by the governing body of the federally recognized American Indian tribe or band or the person designated by the secretary of health and family services shall consider, but not be limited to, all of the following factors:

a. The length of time between the date of the arrest, conviction or of the imposition of the penalty and the date of the review.

b. The nature of the violation or penalty and how that violation or penalty affects the ability of the kinship care relative to care for the child.

c. Whether making an exception to the denial or prohibition would be in the best interests of the child.

4. If the director of the county department, the person designated by the governing body of the federally recognized American Indian tribe or band or, in a county having a population of 500,000 or more, the person designated by the secretary of health and family services determines that the conviction record on which the denial of payments or the prohibition on employment or being an adult resident is based does not include any arrests, convictions or penalties that are likely to adversely affect the child or the ability of the kinship care relative to care for the child, the director of the county department, the person designated by the governing body of the federally recognized American Indian tribe or band or the person designated by the secretary of health and family services may approve the making of payments under sub. (3m) or may permit a person receiving payments under sub. (3m) to

employ a person in a position in which that person would have regular contact with the child for whom payments are being made or permit a person to be an adult resident.

5. A decision under this paragraph is not subject to review under ch. 227.

(hm) A county department or, in a county having a population of 500,000 or more, the department may not make payments to a person under sub. (3n) and a person receiving payments under sub. (3n) may not employ a person in a position in which that person would have regular contact with the child for whom payments are being made or permit a person to be an adult resident if the director of the county department or, in a county having a population of 500,000 or more, the person designated by the secretary to review conviction records under this paragraph determines that the person has any arrest or conviction that is likely to adversely affect the child or the long-term kinship care relative's ability to care for the child.

(i) A county department and, in a county having a population of 500,000 or more, the department of health and family services shall keep confidential all information received under this subsection from the department of justice or the federal bureau of investigation. Such information is not subject to inspection or copying under s. 19.35.

(j) A county department or, in a county having a population

of 500,000 or more, the department of health and family services may charge a fee for conducting a background investigation under this subsection. The fee may not exceed the reasonable cost of conducting the investigation.

**48.57(3t)** Notwithstanding subs. (3m), (3n) and (3p), the department may enter into an agreement with the governing body of a federally recognized American Indian tribe or band to allow that governing body to administer the program under subs. (3m), (3n) and (3p) within the boundaries of that reservation. Any agreement under this subsection relating to the administration of the program under sub. (3m) shall specify the person with whom a request for review under sub. (3p)(h)2. may be filed and the person who has been designated by the governing body to conduct the review under sub. (3p)(h)3. and make the determination under sub. (3p)(h)4. Any agreement under this subsection relating to the administration of the program under sub. (3n) shall specify who is to make any determination as to whether a conviction record is satisfactory.

• **48.60 Child welfare agencies licensed.** (1) No person may receive children, with or without transfer of legal custody, to provide care and maintenance for 75 days in any consecutive 12 months' period for 4 or more such children at any one time unless that person obtains a license to operate a child welfare agency from the department. To obtain a license under this subsection to operate a child welfare agency, a person must meet the minimum requirements for a license established by the department under s. 48.67, meet the requirements specified in s. 48.685 and pay the applicable license fee under s. 48.615(1)(a) or (b). A license issued under this subsection is valid until revoked or suspended, but shall be reviewed every 2 years as provided in s. 48.66(5).

**48.60(2)** This section does not include:

(a) A relative or guardian who provides care and maintenance for such children.

(b) A bona fide educational institution whose pupils, in the ordinary course of events, return annually to the homes of their parents or guardians for not less than 2 months of summer vacation.

(c) A public agency.

(d) A hospital or nursing home licensed, approved or supervised by the department.

(e) A licensed foster home or a licensed treatment foster home.

(f) Institutions for mentally deficient children, which institutions have a full-time child population of not less than 150 children and which are subject to examination as provided in s. 46.03(5).

(g) A licensed group home.

**48.60(3)** Before issuing or continuing any license to a child welfare agency under this section, the department of health and family services shall review the need for the additional placement resources that would be made available by licensing or continuing the license of any child welfare agency after August 5, 1973, providing care authorized under s. 48.61(3). Neither the department of health and family services nor the department of corrections may make any placements to any child welfare agency where the departmental review required under this subsection has failed to indicate the need for the additional placement resources.

**48.60(4)(a)** In this subsection, "child with a disability" has the meaning given in s. 115.76(5).

(b) Notwithstanding ss. 121.78(3)(a) and 121.79(1)(a), a child welfare agency shall pay for the costs incurred by a school district in providing special education and related services to a child with a disability who has been placed with the child welfare agency under the interstate compact on the placement of children under s. 48.988.

**48.60(5)(a)** No later than 24 hours after the death of a child who resided in a residential care center for children and youth operated by a child welfare agency, the child welfare agency shall report the death to the department if one of the following applies:

1. There is reasonable cause to believe that the death was related to the use of physical restraint or a psychotropic medication for the child.

3. There is reasonable cause to believe that the death was a suicide.

(c) No later than 14 days after the date of the death reported

under par. (a), the department shall investigate the death.

- **48.61 Powers and duties of child welfare agencies.** A child welfare agency shall have authority:

(3) To provide appropriate care and training for children in its legal or physical custody and, if licensed to do so, to place children in licensed foster homes, licensed treatment foster homes and licensed group homes.

- **48.615 Child welfare agency licensing fees.** (1)(a) Before the department may issue a license under s. 48.60(1) to a child welfare agency that regularly provides care and maintenance for children within the confines of a residential care center for children and youth operated by the child welfare agency, the child welfare agency must pay to the department a biennial fee of \$121, plus a biennial fee of \$18.15 per child, based on the number of children that the child welfare agency is licensed to serve.

(b) Before the department may issue a license under s. 48.60(1) to a child welfare agency that places children in licensed foster homes, licensed treatment foster homes and licensed group homes, the child welfare agency must pay to the department a biennial fee of \$254.10

(c) A child welfare agency that wishes to continue a license issued under s. 48.60(1) shall pay the applicable fee under par. (a) or (b) by the continuation date of the license.

(d) A new child welfare agency shall pay the applicable fee under par. (a) or (b) no later than 30 days before the opening of the child welfare agency.

**48.615(2)** A child welfare agency that wishes to continue a license issued under s. 48.60(1) and that fails to pay the applicable fee under sub. (1)(a) or (b) by the continuation date of the license or a new child welfare agency that fails to pay the applicable fee under sub. (1)(a) or (b) by 30 days before the opening of the child welfare agency shall pay an additional fee of \$5 per day for every day after the deadline that the agency fails to pay the fee.

- **48.619 Definition.** In this subchapter, "child" means a person under 18 years of age and also includes, for purposes of counting the number of children for whom a foster home, treatment foster home, or group home may provide care and maintenance, a person 18 years of age or over, but under 19 years of age, who is a full-time student at a secondary school or its vocational or technical equivalent, who is reasonably expected to complete the program before reaching 19 years of age, who was residing in the foster home, treatment foster home, or group home immediately prior to his or her 18th birthday, and who continues to reside in that foster home, treatment foster home, or group home.

- **48.625 Licensing of group homes; fees.** (1) Any person who receives, with or without transfer of legal custody, 5 to 8 children, not including children who under sub. (1m) are not counted toward that number, to provide care and maintenance for those children shall obtain a license to operate a group home from the department. To obtain a license under this subsection to operate a group home, a person must meet the minimum requirements for a license established by the department under s. 48.67, meet the requirements specified in s. 48.685 and pay the license fee under sub. (2). A license issued under this subsection is valid until revoked or suspended, but shall be reviewed every 2 years as provided in s. 48.66(5).

**48.625(1m)** The department may issue a license under sub. (1) authorizing a group home solely to provide a safe and structured living arrangement for children 12 years of age or over who are custodial parents, as defined in s. 49.141(1)(b), or expectant mothers and who are placed in the group home under s. 48.345(3)(cm) or 938.34(3)(cm) and for children 14 years of age or over who are custodial parents, as defined in s. 49.141(1)(b), or expectant mothers and who are placed in the group home under voluntary agreements under s. 48.63(5), and to provide those children with training in parenting skills, including child development, family budgeting, health and nutrition, and other skills to promote the long-term economic independence of those children and the well-being of the children of those children. In licensing a group home described in this subsection, the department may not count toward the number of children whom

the group home is licensed to serve the child of a child who is placed in the group home. The department shall promulgate rules establishing standards for a group home described in this subsection. Those rules shall require such a group home to provide for the health, safety, and welfare of the child of any child custodial parent who has been placed in that group home and to have a policy governing visitation between such a child and the child's noncustodial parent.

**48.625(2)(a)** Before the department may issue a license under sub. (1) to a group home, the group home must pay to the department a biennial fee of \$121, plus a biennial fee of \$18.15 per child, based on the number of children that the group home is licensed to serve. A group home that wishes to continue a license issued under sub. (1) shall pay the fee under this paragraph by the continuation date of the license. A new group home shall pay the fee under this paragraph no later than 30 days before the opening of the group home.

(b) A group home that wishes to continue a license issued under sub. (1) and that fails to pay the fee under par. (a) by the continuation date of the license or a new group home that fails to pay the fee under par. (a) by 30 days before the opening of the group home shall pay an additional fee of \$5 per day for every day after the deadline that the group home fails to pay the fee.

**48.625(2m)** When the department issues a license to operate a group home, the department shall notify the clerk of the school district in which the group home is located that a group home has been licensed in the school district.

**48.625(3)** This section does not apply to a foster home licensed under s. 48.62(1)(a) or to a treatment foster home licensed under s. 48.62(1)(b).

- **48.627 Foster, treatment foster and family-operated group home parent insurance and liability.** (1) In this section, "family-operated group home" means a home licensed under s. 48.625 for which the licensee is one or more individuals who operate not more than one group home.

**48.627(2)(a)** Before the department, a county department or a licensed child welfare agency may issue, renew or continue a foster home, treatment foster home or family-operated group home license, the licensing agency shall require the applicant to furnish proof satisfactory to the licensing agency that he or she has homeowner's or renter's liability insurance that provides coverage for negligent acts or omissions by children placed in a foster home, treatment foster home or family-operated group home that result in bodily injury or property damage to 3rd parties.

(b) A licensing agency may, in accordance with rules promulgated by the department, waive the requirement under par. (a) if the applicant shows that he or she is unable to obtain the required insurance, that he or she has had a homeowner's or renter's liability insurance policy canceled or that payment of the premium for the required insurance would cause undue financial hardship.

(c) The department shall conduct a study to determine the cost effectiveness of purchasing insurance to provide standard homeowner's or renter's liability insurance coverage for applicants who are granted a waiver under par. (b). If the department determines that it would be cost-effective to purchase such insurance, it may purchase the insurance from the appropriations under s. 20.435(3)(cf) and (pd).

(d) The licensing agency shall specify the amounts of liability insurance coverage required under par. (a).

**48.627(2c)** The department shall determine the cost effectiveness of purchasing private insurance that would provide coverage to foster, treatment foster and family-operated group home parents for acts or omissions by or affecting a child who is placed in a foster home, a treatment foster home or a family-operated group home. If this private insurance is cost-effective and available, the department shall purchase the insurance from the appropriations under s. 20.435(3)(cf) and (pd). If the insurance is unavailable, payment of claims for acts or omissions by or affecting a child who is placed in a foster home, a treatment foster home or a family-operated group home shall be in accordance with subs. (2m) to (3).

**48.627(2m)** Within the limits of the appropriations under s. 20.435(3)(cf) and (pd), the department shall pay claims to the

extent not covered by any other insurance and subject to the limitations specified in sub. (3), for bodily injury or property damage sustained by a licensed foster, treatment foster or family-operated group home parent or a member of the foster, treatment foster or family-operated group home parent's family as a result of the act of a child in the foster, treatment foster or family-operated group home parent's care.

**48.627(2s)** Within the limits of the appropriations under s. 20.435(3)(cf) and (pd), the department may pay claims to the extent not covered by any other insurance and subject to the limitations specified in sub. (3), for all of the following:

(a) Acts or omissions of the foster, treatment foster or family-operated group home parent that result in bodily injury to the child who is placed in the foster home, treatment foster home or family-operated group home or that form the basis for a civil action for damages by the foster child's parent against the foster, treatment foster or family-operated group home parent.

(b) Bodily injury or property damage caused by an act or omission of a child who is placed in the foster, treatment foster or family-operated group home parent's care for which the foster, treatment foster or family-operated group home parent becomes legally liable.

**48.627(3)(b)** A claim under sub. (2m) shall be submitted to the department within 90 days after the bodily injury or property damage occurs. A claim under sub. (2s) shall be submitted within 90 days after a foster, treatment foster or family-operated group home parent learns that a legal action has been commenced against that parent. No claim may be paid under this subsection unless it is submitted within the time limits specified in this paragraph.

(c) The department shall review and approve in whole or in part or disapprove all claims received under this subsection during each 3-month period beginning with the period from July 1, 1985, to September 30, 1985.

(d) No claim may be approved in an amount exceeding the total amount available for paying claims under this subsection in the fiscal year during which the claim is submitted. No claim for property damage sustained by a foster, treatment foster or family-operated group home parent or a member of a foster, treatment foster or family-operated group home parent's family may be approved in an amount exceeding \$250,000.

(e) The department may not approve a claim unless the foster, treatment foster or family-operated group home parent submits with the claim evidence that is satisfactory to the department of the cause and value of the claim and evidence that insurance coverage is unavailable or inadequate to cover the claim. If insurance is available but inadequate, the department may approve a claim only for the amount of the value of the claim that it determines is in excess of the amount covered by insurance.

(f) If the total amount of the claims approved during any calendar quarter exceeds 25% of the total funds available during the fiscal year for purposes of this subsection plus any unencumbered funds remaining from the previous quarter, the department shall prorate the available funds among the claimants with approved claims. The department shall also prorate any unencumbered funds remaining in the appropriation under s. 20.435(3)(cf) at the end of each fiscal year among the claimants whose claims were prorated during the fiscal year. Payment of a prorated amount from unencumbered funds remaining at the end of the fiscal year constitutes a complete payment of the claim for purposes of this program, but does not prohibit a foster parent or treatment foster parent from submitting a claim under s. 16.007 for the unpaid portion.

(g) A claimant whose claim is denied or whose payment is prorated is not entitled to a hearing under ch. 227 on the issue of the denial or proration.

(h) If a claim by a foster, treatment foster or family-operated group home parent or a member of the foster, treatment foster or family-operated group home parent's family is approved, the department shall deduct from the amount approved \$100 less any amount deducted by an insurance company from a payment for the same claim, except that a foster, treatment foster or family-operated group home parent and his or her family are subject to only one deductible for all claims filed in a fiscal year.

(i) The department may enter into a contract for the administration of this subsection.

**48.627(4)** Except as provided in s. 895.485, the department is not liable for any act or omission by or affecting a child who is placed in a foster home, treatment foster home or family-operated group home, but shall, as provided in this section, pay claims described under sub. (2m) and may pay claims described under sub. (2s) or may purchase insurance to cover such claims as provided for under sub. (2c), within the limits of the appropriations under s. 20.435(3)(cf) and (pd).

**48.627(5)** The attorney general may represent a foster, treatment foster or family-operated group home parent in any civil action arising out of an act or omission of the foster, treatment foster or family-operated group home parent while acting in his or her capacity as a foster, treatment foster or family-operated group home parent.

• **48.63 Restrictions on placements. (1)** Acting under court order or voluntary agreement, the child's parent or guardian or the department of health and family services, the department of corrections, a county department, or a child welfare agency licensed to place children in foster homes, treatment foster homes, or group homes may place a child or negotiate or act as intermediary for the placement of a child in a foster home, treatment foster home, or group home. Voluntary agreements under this subsection may not be used for placements in facilities other than foster, treatment foster, or group homes and may not be extended. A foster home or treatment foster home placement under a voluntary agreement may not exceed 180 days from the date on which the child was removed from the home under the voluntary agreement. A group home placement under a voluntary agreement may not exceed 15 days from the date on which the child was removed from the home under the voluntary agreement, except as provided in sub. (5). These time limitations do not apply to placements made under s. 48.345, 938.183, 938.34, or 938.345. Voluntary agreements may be made only under this subsection and sub. (5)(b) and shall be in writing and shall specifically state that the agreement may be terminated at any time by the parent or guardian or by the child if the child's consent to the agreement is required. The child's consent to the agreement is required whenever the child is 12 years of age or older.

**48.63(2)** No person may place a child or offer or hold himself or herself out as able to place a child, except as provided in this section. Enrollment of a child by a parent or guardian in an educational institution shall not constitute a placement for the purposes of this section.

**48.63(3)** Subsection (1) does not apply to the placement of a child for adoption. Adoptive placements may be made only as provided under ss. 48.833, 48.835, 48.837 and 48.839.

**48.63(4)** A permanency plan under s. 48.38 is required for each child placed in a foster home or treatment foster home under sub. (1). If the child is living in a foster home or treatment foster home under a voluntary agreement, the agency that negotiated or acted as intermediary for the placement shall prepare the permanency plan within 60 days after the date on which the child was removed from his or her home under the voluntary agreement. A copy of each plan shall be provided to the child if he or she is 12 years of age or over and to the child's parent or guardian. If the agency that arranged the voluntary placement intends to seek a court order to place the child outside of his or her home at the expiration of the voluntary placement, the agency shall prepare a revised permanency plan and file that revised plan with the court prior to the date of the hearing on the proposed placement.

**48.63(5)(a)** Subsection (1) does not apply to the voluntary placement under par. (b) of a child in a group home described in s. 48.625(1m). Such placements may be made only as provided in par.(b).

(b) If a child who is at least 14 years of age, who is a custodial parent, as defined in s. 49.141(1)(b), or an expectant mother, and who is in need of a safe and structured living arrangement and the parent or guardian of the child consent, a child welfare agency licensed to place children in group homes may place the child or arrange the placement of the child in a group home described in s. 48.625(1m). Before placing a child or arranging the placement of a child under this paragraph, the child welfare agency shall report

any suspected abuse or neglect of the child as required under s. 48.981(2). A voluntary agreement to place a child in a group home described in s. 48.625(1m) may be made only under this paragraph, shall be in writing, and shall specifically state that the agreement may be terminated at any time by the parent, guardian, or child. An initial placement under this paragraph may not exceed 180 days from the date on which the child was removed from the home under the voluntary agreement, but may be extended as provided in par. (d) 3. to 6. An initial placement under this paragraph of a child who is under 16 years of age on the date of the initial placement may be extended as provided in par. (d)3. to 6. no more than once.

(c) A permanency plan under s. 48.38 is required for each child placed in a group home under par. (b) and for any child of that child who is residing with that child. The agency that placed the child or that arranged the placement of the child shall prepare the plan within 60 days after the date on which the child was removed from his or her home under the voluntary agreement and shall provide a copy of the plan to the child and the child's parent or guardian.

(d)1. In this paragraph, "independent reviewing agency" means a person contracted with under subd. 2. to review permanency plans and placements under subds. 3. to 6.

2. An agency that places children under par. (b) or that arranges those placements shall contract with another agency licensed under s. 48.61(3) to place children or with a county department to review the permanency plans and placements of those children and of any children of those children who are residing with those children as provided in subds. 3. to 6.

3. If the agency that has placed a child under par. (b) or that has arranged the placement of the child wishes to extend the placement of the child, the agency shall prepare a revised permanency plan for that child and for any child of that child who is residing with that child and submit the revised permanency plan or plans, together with a request for a review of the revised permanency plan or plans and the child's placement, to the independent reviewing agency before the expiration of the child's placement. The request shall include a statement that an extension of the child's placement would be in the best interests of the child, together with reliable and credible information in support of that statement, a statement that the child and the parent or guardian of the child consent to the extension of the child's placement, and a request that the independent reviewing agency approve an extension of the child's placement. On receipt of a revised permanency plan or plans and a request for review, the independent reviewing agency shall set a time and place for the review and shall advise the agency that placed the child or that arranged the placement of the child of the time and place of the review.

4. Not less than 10 days before the review, the agency that placed the child or that arranged the placement of the child shall provide a copy of the revised permanency plan or plans and the request for review submitted under subd. 3. and notice of the time and place of the review to the child, the parent, guardian, and legal custodian of the child, and the operator of the group home in which the child is placed, together with notice of the issues to be determined as part of the permanency plan review and notice of the fact that those persons may have the opportunity to be heard at the review by submitting written comments to that agency or the independent reviewing agency before the review or by participating at the review.

5. At the review, any person specified in subd. 4. may present information relevant to the issue of extension and information relevant to the determinations specified in s. 48.38(5)(c). After receiving that information, the independent reviewing agency shall make the determinations specified in s. 48.38(5)(c) and determine whether an extension of the child's placement is in the best interests of the child and whether the child and the parent or guardian of the child consent to the extension. If the independent reviewing agency determines that the extension is in the best interests of the child and that the child and the parent or guardian of the child consent to the extension, the independent reviewing agency shall approve, in writing, an extension of the placement for a specified period of time not to

exceed 6 months, stating the reason for the approval, and the agency that placed the child or that arranged the placement of the child may extend the child's placement for the period of time approved. If the independent reviewing agency determines that the extension is not in the best interests of the child or that the child and the parent or guardian of the child do not consent to the extension, the independent reviewing agency shall, in writing, disapprove an extension of the placement, stating the reason for the disapproval, and the agency that placed the child or that arranged the placement of the child may not extend the placement of the child past the expiration date of the voluntary placement unless the agency obtains a court order placing the child in the group home after the expiration date of the voluntary placement. Notwithstanding the approval of an extension under this subdivision, the child or the parent or guardian of the child may terminate the placement at any time during the extension period.

6. Within 30 days after the review, the agency that prepared the revised permanency plan or plans shall prepare a written summary of the determinations specified in s. 48.38(5)(c) that were made under subd. 5. and shall provide a copy of that summary to the independent reviewing agency, the child, the parent, guardian, and legal custodian of the child, and the operator of the group home in which the child was placed.

• **48.64 Placement of children in foster homes, treatment foster homes and group homes. (1) Definition.** In this section, "agency" means the department of health and family services, the department of corrections, a county department or a licensed child welfare agency authorized to place children in foster homes, treatment foster homes, or group homes.

**48.64(1m) Foster Home, Treatment Foster Home and Group Home Agreements.** If an agency places a child in a foster home, treatment foster home or group home under a court order or voluntary agreement under s. 48.63, the agency shall enter into a written agreement with the head of the home. The agreement shall provide that the agency shall have access at all times to the child and the home, and that the child will be released to the agency whenever, in the opinion of the agency placing the child or the department, the best interests of the child require it. If a child has been in a foster home, treatment foster home or group home for 6 months or more, the agency shall give the head of the home written notice of intent to remove the child, stating the reasons for the removal. The child may not be removed before completion of the hearing under sub. (4)(a) or (c), if requested, or 30 days after the receipt of the notice, whichever is later, unless the safety of the child requires it or, in a case in which the reason for removal is to place the child for adoption under s. 48.833, unless all of the persons who have the right to request a hearing under sub. (4)(a) or (c) sign written waivers of objection to the proposed removal. If the safety of the child requires earlier removal, s. 48.19 shall apply. If an agency removes a child from an adoptive placement, the head of the home shall have no claim against the placing agency for the expense of care, clothing or medical treatment.

**48.64(1r) Notification of School District.** When an agency places a school-age child in a foster home, a treatment foster home or a group home, the agency shall notify the clerk of the school district in which the foster home, treatment foster home or group home is located that a school-age child has been placed in a foster home, treatment foster home or group home in the school district.

**48.64(2) Supervision of Foster Home, Treatment Foster Home and Group Home Placements.** Every child in a foster home, treatment foster home or group home shall be under the supervision of an agency.

**48.64(4) Orders Affecting the Head of a Home or the Children.**

(a) Any decision or order issued by an agency that affects the head of a foster, treatment foster or group home or the children involved may be appealed to the department under fair hearing procedures established under department rules. The department shall, upon receipt of an appeal, give the head of the home reasonable notice and opportunity for a fair hearing. The department may make such additional investigation as the department considers necessary. The department shall give notice of the hearing to the head of the home and to the departmental

subunit, county department or child welfare agency that issued the decision or order. Each person receiving notice is entitled to be represented at the hearing. At all hearings conducted under this subsection, the head of the home, or a representative of the head of the home, shall have an adequate opportunity, notwithstanding s. 48.78(2)(a), to examine all documents and records to be used at the hearing at a reasonable time before the date of the hearing as well as during the hearing, to bring witnesses, to establish all pertinent facts and circumstances, and to question or refute any testimony or evidence, including opportunity to confront and cross-examine adverse witnesses. The department shall grant a continuance for a reasonable period of time when an issue is raised for the first time during a hearing. This requirement may be waived with the consent of the parties. The decision of the department shall be based exclusively on evidence introduced at the hearing. A transcript of testimony and exhibits, or an official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the proceeding, and the findings of the hearing examiner shall constitute the exclusive record for decision by the department. The department shall make the record available at any reasonable time and at an accessible place to the head of the home or his or her representative. Decisions by the department shall specify the reasons for the decision and identify the supporting evidence.

No person participating in an agency action being appealed may participate in the final administrative decision on that action. The department shall render its decision as soon as possible after the hearing and shall send a certified copy of its decision to the head of the home and to the departmental subunit, county department or child welfare agency that issued the decision or order. The decision shall be binding on all parties concerned.

(b) Judicial review of the department's decision may be had as provided in ch. 227.

(c) The circuit court for the county where the child is placed has jurisdiction upon petition of any interested party over a child who is placed in a foster home, treatment foster home or group home. The circuit court may call a hearing, at which the head of the home and the supervising agency under sub. (2) shall be present, for the purpose of reviewing any decision or order of that agency involving the placement and care of the child. If the child has been placed in a foster home, the foster parent may present relevant evidence at the hearing. The court shall determine the case so as to promote the best interests of the child.

• **48.66 Licensing duties of the department.** (1)(a) Except as provided in s. 48.715(6) and (7), the department shall license and supervise child welfare agencies, as required by s. 48.60, group homes, as required by s. 48.625, shelter care facilities, as required by s. 938.22, and day care centers, as required by s. 48.65. The department may license foster homes or treatment foster homes, as provided by s. 48.62, and may license and supervise county departments in accordance with the procedures specified in this section and in ss. 48.67 to 48.74.

(b) Except as provided in s. 48.715(6), the department of corrections may license a child welfare agency to operate a secured child caring institution, as defined in s. 938.02(15g), for holding in secure custody juveniles who have been convicted under s. 938.183 or adjudicated delinquent under s. 938.183 or 938.34(4d), (4h) or (4m) and referred to the child welfare agency by the court or the department of corrections and to provide supervision, care and maintenance for those juveniles. The department of corrections may also license not more than 5 county departments, as defined in s. 938.02(2g), or not more than 5 consortia of county departments to operate not more than 5 group homes that have been licensed under par. (a) as secured group homes, as defined in s. 938.02(15p), for holding in secure custody juveniles who have been convicted under s. 938.183 or adjudicated delinquent under s. 938.183 or 938.34(4m) and referred to the county department by the court and to provide supervision, care and maintenance for those juveniles.

(c) A license issued under par. (a) or (b), other than a license to operate a foster home, treatment foster home, secured child caring institution or secured group home, is valid until revoked or suspended. A license issued under this subsection to operate a

foster home, treatment foster home, secured child caring institution or secured group home may be for any term not to exceed 2 years from the date of issuance. No license issued under par. (a) or (b) is transferable.

**48.66(2)** The department shall prescribe application forms to be used by all applicants for licenses from it. The application forms prescribed by the department shall require that the social security numbers of all applicants for a license to operate a child welfare agency, group home, shelter care facility or day care center who are individuals, other than an individual who does not have a social security number and who submits a statement made or subscribed under oath or affirmation as required under sub. (2m)(a)2., be provided and that the federal employer identification numbers of all applicants for a license to operate a child welfare agency, group home, shelter care facility or day care center who are not individuals be provided.

**48.66(2m)(a)1.** Except as provided in subd. 2., the department of health and family services shall require each applicant for a license under sub. (1)(a) to operate a child welfare agency, group home, shelter care facility or day care center who is an individual to provide that department with the applicant's social security number, and shall require each applicant for a license under sub. (1)(a) to operate a child welfare agency, group home, shelter care facility or day care center who is not an individual to provide that department with the applicant's federal employer identification number, when initially applying for or applying to continue the license.

2. If an applicant who is an individual does not have a social security number, the applicant shall submit a statement made or subscribed under oath or affirmation to the department of health and family services that the applicant does not have a social security number. The form of the statement shall be prescribed by the department of workforce development. A license issued in reliance upon a false statement submitted under this subdivision is invalid.

(am)1. Except as provided in subd. 2., the department of corrections shall require each applicant for a license under sub. (1)(b) to operate a secured child caring institution who is an individual to provide that department with the applicant's social security number when initially applying for or applying to renew the license.

2. If an applicant who is an individual does not have a social security number, the applicant shall submit a statement made or subscribed under oath or affirmation to the department of corrections that the applicant does not have a social security number. The form of the statement shall be prescribed by the department of workforce development. A license issued in reliance upon a false statement submitted under this subdivision is invalid.

(b) If an applicant who is an individual fails to provide the applicant's social security number to the department of health and family services or if an applicant who is not an individual fails to provide the applicant's federal employer identification number to that department, that department may not issue or continue a license under sub. (1)(a) to operate a child welfare agency, group home, shelter care facility or day care center to or for the applicant unless the applicant is an individual who does not have a social security number and the applicant submits a statement made or subscribed under oath or affirmation as required under par. (a)2.

(bm) If an applicant who is an individual fails to provide the applicant's social security number to the department of corrections, that department may not issue or renew a license under sub. (1)(b) to operate a secured child caring institution to or for the applicant unless the applicant does not have a social security number and the applicant submits a statement made or subscribed under oath or affirmation as required under par. (am)2.

(c) The department of health and family services may not disclose any information obtained under par. (a)1. to any person except to the department of revenue for the sole purpose of requesting certifications under s. 73.0301 or on the request of the department of workforce development under s. 49.22(2m).

(cm) The department of corrections may not disclose any information obtained under par. (am)1. to any person except on the request of the department of workforce development under s. 49.22(2m).

**48.66(3)** The department shall prescribe the form and content

of records to be kept and information to be reported by persons licensed by it.

**48.66(5)** A child welfare agency, group home, day care center or shelter care facility license, other than a probationary license, is valid until revoked or suspended, but shall be reviewed every 2 years after the date of issuance as provided in this subsection. At least 30 days prior to the continuation date of the license, the licensee shall submit to the department an application for continuance of the license in the form and containing the information that the department requires. If the minimum requirements for a license established under s. 48.67 are met, the application is approved, the applicable fees referred to in ss. 48.68(1) and 48.685(8) are paid and any forfeiture under s. 48.715(3)(a) or penalty under s. 48.76 that is due is paid, the department shall continue the license for an additional 2-year period, unless sooner suspended or revoked. If the application is not timely filed, the department shall issue a warning to the licensee. If the licensee fails to apply for continuance of the license within 30 days after receipt of the warning, the department may revoke the license as provided in s. 48.715(4) and (4m)(b).

• **48.67 Rules governing child welfare agencies, day care centers, foster homes, treatment foster homes, group homes, shelter care facilities and county departments.** The department shall promulgate rules establishing minimum requirements for the issuance of licenses to, and establishing standards for the operation of, child welfare agencies, day care centers, foster homes, treatment foster homes, group homes, shelter care facilities, and county departments. These rules shall be designed to protect and promote the health, safety, and welfare of the children in the care of all licensees. The department shall consult with the department of commerce and the department of public instruction before promulgating these rules. In establishing the minimum requirements for the issuance of licenses to day care centers that provide care and supervision for children under one year of age, the department shall include a requirement that all licensees who are individuals and all employees and volunteers of a licensee who provide care and supervision for children receive, before the date on which the license is issued or the employment or volunteer work commences, whichever is applicable, training in the most current medically accepted methods of preventing sudden infant death syndrome.

• **48.68 Investigation of applicant; issuing of license. (1)** After receipt of an application for a license, the department shall investigate to determine if the applicant meets the minimum requirements for a license adopted by the department under s. 48.67 and meets the requirements specified in s. 48.685, if applicable. In determining whether to issue or continue a license, the department may consider any action by the applicant, or by an employee of the applicant, that constitutes a substantial failure by the applicant or employee to protect and promote the health, safety and welfare of a child. Upon satisfactory completion of this investigation and payment of the fee required under s. 48.615(1)(a) or (b), 48.625(2)(a), 48.65(3)(a) or 938.22(7)(b), the department shall issue a license under s. 48.66(1)(a) or, if applicable, a probationary license under s. 48.69 or, if applicable, shall continue a license under s. 48.66(5). At the time of initial licensure and license renewal, the department shall provide a foster home licensee with written information relating to the age-related monthly foster care rates and supplemental payments specified in s. 48.62(4), including payment amounts, eligibility requirements for supplemental payments and the procedures for applying for supplemental payments.

**48.68(2)** Before continuing the license of any child welfare agency to operate a residential care center for children and youth or of any group home, the department shall consider all formal complaints filed under s. 48.745(2) and the disposition of each during the previous 2-year period.

**48.68(3)** Within 10 working days after receipt of an application for initial licensure of a child welfare agency to operate a residential care center for children and youth or of a group home, the department shall notify the city, town, or village planning commission, or other appropriate city, town, or village

agency if there is no planning commission, of receipt of the application. The department shall request that the planning commission or agency send to the department, within 30 days, a description of any specific hazards that may affect the health and safety of the residents of the residential care center for children and youth or group home. No license may be issued to a child welfare agency to operate a residential care center for children and youth or to a group home until the 30-day period has expired or until the department receives the response of the planning commission or agency, whichever is sooner. In issuing a license the department shall give full consideration to such hazards determined by the planning commission or agency.

**48.68(4)** Prior to initial licensure of a residential care center for children and youth operated by a child welfare agency or of a group home, the applicant for licensure shall make a good faith effort to establish a community advisory committee consisting of representatives from the child welfare agency or proposed group home, the neighborhood in which the proposed residential care center for children and youth or group home will be located and a local unit of government. The community advisory committee shall provide a forum for communication for those persons interested in the proposed residential care center for children and youth or group home. Any committee established under this subsection shall continue in existence after licensure to make recommendations to the licensee regarding the impact of the residential care center for children and youth or group home on the neighborhood. The department shall determine compliance with this subsection both prior to and after initial licensure.

• **48.685 Criminal history and child abuse record search.**

(1) In this section:

(ag) 1. "Caregiver" means any of the following:  
a. A person who is, or is expected to be, an employee or contractor of an entity, who is or is expected to be under the control of the entity, as defined by the department by rule, and who has, or is expected to have, regular, direct contact with clients of the entity.  
b. A person who has, or is seeking, a license, certification or contract to operate an entity.

2. "Caregiver" does not include a person who is certified as an emergency medical technician under s. 146.50 if the person is employed, or seeking employment, as an emergency medical technician and does not include a person who is certified as a first responder under s. 146.50 if the person is employed, or seeking employment, as a first responder.

(am) "Client" means a child who receives direct care or treatment services from an entity.

(ar) "Contractor" means, with respect to an entity, a person, or that person's agent, who provides services to the entity under an express or implied contract or subcontract, including a person who has staff privileges at the entity.

(av) "Direct contact" means face-to-face physical proximity to a client that affords the opportunity to commit abuse or neglect of a client or to misappropriate the property of a client.

(b) "Entity" means a child welfare agency that is licensed under s. 48.60 to provide care and maintenance for children, to place children for adoption or to license foster homes or treatment foster homes; a foster home or treatment foster home that is licensed under s. 48.62; a group home that is licensed under s. 48.625; a shelter care facility that is licensed under s. 938.22; a day care center that is licensed under s. 48.65 or established or contracted for under s. 120.13(14); a day care provider that is certified under s. 48.651; or a temporary employment agency that provides caregivers to another entity.

(bg) "Foster home" includes a placement for adoption under s. 48.833 of a child for whom adoption assistance will be provided under s. 48.975 after the adoption is finalized.

(bm) "Nonclient resident" means a person who resides, or is expected to reside, at an entity, who is not a client of the entity and who has, or is expected to have, regular, direct contact with clients of the entity.

(br) "Reservation" means land in this state within the boundaries of a reservation of a tribe or within the bureau of Indian affairs service area for the Ho-Chunk Nation.

(c) "Serious crime" means a violation of s. 940.19(3), 1999 stats., a violation of s. 940.01, 940.02, 940.03, 940.05, 940.12,

940.19(2), (4), (5) or (6), 940.22(2) or (3), 940.225(1), (2) or (3), 940.285(2), 940.29, 940.295, 948.02(1) or (2), 948.025, 948.03(2), 948.05, 948.055, 948.06, 948.07, 948.08, 948.11(2)(a) or (am), 948.12, 948.13, 948.21(1) or 948.30 or a violation of the law of any other state or United States jurisdiction that would be a violation of s. 940.19(3), 1999 stats., or a violation of s. 940.01, 940.02, 940.03, 940.05, 940.12, 940.19(2), (4), (5) or (6), 940.22(2) or (3), 940.225(1), (2) or (3), 940.285(2), 940.29, 940.295, 948.02(1) or (2), 948.025, 948.03(2), 948.05, 948.055, 948.06, 948.07, 948.08, 948.11(2)(a) or (am), 948.12, 948.13, 948.21(1) or 948.30 if committed in this state.

(d) "Treatment foster home" includes a placement for adoption under s. 48.833 of a child for whom adoption assistance will be provided under s. 48.975 after the adoption is finalized.

(e) "Tribe" means a federally recognized American Indian tribe or band in this state.

**48.685(2)(am)** The department, a county department, a child welfare agency or a school board shall obtain all of the following with respect to a caregiver specified in sub. (1)(ag) 1. b., a nonclient resident of an entity and a person under 18 years of age, but not under 12 years of age, who is a caregiver of a day care center that is licensed under s. 48.65 or established or contracted for under s. 120.13(14) or of a day care provider that is certified under s. 48.651:

1. A criminal history search from the records maintained by the department of justice.
2. Information that is contained in the registry under s. 146.40(4g) regarding any findings against the person.
3. Information maintained by the department of regulation and licensing regarding the status of the person's credentials, if applicable.
4. Information maintained by the department regarding any substantiated reports of child abuse or neglect against the person.
5. Information maintained by the department under this section and under ss. 48.651(2m), 48.75(1m) and 120.13(14) regarding any denial to the person of a license, continuation or renewal of a license, certification or a contract to operate an entity for a reason specified in sub. (4m)(a)1. to 5. and regarding any denial to the person of employment at, a contract with or permission to reside at an entity for a reason specified in sub. (4m)(b)1. to 5. If the information obtained under this subdivision indicates that the person has been denied a license, continuation or renewal of a license, certification, a contract, employment or permission to reside as described in this subdivision, the department, a county department, a child welfare agency or a school board need not obtain the information specified in subds. 1. to 4.

(b)1. Every entity shall obtain all of the following with respect to a caregiver of the entity:

- a. A criminal history search from the records maintained by the department of justice.
- b. Information that is contained in the registry under s. 146.40(4g) regarding any findings against the person.
- c. Information maintained by the department of regulation and licensing regarding the status of the person's credentials, if applicable.
- d. Information maintained by the department regarding any substantiated reports of child abuse or neglect against the person.
- e. Information maintained by the department under this section and under ss. 48.651(2m), 48.75(1m) and 120.13(14) regarding any denial to the person of a license, continuation or renewal of a license, certification or a contract to operate an entity for a reason specified in sub. (4m)(a)1. to 5. and regarding any denial to the person of employment at, a contract with or permission to reside at an entity for a reason specified in sub. (4m)(b)1. to 5. If the information obtained under this subd. 1.e. indicates that the person has been denied a license, continuation or renewal of a license, certification, a contract, employment or permission to reside as described in this subd. 1. e., the entity need not obtain the information specified in subd. 1. a. to d.

4. Subdivision 1. does not apply with respect to a person under 18 years of age, but not under 12 years of age, who is a caregiver or nonclient resident of a day care center that is licensed under s. 48.65 or established or contracted for under s. 120.13(14) or of a day care provider that is certified under s.

48.651 and with respect to whom the department, a county department or a school board is required under par. (am)(intro.) to obtain the information specified in par. (am)1. to 5.

(bb) If information obtained under par. (am) or (b)1. indicates a charge of a serious crime, but does not completely and clearly indicate the final disposition of the charge, the department, county department, child welfare agency, school board or entity shall make every reasonable effort to contact the clerk of courts to determine the final disposition of the charge. If a background information form under sub. (6)(a) or (am) indicates a charge or a conviction of a serious crime, but information obtained under par. (am) or (b)1. does not indicate such a charge or conviction, the department, county department, child welfare agency, school board or entity shall make every reasonable effort to contact the clerk of courts to obtain a copy of the criminal complaint and the final disposition of the complaint. If information obtained under par. (am) or (b)1., a background information form under sub. (6)(a) or (am) or any other information indicates a conviction of a violation of s. 940.19(1), 940.195, 940.20, 941.30, 942.08, 947.01 or 947.013 obtained not more than 5 years before the date on which that information was obtained, the department, county department, child welfare agency, school board or entity shall make every reasonable effort to contact the clerk of courts to obtain a copy of the criminal complaint and judgment of conviction relating to that violation.

(bd) Notwithstanding pars. (am) and (b)1., the department, a county department, a child welfare agency or a school board is not required to obtain the information specified in par. (am) 1. to 5., and an entity is not required to obtain the information specified in par. (b)1.a. to e., with respect to a person under 18 years of age whose background information form under sub. (6)(am) indicates that the person is not ineligible to be employed, contracted with or permitted to reside at an entity for a reason specified in sub. (4m)(b)1. to 5. and with respect to whom the department, county department, child welfare agency, school board or entity otherwise has no reason to believe that the person is ineligible to be employed, contracted with or permitted to reside at an entity for any of those reasons. This paragraph does not preclude the department, a county department, a child welfare agency or a school board from obtaining, at its discretion, the information specified in par. (am)1. to 5. with respect to a person described in this paragraph who is a nonclient resident or a prospective nonclient resident of an entity.

(bg) If an entity employs or contracts with a caregiver for whom, within the last 4 years, the information required under par. (b)1.a. to c. and e. has already been obtained by another entity, the entity may obtain that information from that other entity, which shall provide the information, if possible, to the requesting entity. If an entity cannot obtain the information required under par. (b) 1. a. to c. and e. from another entity or if an entity has reasonable grounds to believe that any information obtained from another entity is no longer accurate, the entity shall obtain that information from the sources specified in par. (b)1.a. to c. and e.

(bm) If the person who is the subject of the search under par. (am) or (b)1. is not a resident of this state, or if at any time within the 3 years preceding the date of the search that person has not been a resident of this state, or if the department, county department, child welfare agency, school board or entity determines that the person's employment, licensing or state court records provide a reasonable basis for further investigation, the department, county department, child welfare agency, school board or entity shall make a good faith effort to obtain from any state or other United States jurisdiction in which the person is a resident or was a resident within the 3 years preceding the date of the search information that is equivalent to the information specified in par. (am)1. or (b)1. a. The department, county department, child welfare agency, school board or entity may require the person to be fingerprinted on 2 fingerprint cards, each bearing a complete set of the person's fingerprints. The department of justice may provide for the submission of the fingerprint cards to the federal bureau of investigation for the purposes of verifying the identity of the person fingerprinted and obtaining records of his or her criminal arrests and convictions.

(d) Every entity shall maintain, or shall contract with another person to maintain, the most recent background information

HFS 57 GROUP FOSTER CARE ANNOTATED  
APPENDIX E

obtained on a caregiver under par. (b). The information shall be made available for inspection by authorized persons, as defined by the department by rule.

**48.685(3)(a)** Every 4 years or at any time within that period that the department, a county department, a child welfare agency or a school board considers appropriate, the department, county department, child welfare agency or school board shall request the information specified in sub. (2)(am)1. to 5. for all persons who are licensed, certified or contracted to operate an entity, for all persons who are nonclient residents of an entity and for all persons under 18 years of age, but not under 12 years of age, who are caregivers of a day care center that is licensed under s. 48.65 or established or contracted for under s. 120.13(4) or of a day care provider that is certified under s. 48.651.

(b) Every 4 years or at any time within that period that an entity considers appropriate, the entity shall request the information specified in sub. (2)(b)1.a. to e. for all persons who are caregivers of the entity other than persons under 18 years of age, but not under 12 years of age, who are caregivers of a day care center that is licensed under s. 48.65 or established or contracted for under s. 120.13(14) or of a day care provider that is certified under s. 48.651.

**48.685(3m)** Notwithstanding subs. (2)(b)1. and (3)(b), if the department, a county department, a child welfare agency or a school board has obtained the information required under sub. (2)(am) or (3)(a) with respect to a person who is a caregiver specified in sub. (1)(ag)1.b. and that person is also an employee, contractor or nonclient resident of an entity, the entity is not required to obtain the information specified in sub. (2)(b)1. or (3)(b) with respect to that person.

**48.685(4)** An entity that violates sub. (2), (3) or (4m)(b) may be required to forfeit not more than \$1,000 and may be subject to other sanctions specified by the department by rule.

**48.685(4m)** (a) Notwithstanding s. 111.335, and except as provided in par. (ad) and sub. (5), the department may not license, or continue or renew the license of, a person to operate an entity, a county department may not certify a day care provider under s. 48.651, a county department or a child welfare agency may not license, or renew the license of, a foster home or treatment foster home under s. 48.62 and a school board may not contract with a person under s. 120.13(14), if the department, county department, child welfare agency or school board knows or should have known any of the following:

1. That the person has been convicted of a serious crime or, if the person is an applicant for issuance or continuation of a license to operate a day care center or for initial certification under s. 48.651 or for renewal of that certification or if the person is proposing to contract with a school board under s. 120.13(14) or to renew a contract under that subsection, that the person has been convicted of a serious crime or adjudicated delinquent on or after his or her 12th birthday for committing a serious crime.

3. That a unit of government or a state agency, as defined in s. 16.61(2)(d), has made a finding that the person has abused or neglected any client or misappropriated the property of any client.

4. That a determination has been made under s. 48.981(3)(c)4. that the person has abused or neglected a child.

5. That, in the case of a position for which the person must be credentialed by the department of regulation and licensing, the person's credential is not current or is limited so as to restrict the person from providing adequate care to a client.

(ad) The department, a county department or a child welfare agency may license a foster home or treatment foster home under s. 48.62, a county department may certify a day care provider under s. 48.651 and a school board may contract with a person under s. 120.13(14), conditioned on the receipt of the information specified in sub. (2)(am) indicating that the person is not ineligible to be licensed, certified or contracted with for a reason specified in par. (a)1. to 5.

(b) Notwithstanding s. 111.335, and except as provided in sub. (5), an entity may not employ or contract with a caregiver or permit a nonclient resident to reside at the entity if the entity knows or should have known any of the following:

1. That the person has been convicted of a serious crime or, if the person is a caregiver or nonclient resident of a day care center that is licensed under s. 48.65 or established or contracted

for under s. 120.13(14) or of a day care provider that is certified under s. 48.651, that the person has been convicted of a serious crime or adjudicated delinquent on or after his or her 12th birthday for committing a serious crime.

3. That a unit of government or a state agency, as defined in s. 16.61(2)(d), has made a finding that the person has abused or neglected any client or misappropriated the property of any client.

4. That a determination has been made under s.

48.981(3)(c)4. that the person has abused or neglected a child.

5. That, in the case of a position for which the person must be credentialed by the department of regulation and licensing, the person's credential is not current or is limited so as to restrict the person from providing adequate care to a client.

(c) If the background information form completed by a person under sub. (6)(am) indicates that the person is not ineligible to be employed or contracted with for a reason specified in par. (b)1. to 5., an entity may employ or contract with the person for not more than 60 days pending the receipt of the information sought under sub. (2)(am)1. to 5. or (b)1. If the background information form completed by a person under sub. (6)(am) indicates that the person is not ineligible to be permitted to reside at an entity for a reason specified in par. (b)1. to 5. and if an entity otherwise has no reason to believe that the person is ineligible to be permitted to reside at an entity for any of those reasons, the entity may permit the person to reside at the entity for not more than 60 days pending receipt of the information sought under sub. (2)(am). An entity shall provide supervision for a person who is employed, contracted with or permitted to reside as permitted under this paragraph.

**48.685(5)(a)** The department may license to operate an entity, a county department may certify under s. 48.651, a county department or a child welfare agency may license under s. 48.62 and a school board may contract with under s. 120.13(14) a person who otherwise may not be licensed, certified or contracted with for a reason specified in sub. (4m)(a)1. to 5., and an entity may employ, contract with or permit to reside at the entity a person who otherwise may not be employed, contracted with or permitted to reside at the entity for a reason specified in sub. (4m)(b)1. to 5., if the person demonstrates to the department, the county department, the child welfare agency or the school board or, in the case of an entity that is located within the boundaries of a reservation, to the person or body designated by the tribe under sub. (5d)(a) 3., by clear and convincing evidence and in accordance with procedures established by the department by rule or by the tribe that he or she has been rehabilitated.

(bm) For purposes of licensing a foster home or treatment foster home, no person who has been convicted of any of the following offenses may be permitted to demonstrate that he or she has been rehabilitated:

1. An offense under ch. 948 that is a felony.

2. A violation of s. 940.19(3), 1999 stats., or of s. 940.19(2), (4), (5) or (6) or 940.20(1) or (1m), if the victim is the spouse of the person.

3. A violation of s. 943.23(1m) or (1r), 1999 stats., or of s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.21, 940.225(1), (2) or (3), 940.23, 940.305, 940.31, 941.20(2) or (3), 941.21, 943.10(2), 943.23(1g) or 943.32(2).

4. A violation of s. 940.19(3), 1999 stats., or of s. 125.075(1), 125.085(3)(a)2., 125.105(2)(b), 125.66(3), 125.68(12), 940.09, 940.19(2), (4), (5), or (6), 940.20, 940.203, 940.205, 940.207, or 940.25, a violation of s. 346.63(1), (2), (5), or (6) that is a felony under s. 346.65(2)(e) or (f), (2j) (d), or (3m), or an offense under ch. 961 that is a felony, if committed not more than 5 years before the date of the investigation under sub. (2)(am).

**48.685(5c)(a)** Any person who is permitted but fails under sub. (5)(a) to demonstrate to the department or a child welfare agency that he or she has been rehabilitated may appeal to the secretary of health and family services or his or her designee. Any person who is adversely affected by a decision of the secretary or his or her designee under this paragraph has a right to a contested case hearing under ch. 227.

(b) Any person who is permitted but fails under sub. (5)(a) to demonstrate to the county department that he or she has been rehabilitated may appeal to the director of the county department or his or her designee. Any person who is adversely affected by a decision of the director or his or her designee under this paragraph

has a right to appeal the decision under ch. 68.

(c) Any person who is permitted but fails under sub. (5)(a) to demonstrate to the school board that he or she has been rehabilitated may appeal to the state superintendent of public instruction or his or her designee. Any person who is adversely affected by a decision of the state superintendent or his or her designee under this paragraph has a right to a contested case hearing under ch. 227.

**48.685(5d)(a)** Any tribe that chooses to conduct rehabilitation reviews under sub. (5) shall submit to the department a rehabilitation review plan that includes all of the following:

1. The criteria to be used to determine if a person has been rehabilitated.

2. The title of the person or body designated by the tribe to whom a request for review must be made.

3. The title of the person or body designated by the tribe to determine whether a person has been rehabilitated.

3m. The title of the person or body, designated by the tribe, to whom a person may appeal an adverse decision made by the person specified under subd. 3. and whether the tribe provides any further rights to appeal.

4. The manner in which the tribe will submit information relating to a rehabilitation review to the department so that the department may include that information in its report to the legislature required under sub. (5g).

5. A copy of the form to be used to request a review and a copy of the form on which a written decision is to be made regarding whether a person has demonstrated rehabilitation.

(b) If, within 90 days after receiving the plan, the department does not disapprove the plan, the plan shall be considered approved. If, within 90 days after receiving the plan, the department disapproves the plan, the department shall provide notice of that disapproval to the tribe in writing, together with the reasons for the disapproval. The department may not disapprove a plan unless the department finds that the plan is not rationally related to the protection of clients. If the department disapproves the plan, the tribe may, within 30 days after receiving notice of the disapproval, request that the secretary review the department's decision. A final decision under this paragraph is not subject to further review under ch. 227.

**48.685(5g)** Beginning on January 1 1999, and annually thereafter, the department shall submit a report to the legislature under s. 13.172(2) that specifies the number of persons in the previous year who have requested to demonstrate that they have been rehabilitated under sub. (5)(a), the number of persons who successfully demonstrated that they have been rehabilitated under sub. (5)(a) and the reasons for the success or failure of a person who has attempted to demonstrate that he or she has been rehabilitated.

**48.685(5m)** Notwithstanding s. 111.335, the department may refuse to license a person to operate an entity, a county department or a child welfare agency may refuse to license a foster home or treatment foster home under s. 48.62, and an entity may refuse to employ or contract with a caregiver or permit a nonclient resident to reside at the entity if the person has been convicted of an offense that is not a serious crime, but that is, in the estimation of the department, county department, child welfare agency or entity, substantially related to the care of a client. Notwithstanding s. 111.335, the department may refuse to license a person to operate a day care center, a county department may refuse to certify a day care provider under s. 48.651, a school board may refuse to contract with a person under s. 120.13(14), a day care center that is licensed under s. 48.65 or established or contracted for under s. 120.13(14) and a day care provider that is certified under s. 48.651 may refuse to employ or contract with a caregiver or permit a nonclient resident to reside at the day care center or day care provider if the person has been convicted of or adjudicated delinquent on or after his or her 12th birthday for an offense that is not a serious crime, but that is, in the estimation of the department, county department, school board, day care center or day care provider, substantially related to the care of a client.

**48.685(6)(a)** The department shall require any person who applies for issuance, continuation or renewal of a license to

operate an entity, a county department shall require any day care provider who applies for initial certification under s. 48.651 or for renewal of that certification, a county department or a child welfare agency shall require any person who applies for issuance or renewal of a license to operate a foster home or treatment foster home under s. 48.62 and a school board shall require any person who proposes to contract with the school board under s. 120.13(14) or to renew a contract under that subsection, to complete a background information form that is provided by the department.

(am) Every 4 years an entity shall require all of its caregivers and nonclient residents to complete a background information form that is provided to the entity by the department.

(b)1. For caregivers who are licensed by the department, for persons under 18 years of age, but not under 12 years of age, who are caregivers of a day care center that is licensed under s. 48.65 or established or contracted for under s. 120.13(14) or of a day care provider that is certified under s. 48.651, for persons who are nonclient residents of an entity that is licensed by the department, and for other persons specified by the department by rule, the entity shall send the background information form to the department.

2. For caregivers who are licensed or certified by a county department, for persons who are nonclient residents of an entity that is licensed or certified by a county department and for other persons specified by the department by rule, the entity shall send the background information form to the county department.

3. For caregivers who are licensed by a child welfare agency, for persons who are nonclient residents of an entity that is licensed by a child welfare agency and for other persons specified by the department by rule, the entity shall send the background information form to the child welfare agency.

4. For caregivers who are contracted with by a school board, for persons who are nonclient residents of an entity that is contracted with by a school board and for other persons specified by the department by rule, the entity shall send the background information form to the school board.

(c) A person who provides false information on a background information form required under this subsection may be required to forfeit not more than \$1,000 and may be subject to other sanctions specified by the department by rule.

**48.685(7)** The department shall do all of the following:

(c) Conduct throughout the state periodic training sessions that cover criminal background investigations; reporting and investigating misappropriation of property or abuse or neglect of a client; and any other material that will better enable entities to comply with the requirements of this section.

(d) Provide a background information form that requires the person completing the form to include his or her date of birth on the form.

**48.685(8)** The department, a county department, a child welfare agency or a school board may charge a fee for obtaining the information required under sub. (2)(am) or (3)(a) or for providing information to an entity to enable the entity to comply with sub. (2)(b)1. or (3)(b). The fee may not exceed the reasonable cost of obtaining the information. No fee may be charged to a nurse's assistant, as defined in s. 146.40(1)(d), for obtaining or maintaining information if to do so would be inconsistent with federal law.

• **48.69 Probationary licenses.** Except as provided under s. 48.715(6) and (7), if any child welfare agency, shelter care facility, group home or day care center that has not been previously issued a license under s. 48.66(1)(a) applies for a license, meets the minimum requirements for a license established under s. 48.67 and pays the applicable fee referred to in s. 48.68(1), the department shall issue a probationary license to that child welfare agency, shelter care facility, group home or day care center. A probationary license is valid for up to 6 months after the date of issuance unless renewed under this section or suspended or revoked under s. 48.715. Before a probationary license expires, the department shall inspect the child welfare agency, shelter care facility, group home or day care center holding the probationary license and, except as provided under s. 48.715(6) and (7), if the child welfare agency, shelter care facility, group home or day care center meets the

minimum requirements for a license established under s. 48.67, the department shall issue a license under s. 48.66(1)(a). A probationary license issued under this section may be renewed for one 6-month period.

• **48.70 Provisions of licenses.** (1) General. Each license shall state the name of the person licensed, the premises included under the license, the maximum number of children who can be received and their age and sex and such additional information and special conditions as the department may prescribe.

**48.70(2)** Special Provisions for Child Welfare Agency Licenses. A license to a child welfare agency shall also specify the kind of child welfare work the agency is authorized to undertake, whether the agency may accept guardianship of children, whether the agency may place children in foster homes or treatment foster homes, and if so, the area the agency is equipped to serve.

• **48.715 Sanctions and penalties.** (1) In this section, "licensee" means a person who holds a license under s. 48.66(1)(a) or a probationary license under s. 48.69 to operate a child welfare agency, shelter care facility, group home or day care center.

**48.715(2)** If the department provides written notice of the grounds for a sanction, an explanation of the types of sanctions that may be imposed under this subsection and an explanation of the process for appealing a sanction imposed under this subsection, the department may order any of the following sanctions:

(a) That a person stop operating a child welfare agency, shelter care facility, group home or day care center if the child welfare agency, shelter care facility, group home or day care center is without a license in violation of s. 48.66(1)(a) or a probationary license in violation of s. 48.69.

(b) That a person who employs a person who has had a license under s. 48.66(1)(a) or a probationary license under s. 48.69 revoked within the previous 5 years terminate the employment of that person within 30 days after the date of the order. This paragraph includes employment of a person in any capacity, whether as an officer, director, agent or employee.

(c) That a licensee stop violating any provision of licensure under s. 48.70(1) or rules promulgated by the department under s. 48.67.

(d) That a licensee submit a plan of correction for violation of any provision of licensure under s. 48.70(1) or rule promulgated by the department under s. 48.67.

(e) That a licensee implement and comply with a plan of correction provided by the department or previously submitted by the licensee and approved by the department.

(f) That a licensee close the intake of any new children until all violations of the provisions of licensure under s. 48.70(1) and the rules promulgated by the department under s. 48.67 are corrected.

(g) That a licensee provide training for the licensee's staff members as specified by the department.

**48.715(3)** If the department provides written notice of the grounds for a penalty, an explanation of the types of penalties that may be imposed under this subsection and an explanation of the process for appealing a penalty imposed under this subsection, the department may impose any of the following penalties against a licensee or any other person who violates a provision of licensure under s. 48.70(1) or rule promulgated by the department under s. 48.67 or who fails to comply with an order issued under sub. (2) by the time specified in the order:

(a) A daily forfeiture amount per violation of not less than \$10 nor more than \$1,000. All of the following apply to a forfeiture under this paragraph:

1. Within the limits specified in this paragraph, the department may, by rule, set daily forfeiture amounts and payment deadlines based on the size and type of facility or agency and the seriousness of the violation. The department may set daily forfeiture amounts that increase periodically within the statutory limits if there is continued failure to comply with an order issued under sub. (2).

2. The department may directly assess a forfeiture imposed

under this paragraph by specifying the amount of that forfeiture in the notice provided under this subsection.

3. A person against whom the department has assessed a forfeiture shall pay that forfeiture to the department within 10 days after receipt of notice of the assessment or, if that person contests that assessment under s. 48.72, within 10 days after receipt of the final decision after exhaustion of administrative review or, if that person petitions for judicial review under ch. 227, within 10 days after receipt of the final decision after exhaustion of judicial review. The department shall remit all forfeitures paid under this subdivision to the secretary of administration for deposit in the school fund.

4. The attorney general may bring an action in the name of the state to collect any forfeiture imposed under this paragraph that has not been paid as provided in subd. 3. The only contestable issue in an action under this subdivision is whether or not the forfeiture has been paid.

(b) Suspension of the licensee's license for not more than 2 weeks.

(c) Refusal to continue a license or a probationary license.

(d) Revocation of a license or a probationary license as provided in sub. (4).

**48.715(4)** If the department provides written notice of revocation and the grounds for revocation as provided in sub. (4m) and an explanation of the process for appealing a revocation under this subsection, the department may revoke a license issued under s. 48.66(1)(a) or a probationary license issued under s. 48.69 for any of the following reasons:

(a) The department has imposed a penalty on the licensee under sub. (3) and the licensee or a person under the supervision of the licensee either continues to violate or resumes violation of a rule promulgated under s. 48.67, a provision of licensure under s. 48.70(1) or an order under this section forming any part of the basis for the penalty.

(b) The licensee or a person under the supervision of the licensee has committed a substantial violation, as determined by the department, of a rule promulgated under s. 48.67, a provision of licensure under s. 48.70(1) or an order under this section.

(c) The licensee or a person under the supervision of the licensee has committed an action or has created a condition relating to the operation or maintenance of the child welfare agency, shelter care facility, group home or day care center that directly threatens the health, safety or welfare of any child under the care of the licensee.

(d) The licensee or a person under the supervision of the licensee has violated, as determined by the department, a rule promulgated under s. 48.67, a provision of licensure under s. 48.70(1) or an order under this section that is the same as or similar to a rule promulgated under s. 48.67, a provision of licensure under s. 48.70(1) or an order under this section that the licensee or a person under the supervision of the licensee has violated previously.

(e) The licensee has failed to apply for a continuance of the license within 30 days after receipt of the warning under s. 48.66(5).

**48.715(4m)(a)** For a revocation under sub. (4)(a) or (d), the department shall provide to the licensee written notice of the revocation and the grounds for revocation not less than 30 days before the date of the revocation. The revocation will take effect only if the violation on which the revocation is based remains substantially uncorrected at the end of the 30-day notice period.

(b) For revocations under sub. (4)(b), (c) or (e), the department may revoke the license or probationary license immediately upon written notice to the licensee of the revocation and the grounds for revocation.

**48.715(5)** The department may deny a license under s. 48.66(1)(a) or a probationary license under s. 48.69 to any person who has had a license under s. 48.66(1)(a) or a probationary license under s. 48.69 revoked within the previous 5 years.

**48.715(6)** The department of health and family services shall deny, suspend, restrict, refuse to renew or otherwise withhold a license under s. 48.66(1)(a) or a probationary license under s. 48.69 to operate a child welfare agency, group home, shelter care facility or day care center, and the department of corrections shall deny, suspend, restrict, refuse to renew or otherwise withhold a

license under s. 48.66(1)(b) to operate a secured child caring institution, for failure of the applicant or licensee to pay court-ordered payments of child or family support, maintenance, birth expenses, medical expenses or other expenses related to the support of a child or former spouse or for failure of the applicant or licensee to comply, after appropriate notice, with a subpoena or warrant issued by the department of workforce development or a county child support agency under s. 59.53(5) and related to paternity or child support proceedings, as provided in a memorandum of understanding entered into under s. 49.857. Notwithstanding s. 48.72, an action taken under this subsection is subject to review only as provided in the memorandum of understanding entered into under s. 49.857 and not as provided in s. 48.72.

**48.715(7)** The department shall deny an application for the issuance or continuation of a license under s. 48.66(1)(a) or a probationary license under s. 48.69 to operate a child welfare agency, group home, shelter care facility or day care center, or revoke such a license already issued, if the department of revenue certifies under s. 73.0301 that the applicant or licensee is liable for delinquent taxes. An action taken under this subsection is subject to review only as provided under s. 73.0301(5) and not as provided in s. 48.72.

- **48.72 Appeal procedure.** Except as provided in s. 48.715(6) and (7), any person aggrieved by the department's refusal or failure to issue, renew or continue a license or by any action taken by the department under s. 48.715 has the right to an administrative hearing provided for contested cases in ch. 227. To receive an administrative hearing under ch. 227, the aggrieved person shall send to the department a written request for a hearing under s. 227.44 within 10 days after the date of the department's refusal or failure to issue, renew or continue a license or the department's action taken under s. 48.715. The department shall hold an administrative hearing under s. 227.44 within 30 days after receipt of the request for the administrative hearing unless the aggrieved person consents to an extension of that time period. Judicial review of the department's decision may be had as provided in ch. 227.

- **48.73 Inspection of licensees.** The department may visit and inspect each child welfare agency, foster home, treatment foster home, group home and day care center licensed by it, and for such purpose shall be given unrestricted access to the premises described in the license.

- **48.74 Authority of department to investigate alleged violations.** Whenever the department is advised or has reason to believe that any person is violating any of the provisions of ss. 48.60, 48.62, 48.625 or 48.65, it shall make an investigation to determine the facts. For the purposes of this investigation, it shall have authority to inspect the premises where the violation is alleged to occur. If it finds that the person is violating any of the specified sections, it may either issue a license if the person is qualified or may institute a prosecution under s. 48.76.

- **48.76 Penalties.** In addition to the sanctions and penalties provided in s. 48.715, any person who violates s. 48.60, 48.62, 48.625, 48.63 or 48.65 may be fined not more than \$500 or imprisoned for not more than one year in county jail or both.

- **48.77 Injunction against violations.** In addition to the penalties provided in s. 48.76, the circuit courts shall have jurisdiction to prevent and restrain by injunction violations of s. 48.60, 48.62, 48.625, 48.63 or 48.65. It shall be the duty of the district attorneys, upon request of the department, to institute action for such injunction under ch. 813.

- **48.78 Confidentiality of records. (1)** In this section, unless otherwise qualified, "agency" means the department, a county department, a licensed child welfare agency, or a licensed day care center.

**48.78(2)(a)** No agency may make available for inspection or disclose the contents of any record kept or information received about an individual in its care or legal custody, except as provided under s. 48.371, 48.38(5)(b) or (d) or (5m) (d), 48.432, 48.433, 48.93, 48.981(7), 938.51, or 938.78 or by order of the court.

(ag) Paragraph (a) does not prohibit an agency from making available for inspection or disclosing the contents of a record,

upon the request of the parent, guardian, or legal custodian of the child who is the subject of the record or upon the request of the child, if 14 years of age or over, to the parent, guardian, legal custodian, or child, unless the agency determines that inspection of the record by the child, parent, guardian, or legal custodian would result in imminent danger to anyone.

(aj) Paragraph (a) does not prohibit an agency from making available for inspection or disclosing the contents of a record, upon the request of a parent, guardian, or legal custodian of a child expectant mother of an unborn child who is the subject of the record, upon the request of an expectant mother of an unborn child who is the subject of the record, if 14 years of age or over, or upon the request of an unborn child by the unborn child's guardian ad litem to the parent, guardian, legal custodian, expectant mother, or unborn child by the unborn child's guardian ad litem, unless the agency determines that inspection of the record by the parent, guardian, legal custodian, expectant mother, or unborn child by the unborn child's guardian ad litem would result in imminent danger to anyone.

(am) Paragraph (a) does not prohibit an agency from making available for inspection or disclosing the contents of a record, upon the written permission of the parent, guardian, or legal custodian of the child who is the subject of the record or upon the written permission of the child, if 14 years of age or over, to the person named in the permission if the parent, guardian, legal custodian, or child specifically identifies the record in the written permission, unless the agency determines that inspection of the record by the person named in the permission would result in imminent danger to anyone.

(ap) Paragraph (a) does not prohibit an agency from making available for inspection or disclosing the contents of a record, upon the written permission of the parent, guardian, or legal custodian of a child expectant mother of an unborn child who is the subject of the record, or of an expectant mother of an unborn child who is the subject of the record, if 14 years of age or over, and of the unborn child by the unborn child's guardian ad litem, to the person named in the permission if the parent, guardian, legal custodian, or expectant mother, and unborn child by the unborn child's guardian ad litem, specifically identify the record in the written permission, unless the agency determines that inspection of the record by the person named in the permission would result in imminent danger to anyone.

(b) Paragraph (a) does not apply to the confidential exchange of information between an agency and another social welfare agency, a law enforcement agency, a public school or a private school regarding an individual in the care or legal custody of the agency. A social welfare agency that obtains information under this paragraph shall keep the information confidential as required under this section and s. 938.78. A law enforcement agency that obtains information under this paragraph shall keep the information confidential as required under ss. 48.396(1) and 938.396(1). A public school that obtains information under this paragraph shall keep the information confidential as required under s. 118.125 and a private school that obtains information under this paragraph shall keep the information confidential in the same manner as is required of a public school under s. 118.125.

(c) Paragraph (a) does not prohibit the department or a county department from using in the media a picture or description of a child in the guardianship of the department or a county department for the purpose of finding adoptive parents for that child.

(d) Paragraph (a) does not prohibit the department of health and family services or a county department from disclosing information about an individual formerly in the legal custody or under the supervision of that department under s. 48.34(4m), 1993 stats., or formerly under the supervision of that department or county department under s. 48.34(4n), 1993 stats., to the department of corrections, if the individual is at the time of disclosure any of the following:

1. The subject of a presentence investigation under s. 972.15.
2. Under sentence to the Wisconsin state prisons under s. 973.15.
3. Subject to an order under s. 48.366 and placed in a state prison under s. 48.366(8).
4. On probation to the department of corrections under s.

973.09.

5. On parole under s. 302.11 or ch. 304 or on extended supervision under s. 302.113 or 302.114.

(g) Paragraph (a) does not prohibit an agency from disclosing information about an individual in its care or legal custody on the written request of the department of regulation and licensing or of any interested examining board or affiliated credentialing board in that department for use in any investigation or proceeding relating to any alleged misconduct by any person who is credentialed or who is seeking credentialing under ch. 448, 455 or 457. Unless authorized by an order of the court, the department of regulation and licensing and any examining board or affiliated credentialing board in that department shall keep confidential any information obtained under this paragraph and may not disclose the name of or any other identifying information about the individual who is the subject of the information disclosed, except to the extent that redisclosure of that information is necessary for the conduct of the investigation or proceeding for which that information was obtained.

• **48.981 Abused or neglected children and abused unborn children.** (1) Definitions. In this section:

(d) "Neglect" means failure, refusal or inability on the part of a parent, guardian, legal custodian or other person exercising temporary or permanent control over a child, for reasons other than poverty, to provide necessary care, food, clothing, medical or dental care or shelter so as to seriously endanger the physical health of the child.

**48.981(2) Persons Required to Report.**

(a) Any of the following persons who has reasonable cause to suspect that a child seen by the person in the course of professional duties has been abused or neglected or who has reason to believe that a child seen by the person in the course of professional duties has been threatened with abuse or neglect and that abuse or neglect of the child will occur shall, except as provided under sub. (2m), report as provided in sub. (3):

1. A physician.
  2. A coroner.
  3. A medical examiner.
  4. A nurse.
  5. A dentist.
  6. A chiropractor.
  7. An optometrist.
  8. An acupuncturist.
  9. A medical or mental health professional not otherwise specified in this paragraph.
  10. A social worker.
  11. A marriage and family therapist.
  12. A professional counselor.
  13. A public assistance worker, including a financial and employment planner, as defined in s. 49.141(1)(d).
  14. A school teacher.
  15. A school administrator
  16. A school counselor.
  17. A mediator under s. 767.11.
  18. A child-care worker in a day care center, group home, as described in s. 48.625(1m), or residential care center for children and youth.
  19. A day care provider.
  20. An alcohol or other drug abuse counselor.
  21. A member of the treatment staff employed by or working under contract with a county department under s. 46.23, 51.42, or 51.437 or a residential care center for children and youth.
  22. A physical therapist.
  - 22m. A physical therapist assistant.
  23. An occupational therapist.
  24. A dietitian.
  25. A speech language pathologist.
  26. An audiologist.
  27. An emergency medical technician.
  28. A first responder.
  29. A police or law enforcement officer.
- (b) A court-appointed special advocate who has reasonable cause to suspect that a child seen in the course of activities under s. 48.236(3) has been abused or neglected or who has reason to

believe that a child seen in the course of those activities has been threatened with abuse and neglect and that abuse or neglect of the child will occur shall, except as provided in sub. (2m), report as provided in sub. (3).

(bm)1. Except as provided in subd. 3. and sub. (2m), a member of the clergy shall report as provided in sub. (3) if the member of the clergy has reasonable cause to suspect that a child seen by the member of the clergy in the course of his or her professional duties:

a. Has been abused, as defined in s. 48.02 (1) (b) to (f); or  
b. Has been threatened with abuse, as defined in s. 48.02(1)(b) to (f), and abuse of the child will likely occur.

2. Except as provided in subd. 3. and sub. (2m), a member of the clergy shall report as provided in sub. (3) if the member of the clergy has reasonable cause, based on observations made or information that he or she receives, to suspect that a member of the clergy has done any of the following:

a. Abused a child, as defined in s. 48.02(1)(b) to (f).  
b. Threatened a child with abuse, as defined in s. 48.02(1)(b) to (f), and abuse of the child will likely occur.

3. A member of the clergy is not required to report child abuse information under subd. 1. or 2. that he or she receives solely through confidential communications made to him or her privately or in a confessional setting if he or she is authorized to hear or is accustomed to hearing such communications and, under the disciplines, tenets, or traditions of his or her religion, has a duty or is expected to keep those communications secret. Those disciplines, tenets, or traditions need not be in writing.

(c) Any person not otherwise specified in par. (a), (b), or (bm), including an attorney, who has reason to suspect that a child has been abused or neglected or who has reason to believe that a child has been threatened with abuse or neglect and that abuse or neglect of the child will occur may report as provided in sub. (3).

(d) Any person, including an attorney, who has reason to suspect that an unborn child has been abused or who has reason to believe that an unborn child is at substantial risk of abuse may report as provided in sub. (3).

(e) No person making a report under this subsection may be discharged from employment for so doing.

**48.981(7) Confidentiality.**

(a) All reports made under this section, notices provided under sub. (3)(bm) and records maintained by an agency and other persons, officials and institutions shall be confidential. Reports and records may be disclosed only to the following persons:

1. The subject of a report, except that the person or agency maintaining the record or report may not disclose any information that would identify the reporter. 1m. A reporter described in sub. (3)(c)6m. who makes a written request to an agency for information regarding what action, if any, was taken to protect the health and welfare of the child or unborn child who is the subject of the report, unless a court order under sub. (3)(c)6m. prohibits disclosure of that information to that reporter, except that the only information that may be disclosed is information in the record regarding what action, if any, was taken to protect the health and welfare of the child or unborn child who is the subject of the report.

2. Appropriate staff of an agency or a tribal social services department.

2m. A person authorized to provide or providing intake or dispositional services for the court under s. 48.067, 48.069 or 48.10.

2r. A person authorized to provide or providing intake or dispositional services under s. 938.067, 938.069 or 938.10.

3. An attending physician for purposes of diagnosis and treatment.

3m. A child's parent, guardian or legal custodian or the expectant mother of an unborn child, except that the person or agency maintaining the record or report may not disclose any information that would identify the reporter.

4. A child's foster parent, treatment foster parent or other person having physical custody of the child or a person having physical custody of the expectant mother of an unborn child, except that the person or agency maintaining the record or report may not disclose any information that would identify the reporter.

5. A professional employee of a county department under s. 51.42 or 51.437 who is working with the child or the expectant

mother of the unborn child under contract with or under the supervision of the county department under s. 46.22 or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department.

6. A multidisciplinary child abuse and neglect or unborn child abuse team recognized by the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department.

6m. A person employed by a child advocacy center recognized by the county board, the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department, to the extent necessary to perform the services for which the center is recognized by the county board, the county department, the department or the licensed child welfare agency.

8. A law enforcement officer or law enforcement agency or a district attorney for purposes of investigation or prosecution.

8m. The department of corrections, the department of health and family services, a county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437 or any other person under contract with the department of corrections, the department of health and family services or a county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437 to exercise custody or supervision over a person who is subject to community placement for purposes of investigating or providing services to a person who is subject to community placement and who is the subject of a report. In making its investigation, the department of corrections, department of health and family services, county department or other person shall cooperate with the agency making the investigation under sub. (3)(c) or (d).

9. A court or administrative agency for use in a proceeding relating to the licensing or regulation of a facility regulated under this chapter.

10. A court conducting proceedings under s. 48.21 or 48.213, a court conducting proceedings related to a petition under s. 48.13, 48.133 or 48.42 or a court conducting dispositional proceedings under subch. VI or VIII in which abuse or neglect of the child who is the subject of the report or record or abuse of the unborn child who is the subject of the report or record is an issue.

10g. A court conducting proceedings under s. 48.21, a court conducting proceedings related to a petition under s. 48.13(3m) or (10m) or a court conducting dispositional proceedings under subch. VI in which an issue is the substantial risk of abuse or neglect of a child who, during the time period covered by the report or record, was in the home of the child who is the subject of the report or record.

10j. A court conducting proceedings under s. 938.21, a court conducting proceedings relating to a petition under ch. 938 or a court conducting dispositional proceedings under subch. VI of ch. 938 in which abuse or neglect of the child who is the subject of the report or record is an issue.

10m. A tribal court, or other adjudicative body authorized by a tribe or band to perform child welfare functions, that exercises jurisdiction over children and unborn children alleged to be in need of protection or services for use in proceedings in which abuse or neglect of the child who is the subject of the report or record or abuse of the unborn child who is the subject of the report or record is an issue.

10r. A tribal court, or other adjudicative body authorized by a tribe or band to perform child welfare functions, that exercises jurisdiction over children alleged to be in need of protection or services for use in proceedings in which an issue is the substantial risk of abuse or neglect of a child who, during the time period covered by the report or record, was in the home of the child who is the subject of the report or record.

11. The county corporation counsel or district attorney representing the interests of the public, the agency legal counsel and the counsel or guardian ad litem representing the interests of a child in proceedings under subd. 10., 10g. or 10j. and the guardian ad litem representing the interests of an unborn child in proceedings under subd. 10.

11m. An attorney representing the interests of an Indian tribe or band in proceedings under subd. 10m. or 10r., of an Indian

child in proceedings under subd. 10m. or 10r. or of an Indian unborn child in proceedings under subd. 10m.

11r. A volunteer court-appointed special advocate designated under s. 48.236(1) or person employed by a court-appointed special advocate program recognized by the chief judge of a judicial administrative district under s. 48.07(5), to the extent necessary for the court-appointed special advocate to perform the advocacy services specified in s. 48.236(3) that the court-appointed special advocate was designated to perform in proceedings related to a petition under s. 48.13.

12. A person engaged in bona fide research, with the permission of the department. Information identifying subjects and reporters may not be disclosed to the researcher.

13. The department, a county department under s. 48.57(1)(e) or (hm) or a licensed child welfare agency ordered to conduct a screening or an investigation of a stepparent under s. 48.88(2)(c).

14. A grand jury if it determines that access to specified records is necessary for the conduct of its official business.

14m. A judge conducting proceedings under s. 968.26.

15. A child fatality review team recognized by the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department.

15g. A citizen review panel established or designated by the department or a county department.

15m. A coroner, medical examiner or pathologist or other physician investigating the cause of death of a child whose death is unexplained or unusual or is associated with unexplained or suspicious circumstances.

17. A federal agency, state agency of this state or any other state or local governmental unit located in this state or any other state that has a need for a report or record in order to carry out its responsibility to protect children from abuse or neglect or to protect unborn children from abuse.

(am) Notwithstanding par. (a)(intro.), a tribal agent who receives notice under sub. (3)(bm) may disclose the notice to a tribal social services department.

(b) Notwithstanding par. (a), either parent of a child may authorize the disclosure of a record for use in a child custody proceeding under s. 767.24 or 767.325 or in an adoption proceeding under s. 48.833, 48.835, 48.837 or 48.839 when the child has been the subject of a report. Any information that would identify a reporter shall be deleted before disclosure of a record under this paragraph.

(c) Notwithstanding par. (a), the subject of a report may authorize the disclosure of a record to the subject's attorney. The authorization shall be in writing. Any information that would identify a reporter shall be deleted before disclosure of a record under this paragraph.

(cm) Notwithstanding par. (a), an agency may disclose information from its records for use in proceedings under s. 48.25(6), 813.122 or 813.125.

(cr)1. Notwithstanding par. (a) and subject to subd. 3., an agency may disclose to the general public a written summary of the information specified in subd. 2. relating to any child who has died or been placed in serious or critical condition, as determined by a physician, as a result of any suspected abuse or neglect that has been reported under this section if any of the following circumstances apply:

a. A person has been charged with a crime for causing the death or serious or critical condition of the child as a result of the suspected abuse or neglect, or the district attorney indicates that a person who is deceased would have been charged with a crime for causing the death or serious or critical condition of the child as a result of the suspected abuse or neglect, but for the fact that the person is deceased.

b. A judge, district attorney, law enforcement officer, law enforcement agency or any other officer or agency whose official duties include the investigation or prosecution of crime has previously disclosed to the public, in the performance of the official duties of the officer or agency, that the suspected abuse or neglect of the child has been investigated under sub. (3) or that child welfare services have been provided to the child or the child's family under this chapter.

c. A parent, guardian or legal custodian of the child or the

child, if 14 years of age or over, has previously disclosed or authorized the disclosure of the information specified in subd. 2.

2. If an agency is permitted to disclose information under subd. 1. relating to a child who has died or been placed in serious or critical condition as a result of any suspected abuse or neglect that has been reported under this section, the agency may disclose all of the following information from its records:

a. A description of any investigation made by the agency in response to the report of the suspected abuse or neglect, a statement of the determination made by the agency under sub. (3)(c)4. with respect to the report and the basis for that determination, a statement of whether any services were offered or provided to the child, the child's family or the person suspected of the abuse or neglect and a statement of whether any other action was taken by the agency to protect the child who is the subject of the report or any other child residing in the same dwelling as the child who is the subject of the report.

b. Whether any previous report of suspected or threatened abuse or neglect of the child has been made to the agency and the date of the report, a statement of the determination made by the agency under sub. (3)(c)4. with respect to the report and the basis for that determination, a statement of whether any services were offered or provided to the child, the child's family or the person suspected of the abuse or neglect and a statement of whether any other action was taken by the agency to protect the child who is the subject of the report or any other child residing in the same dwelling as the child who is the subject of the report.

c. Whether the child or the child's family has received any services under this chapter prior to the report of suspected abuse or neglect that caused the child's death or serious or critical condition or any previous report of suspected or threatened abuse or neglect.

3. An agency may not disclose any of the information described in subd. 2. if any of the following applies:

a. The agency determines that disclosure of the information would be contrary to the best interests of the child who is the subject of the report, the child's siblings or any other child residing in the same dwelling as the child who is the subject of the report or that disclosure of the information is likely to cause mental, emotional or physical harm or danger to the child who is the subject of the report, the child's siblings, any other child residing in the same dwelling as the child who is the subject of the report or any other person.

b. The district attorney determines that disclosure of the information would jeopardize any ongoing or future criminal investigation or prosecution or would jeopardize a defendant's right to a fair trial.

c. The agency determines that disclosure of the information would jeopardize any ongoing or future civil investigation or proceeding or would jeopardize the fairness of such a proceeding.

d. Disclosure of the information is not authorized by state law or rule or federal law or regulation.

e. The investigation under sub. (3) of the report of the suspected abuse or neglect has not been completed, in which case the agency may only disclose that the report is under investigation.

f. Disclosure of the information would reveal the identity of the child who is the subject of the report, the child's siblings, the child's parent, guardian or legal custodian or any other person residing in the same dwelling as the child, and information that would reveal the identity of those persons has not previously been disclosed to the public.

g. Disclosure of the information would reveal the identity of a reporter or any other person who provides information relating to the suspected abuse or neglect of the child.

4. Any person who requests the information specified in subd. 2. under the circumstances specified in subd. 1. and whose request is denied may petition the court to order the disclosure of that information. On receiving a petition under this subdivision, the court shall notify the agency, the district attorney, the child and the child's parent, guardian or legal custodian of the petition. If any person notified objects to the disclosure, the court may hold a hearing to take evidence and hear argument relating to the disclosure of the information. The court shall make an in camera inspection of the information sought to be disclosed and shall

order disclosure of the information, unless the court finds that any of the circumstances specified in subd. 3. apply.

5. Any person acting in good faith in disclosing or refusing to disclose the information specified in subd. 2. under the circumstances specified in subd. 1. is immune from any liability, civil or criminal, that may result by reason of that disclosure or nondisclosure. For purposes of any proceeding, civil or criminal, the good faith of a person in disclosing or refusing to disclose the information specified in subd. 2. under the circumstances specified in subd. 1. shall be presumed.

(d) Notwithstanding par. (a), the department may have access to any report or record maintained by an agency under this section.

(e) A person to whom a report or record is disclosed under this subsection may not further disclose it, except to the persons and for the purposes specified in this section.

(f) Any person who violates this subsection, or who permits or encourages the unauthorized dissemination or use of information contained in reports and records made under this section, may be fined not more than \$1,000 or imprisoned not more than 6 months or both.

#### **CHAPTER 49 PUBLIC ASSISTANCE**

• **49.857 Administrative enforcement of support; denial, nonrenewal, restriction and suspension of licenses. (1)** In this section:

(a) "Child support agency" means a county child support agency under s. 59.53(5).

(b) "Credential" means a license, permit, certificate or registration that is granted under chs. 440 to 480.

(c) "Credentialing board" means a board, examining board or affiliated credentialing board in the department of regulation and licensing that grants a credential.

(d) "License" means any of the following:

1. A license issued under s. 13.63 or a registration issued under s. 13.64.

2. An approval specified in s. 29.024(2g) or a license issued under ch. 169.

2m. A fishing approval issued under s. 29.229.

3. A license issued under s. 48.66(1)(a) or (b).

4. A certification, license, training permit, registration, approval or certificate issued under s. 49.45(2)(a)11., 146.50(5)(a) or (b), (6g)(a) or (8)(a), 250.05(5), 252.23(2), 252.24(2), 254.176(1) or (3)(a), 254.178(2)(a), 254.20(2), (3) or (4), 254.47(1), 254.64(1)(a) or (b), 254.71(2) or 255.08(2).

5. A business tax registration certificate issued under s. 73.03(50).

6. A license, registration, registration certificate or certification specified in s. 93.135(1).

7. A license, permit or certificate of certification or registration specified in s. 101.02(21)(a).

8. A license issued under s. 102.17(1)(c), 104.07 or 105.05.

10. A certificate issued under s. 103.275, 103.91 or 103.92.

11. A license or permit issued under chs. 115 and 118.

12. A license or certificate of registration issued under ss. 138.09, 138.12, 217.06, 218.0101 to 218.0163, 218.02, 218.04, 218.05, 224.72, 224.93 or subch. III of ch. 551.

13. A permit issued under s. 170.12.

14. A certification under s. 165.85.

15. A license, permit or registration issued under ss. 218.0101 to 218.0163, 218.11, 218.12, 218.22, 218.32, 218.41, 218.51, 341.51, 343.305(6), 343.61 or 343.62.

16. A license, registration or certification specified in s. 299.08(1)(a).

17. A license issued under ch. 343 or, with respect to restriction, limitation or suspension, an individual's operating privilege, as defined in s. 340.01(40).

18. A credential.

19. A license issued under s. 563.24 or ch. 562.

20. A license issued under s. 628.04, 632.68(2) or (4) or 633.14 or a temporary license issued under s. 628.09.

21. A license to practice law.

(e) "Licensing agency" means a board, office or commissioner, department or division within a department that grants or issues a license, but does not include a credentialing board.

(em) "Licensing authority" means the supreme court or the Lac du Flambeau band of the Lake Superior Chippewa.

(f) "Subpoena or warrant" means a subpoena or warrant issued by the department of workforce development or a child support agency and relating to paternity or support proceedings.

(g) "Support" means child or family support, maintenance, birth expenses, medical expenses or other expenses related to the support of a child or former spouse.

**49.857(2)(a)** The department of workforce development shall establish a system, in accordance with federal law, under which a licensing authority is requested, and a licensing agency or credentialing board is required, to restrict, limit, suspend, withhold, deny, refuse to grant or issue or refuse to renew or revalidate a license in a timely manner upon certification by and in cooperation with the department of workforce development, if the individual holding or applying for the license is delinquent in making court-ordered payments of support or fails to comply, after appropriate notice, with a subpoena or warrant.

(b) Under the system, the department of workforce development shall enter into a memorandum of understanding with a licensing authority, if the licensing authority agrees, and with a licensing agency. A memorandum of understanding under this paragraph shall address at least all of the following:

1. The circumstances under which the licensing authority or the licensing agency must restrict, limit, suspend, withhold, deny, refuse to grant or issue or refuse to renew or revalidate a license and guidelines for determining the appropriate action to take. The memorandum of understanding with the department of regulation and licensing shall include the circumstances under which the department of regulation and licensing shall direct a credentialing board to restrict, limit, suspend, withhold, deny or refuse to grant a credential and guidelines for determining the appropriate action to take. The guidelines under this subdivision for determining the appropriate action to take shall require the consideration of whether the action is likely to have an adverse effect on public health, safety or welfare or on the environment, and of whether the action is likely to adversely affect individuals other than the individual holding or applying for the license, such as employees of that individual.

2. Procedures that the department of workforce development shall use for doing all of the following:

a. Certifying to the licensing authority or licensing agency a delinquency in support or a failure to comply with a subpoena or warrant. The memorandum of understanding with the department of regulation and licensing shall include procedures for the department of regulation and licensing to notify a credentialing board that a certification of delinquency in support or failure to comply with a subpoena or warrant has been made by the department of workforce development with respect to an individual who holds or applied for a credential granted by the credentialing board.

b. Notifying an individual who is delinquent in making court ordered payments of support under sub. (3)(a).

bg. Notifying an individual who is delinquent in making court-ordered payments of support and who fails to request a hearing under sub. (3)(am).

br. Notifying an individual who fails to comply with a subpoena or warrant under sub. (3)(b).

c. Notifying the licensing authority or licensing agency that an individual has paid delinquent support or made satisfactory alternative payment arrangements or satisfied the requirements under a subpoena or warrant. The memorandum of understanding with the department of regulation and licensing shall include procedures for the department of regulation and licensing to notify a credentialing board that an individual who holds or applied for a credential granted by the credentialing board has paid delinquent support or made satisfactory alternative payment arrangements or satisfied the requirements under a subpoena or warrant.

3. Procedures that the licensing authority or licensing agency shall use for doing all of the following:

a. Restricting, limiting, suspending, withholding, denying, refusing to grant or issue or refusing to renew or revalidate a license. The memorandum of understanding with the department of regulation and licensing shall include procedures for the

department of regulation and licensing to direct a credentialing board to restrict, limit, suspend, withhold, deny or refuse to grant a credential.

b. Notifying an individual of action taken under sub. (3)(c)2.

c. Issuing or reinstating a license if the department of workforce development notifies the licensing authority or licensing agency that an individual who was delinquent in making court-ordered payments of support has paid the delinquent support or made satisfactory alternative payment arrangements or that an individual who failed to comply with a subpoena or warrant has satisfied the requirements under the subpoena or warrant. The memorandum of understanding with the department of regulation and licensing shall include procedures for the department of regulation and licensing to direct a credentialing board to grant or reinstate a credential if the department of workforce development notifies the department of regulation and licensing that an individual who holds or applied for a credential granted by the credentialing board has paid the delinquent support or made satisfactory alternative payment arrangements or that an individual who failed to comply with a subpoena or warrant has satisfied the requirements under the subpoena or warrant.

d. Issuing or reinstating a license after the maximum time has elapsed if an individual who was delinquent in making court-ordered payments of support does not pay the delinquent support or make satisfactory alternative payment arrangements and if an individual who failed to comply with a subpoena or warrant fails to satisfy the requirements under the subpoena or warrant.

4. Procedures for the use under the system of social security numbers obtained from license applications.

5. Procedures for safeguarding the confidentiality of information about an individual, including social security numbers obtained by the department of workforce development, the licensing authority, the licensing agency or a credentialing board.

(c)1. The system shall provide for adequate notice to an individual who is delinquent in making court-ordered payments of support, an opportunity for the individual to make alternative arrangements for paying the delinquent support, an opportunity for the individual to request and obtain a hearing before a court or circuit court commissioner as provided in sub. (3) and prompt reinstatement of the individual's license upon payment of the delinquent support or upon making satisfactory alternative payment arrangements.

2. The system shall provide for adequate notice to an individual who fails to comply with a subpoena or warrant, an opportunity for the individual to satisfy the requirements under the subpoena or warrant and prompt reinstatement of the individual's license upon satisfaction of the requirements under the subpoena or warrant.

(d) Notwithstanding pars. (b) 3. c. and (c), under the system a license may not be restricted, limited, suspended, withheld, denied or refused granting, issuing, renewing or revalidating for a delinquency in support for more than 5 years, or for a failure to comply with a subpoena or warrant for more than 6 months.

**49.857(3)(a)** Before the department of workforce development certifies to a licensing authority or a licensing agency under the system established under sub. (2) that an individual is delinquent in making court-ordered payments of support, the department of workforce development or a child support agency shall provide notice to the individual by regular mail. The notice shall inform the individual of all of the following:

1. That a certification of delinquency in paying support will be made to a licensing authority, a licensing agency or, with respect to a credential granted by a credentialing board, the department of regulation and licensing.

2. When the certification under subd. 1. will occur.

3. That, upon certification, for a period of 5 years any license that the individual holds from any licensing agency or credentialing board, or from any licensing authority if the licensing authority agrees, will be restricted, limited, suspended or not renewed or revalidated, and any license for which the individual applies or has applied from any licensing agency or credentialing board, or from any licensing authority if the licensing authority agrees, will not be granted or issued. The notice shall inform the individual that he or she may be eligible for an occupational license under s. 343.10 if his or her operating privilege is suspended.

4. That the certification will not be made if the individual pays the delinquent amount in full or makes satisfactory alternative payment arrangements with the department of workforce development or a child support agency. The notice shall inform the individual of how he or she may pay the delinquent amount or make satisfactory alternative payment arrangements.

5. That, within 20 business days after receiving the notice, the individual may request a hearing before the circuit court that rendered the order or judgment requiring the payments. The request shall be in writing and the individual shall mail or deliver a copy of the request to the child support agency.

(ac)1. If an individual timely requests a hearing under par. (a)5., the court shall schedule a hearing within 10 business days after receiving the request. A circuit court commissioner may conduct the hearing. The only issues at the hearing shall be whether the individual is delinquent in making court-ordered payments of support and whether any alternative payment arrangement offered by the department of workforce development or the county child support agency is reasonable.

2. If at a hearing under subd. 1. the court or circuit court commissioner finds that the individual does not owe delinquent support, or if within 20 business days after receiving a notice under par. (a) the individual pays the delinquent amount in full or makes satisfactory alternative payment arrangements, the department of workforce development may not place the individual's name on a certification list.

3. If at a hearing under subd. 1. the court or circuit court commissioner makes a written determination that alternative payment arrangements proposed by the department of workforce development or a child support agency are not reasonable, the court or circuit court commissioner may order for the individual an alternative payment arrangement. If the court or circuit court commissioner orders an alternative payment arrangement, the department of workforce development may not place the individual's name on a certification list.

(am) If an individual, after receiving notice under par. (a), does not timely request a hearing or pay the delinquent amount of support or make satisfactory alternative payment arrangements, the department of workforce development shall place the individual's name on a certification list. Thereafter, the department of workforce development or a child support agency shall provide a 2<sup>nd</sup> notice to the individual by regular mail that informs the individual of all of the following:

1. That the individual's name has been placed on a certification list, which will be provided to a licensing authority, a licensing agency or, with respect to a credential granted by a credentialing board, the department of regulation and licensing.

2. When the certification will be made.

3. That, upon certification, for a period of 5 years any license that the individual holds from any licensing agency or credentialing board, or from any licensing authority if the licensing authority agrees, will be restricted, limited, suspended or not renewed or revalidated, and any license for which the individual applies or has applied from any licensing agency or credentialing board, or from any licensing authority if the licensing authority agrees, will not be granted or issued.

4. That the certification will not be made if the individual pays the delinquent amount in full or makes satisfactory alternative payment arrangements with the department of workforce development or a child support agency. The notice shall inform the individual of how he or she may pay the delinquent amount or make satisfactory alternative payment arrangements.

5. That, within 20 business days after receiving the notice, the individual may request a hearing before the circuit court that rendered the order or judgment requiring the payments. The request shall be in writing and the individual shall mail or deliver a copy of the request to the child support agency.

(ar) 1. If an individual timely requests a hearing under par. (am)5., the court shall schedule a hearing within 10 business days after receiving the request. A circuit court commissioner may conduct the hearing. The only issues at the hearing shall be whether the individual is delinquent in making court-ordered payments of support and whether any alternative payment arrangement offered by the department of workforce development or the county child support agency is reasonable.

2. If at a hearing under subd. 1. the court or circuit court commissioner finds that the individual does not owe delinquent support, or if within 20 business days after receiving a notice under par. (am) the individual pays the delinquent amount in full or makes satisfactory alternative payment arrangements, the department of workforce development shall remove the individual's name from the certification list.

3. If at a hearing under subd. 1. the court or circuit court commissioner makes a written determination that alternative payment arrangements proposed by the department of workforce development or a child support agency are not reasonable, the court or circuit court commissioner may order for the individual an alternative payment arrangement. If the court or circuit court commissioner orders an alternative payment arrangement, the department of workforce development may not place the individual's name on a certification list.

(b) Any subpoena or warrant shall include notice to the individual of the effect that a failure to comply with the subpoena or warrant may have on any license that the individual holds or for which the individual applies. If the individual fails to comply, before the department of workforce development certifies to a licensing authority or a licensing agency under the system established under sub. (2) that an individual has failed to comply with a subpoena or warrant, the department of workforce development or a child support agency shall provide notice to the individual by regular mail. The notice shall inform the individual of all of the following:

1. That a certification of the failure to comply with a subpoena or warrant will be made to a licensing authority, a licensing agency or, with respect to a credential granted by a credentialing board, the department of regulation and licensing.

2. When the certification under subd. 1. will occur.

3. That, upon certification, for a period of 6 months any license that the individual holds from any licensing agency or credentialing board, or from any licensing authority if the licensing authority agrees, will be restricted, limited, suspended or not renewed or revalidated, and any license for which the individual applies or has applied from any licensing agency or credentialing board, or from any licensing authority if the licensing authority agrees, will not be granted or issued.

4. That certification will not be made if the individual satisfies the requirements under the subpoena or warrant. The notice shall inform the individual of how he or she may satisfy those requirements.

(bm) If an individual, after receiving notice under par. (b), does not satisfy the requirements under the subpoena or warrant, the department of workforce development shall place the individual's name on a certification list.

(c) If the department of workforce development provides a certification list to a licensing authority, a licensing agency or, with respect to a credential granted by a credentialing board, the department of regulation and licensing, upon receipt of the list the licensing authority if the licensing authority agrees, the licensing agency or, with respect to a credential granted by a credentialing board, the department of regulation and licensing shall do all of the following:

1. In accordance with a memorandum of understanding entered into under sub. (2)(b), restrict, limit, suspend, withhold, deny, refuse to grant or issue or refuse to renew or revalidate a license if the individual holding or applying for the license is included on the list.

2. Provide notice to the individual by regular mail of the action taken under subd. 1.

(d)1. Subject to sub. (2)(d), if an individual who, on the basis of delinquent support, is denied a license or whose license, on the basis of delinquent support, is restricted, limited, suspended or refused renewal or revalidation under a memorandum of understanding entered into under sub. (2)(b) pays the delinquent amount of support in full or makes satisfactory alternative payment arrangements, the department of workforce development shall immediately notify the licensing authority or licensing agency to issue or reinstate the individual's license as provided in the memorandum of understanding. If the individual held or applied for a credential granted by a credentialing board, the department of regulation and licensing shall, upon notice by the department of workforce development, notify the credentialing board to grant or

reinstate the individual's credential.

2. Subject to sub. (2)(d), if an individual who, on the basis of a failure to comply with a subpoena or warrant, is denied a license or whose license, on the basis of a failure to comply with a subpoena or warrant, is restricted, limited, suspended or refused renewal or revalidation under a memorandum of understanding entered into under sub. (2)(b) satisfies the requirements under the subpoena or warrant, the department of workforce development shall immediately notify the licensing authority or licensing agency to issue or reinstate the individual's license as provided in the memorandum of understanding. If the individual held or applied for a credential granted by a credentialing board, the department of regulation and licensing shall, upon notice by the department of workforce development, notify the credentialing board to grant or reinstate the individual's credential.

**49.857(4)** Each licensing agency shall enter into a memorandum of understanding with the department of workforce development under sub. (2)(b) and shall cooperate with the department of workforce development in its administration of s. 49.22. The department of regulation and licensing shall enter into a memorandum of understanding with the department of workforce development on behalf of a credentialing board with respect to a credential granted by the credentialing board.

**49.857(5)** The restriction, limitation, suspension, withholding or denial of, or the refusal to grant, issue, renew or revalidate, a license under a memorandum of understanding entered into under sub. (2)(b) is not subject to administrative review under ch. 227.

#### **CHAPTER 51 STATE ALCOHOL, DRUG ABUSE, DEVELOPMENTAL DISABILITIES AND MENTAL HEALTH ACT**

##### **• 51.30 Records. (4) Access to Registration and Treatment Records.**

(a) *Confidentiality of records.* Except as otherwise provided in this chapter and ss. 118.125(4), 610.70(3) and (5), 905.03 and 905.04, all treatment records shall remain confidential and are privileged to the subject individual. Such records may be released only to the persons designated in this chapter or ss. 118.125(4), 610.70(3) and (5), 905.03 and 905.04, or to other designated persons with the informed written consent of the subject individual as provided in this section. This restriction applies to elected officials and to members of boards appointed under s. 51.42(4)(a) or 51.437(7)(a).

##### *(b) Access without informed written consent.*

Notwithstanding par. (a), treatment records of an individual may be released without informed written consent in the following circumstances, except as restricted under par. (c):

1. To an individual, organization or agency designated by the department or as required by law for the purposes of management audits, financial audits, or program monitoring and evaluation. Information obtained under this paragraph shall remain confidential and shall not be used in any way that discloses the names or other identifying information about the individual whose records are being released. The department shall promulgate rules to assure the confidentiality of such information.

2. To the department, the director of a county department under s. 51.42 or 51.437, or a qualified staff member designated by the director as is necessary for, and only to be used for, billing or collection purposes. Such information shall remain confidential. The department and county departments shall develop procedures to assure the confidentiality of such information.

3. For purposes of research as permitted in s. 51.61(1)(j) and (4) if the research project has been approved by the department and the researcher has provided assurances that the information will be used only for the purposes for which it was provided to the researcher, the information will not be released to a person not connected with the study under consideration, and the final product of the research will not reveal information that may serve to identify the individual whose treatment records are being released under this subsection without the informed written consent of the individual. Such information shall remain confidential. In approving research projects under this subsection, the department shall impose any additional safeguards needed to

prevent unwarranted disclosure of information.

4. Pursuant to lawful order of a court of record.

5. To qualified staff members of the department, to the director of the county department under s. 51.42 or 51.437 which is responsible for serving a subject individual or to qualified staff members designated by the director as is necessary to determine progress and adequacy of treatment, to determine whether the person should be transferred to a less restrictive or more appropriate treatment modality or facility or for the purposes of s. 51.14. Such information shall remain confidential. The department and county departments under s. 51.42 or 51.437 shall develop procedures to assure the confidentiality of such information.

6. Within the treatment facility where the subject individual is receiving treatment confidential information may be disclosed to individuals employed, individuals serving in bona fide training programs or individuals participating in supervised volunteer programs, at the facility when and to the extent that performance of their duties requires that they have access to such information.

7. Within the department to the extent necessary to coordinate treatment for mental illness, developmental disabilities, alcoholism or drug abuse of individuals who have been committed to or who are under the supervision of the department. The department shall promulgate rules to assure the confidentiality of such information.

8. To a licensed physician who has determined that the life or health of the individual is in danger and that treatment without the information contained in the treatment records could be injurious to the patient's health. Such disclosure shall be limited to that part of the records necessary to meet the medical emergency.

8m. To appropriate examiners and facilities in accordance with s. 971.17(2)(e), (4)(c) and (7)(c), 980.03(4) or 980.08(3). The recipient of any information from the records shall keep the information confidential except as necessary to comply with s. 971.17 or ch. 980.

9. To a facility which is to receive an individual who is involuntarily committed under this chapter, ch. 48, 971 or 975 upon transfer of the individual from one treatment facility to another. Release of records under this subdivision shall be limited to such treatment records as are required by law, a record or summary of all somatic treatments, and a discharge summary. The discharge summary may include a statement of the patient's problem, the treatment goals, the type of treatment which has been provided, and recommendation for future treatment, but it may not include the patient's complete treatment record. The department shall promulgate rules to implement this subdivision.

10. To a correctional facility or to a probation, extended supervision and parole agent who is responsible for the supervision of an individual who is receiving inpatient or outpatient evaluation or treatment under this chapter in a program that is operated by, or is under contract with, the department or a county department under s. 51.42 or 51.437, or in a treatment facility, as a condition of the probation, extended supervision and parole supervision plan, or whenever such an individual is transferred from a state or local correctional facility to such a treatment program and is then transferred back to the correctional facility. Every probationer, parolee or person on extended supervision who receives evaluation or treatment under this chapter shall be notified of the provisions of this subdivision by the individual's probation, extended supervision and parole agent. Release of records under this subdivision is limited to:

a. The report of an evaluation which is provided pursuant to the written probation, extended supervision and parole supervision plan.

b. The discharge summary, including a record or summary of all somatic treatments, at the termination of any treatment which is provided as part of the probation, extended supervision and parole supervision plan.

c. When an individual is transferred from a treatment facility back to a correctional facility, the information provided under subd. 10. d.

d. Any information necessary to establish, or to implement changes in, the individual's treatment plan or the level and kind of supervision on probation, extended supervision or parole, as determined by the director of the facility or the treatment director. In cases involving a person transferred back to a correctional

facility, disclosure shall be made to clinical staff only. In cases involving a person on probation, extended supervision or parole, disclosure shall be made to a probation, extended supervision and parole agent only. The department shall promulgate rules governing the release of records under this subdivision.

10m. To the department of justice or a district attorney under s. 980.015(3)(b), if the treatment records are maintained by an agency with jurisdiction, as defined in s. 980.015(1), that has control or custody over a person who may meet the criteria for commitment as a sexually violent person under ch. 980.

11. To the subject individual's counsel or guardian ad litem and the corporation counsel, without modification, at any time in order to prepare for involuntary commitment or recommitment proceedings, reexaminations, appeals, or other actions relating to detention, admission, commitment, or patients' rights under this chapter or ch. 48, 971, or 975.

11m. To the guardian ad litem of the unborn child, as defined in s. 48.02(19), of a subject individual, without modification, at any time to prepare for proceedings under s. 48.133.

12. To a correctional officer of the department of corrections who has custody of or is responsible for the supervision of an individual who is transferred or discharged from a treatment facility. Records released under this subdivision are limited to notice of the subject individual's change in status.

12m. To any person if the patient was admitted under s. 971.14, 971.17 or 980.06 or ch. 975 or transferred under s. 51.35(3) or 51.37 and is on unauthorized absence from a treatment facility. Information released under this subdivision is limited to information that would assist in the apprehension of the patient.

13. To the parents, children or spouse of an individual who is or was a patient at an inpatient facility, to a law enforcement officer who is seeking to determine whether an individual is on unauthorized absence from the facility, and to mental health professionals who are providing treatment to the individual at the time that the information is released to others. Information released under this subdivision is limited to notice as to whether or not an individual is a patient at the inpatient facility.

15. To personnel employed by a county department under s. 46.215, 46.22, 51.42 or 51.437 in any county where the county department has established and submitted to the department a written agreement to coordinate services to individuals receiving services under this chapter. This information shall be released upon request of such county department personnel, and may be utilized only for the purposes of coordinating human services delivery and case management. This information shall remain confidential, and shall continue to be governed by this section. Information may be released under this subdivision only if the subject individual has received services through a county department under s. 51.42 or 51.437 within 6 months preceding the request for information, and the information is limited to:

- a. The subject individual's name, address, age, birthdate, sex, client-identifying number and primary disability.
- b. The type of service rendered or requested to be provided to the subject individual, and the dates of such service or request.
- c. Funding sources, and other funding or payment information.

16. If authorized by the secretary or his or her designee, to a law enforcement agency upon request if the individual was admitted under ch. 971 or 975 or transferred under s. 51.35(3) or 51.37. Information released under this subdivision is limited to the individual's name and other identifying information, including photographs and fingerprints, the branch of the court that committed the individual, the crime that the individual is charged with, found not guilty of by reason of mental disease or defect or convicted of, whether or not the individual is or has been authorized to leave the grounds of the institution and information as to the individual's whereabouts during any time period. In this subdivision "law enforcement agency" has the meaning provided in s. 165.83(1)(b).

17. To the county agency designated under s. 46.90(2) or other investigating agency under s. 46.90 for the purposes of s. 46.90(4)(a) and (5), to the county department, as defined in s. 48.02(2g), or the sheriff or police department for the purposes of s. 48.981(2) and (3) or to the county protective services agency

designated under s. 55.02 for purposes of s. 55.043. The treatment record holder may release treatment record information by initiating contact with the county protective services agency or county department, as defined in s. 48.02(2g), without first receiving a request for release of the treatment record from the county protective services agency or county department.

18.a. In this subdivision, "abuse" has the meaning given in s. 51.62(1)(ag); "neglect" has the meaning given in s. 51.62(1)(br); and "parent" has the meaning given in s. 48.02 (13), except that "parent" does not include the parent of a minor whose custody is transferred to a legal custodian, as defined in s. 48.02(11), or for whom a guardian is appointed under s. 880.33.

b. Except as provided in subd. 18. c. and d., to staff members of the protection and advocacy agency designated under s. 51.62(2) or to staff members of the private, nonprofit corporation with which the agency has contracted under s. 51.62(3)(a) 3., if any, for the purpose of protecting and advocating the rights of persons with developmental disabilities, as defined under s. 51.62(1)(am), or mental illness, as defined under s. 51.62(1)(bm).

c. If the patient, regardless of age, has a guardian appointed under s. 880.33, or if the patient is a minor with developmental disability who has a parent or has a guardian appointed under s. 48.831 and does not have a guardian appointed under s. 880.33, information concerning the patient that is obtainable by staff members of the agency or nonprofit corporation with which the agency has contracted is limited, except as provided in subd. 18.e., to the nature of an alleged rights violation, if any; the name, birth date and county of residence of the patient; information regarding whether the patient was voluntarily admitted, involuntarily committed or protectively placed and the date and place of admission, placement or commitment; and the name, address and telephone number of the guardian of the patient and the date and place of the guardian's appointment or, if the patient is a minor with developmental disability who has a parent or has a guardian appointed under s. 48.831 and does not have a guardian appointed under s. 880.33, the name, address and telephone number of the parent or guardian appointed under s. 48.831 of the patient.

d. Except as provided in subd. 18.e., any staff member who wishes to obtain additional information about a patient described in subd. 18.c. shall notify the patient's guardian or, if applicable, parent in writing of the request and of the guardian's or parent's right to object. The staff member shall send the notice by mail to the guardian's or, if applicable, parent's address. If the guardian or parent does not object in writing within 15 days after the notice is mailed, the staff member may obtain the additional information. If the guardian or parent objects in writing within 15 days after the notice is mailed, the staff member may not obtain the additional information.

e. The restrictions on information that is obtainable by staff members of the protection and advocacy agency or private, nonprofit corporation that are specified in subd. 18. c. and d. do not apply if the custodian of the record fails to promptly provide the name and address of the parent or guardian; if a complaint is received by the agency or nonprofit corporation about a patient, or if the agency or nonprofit corporation determines that there is probable cause to believe that the health or safety of the patient is in serious and immediate jeopardy, the agency or nonprofit corporation has made a good-faith effort to contact the parent or guardian upon receiving the name and address of the parent or guardian, the agency or nonprofit corporation has either been unable to contact the parent or guardian or has offered assistance to the parent or guardian to resolve the situation and the parent or guardian has failed or refused to act on behalf of the patient; if a complaint is received by the agency or nonprofit corporation about a patient or there is otherwise probable cause to believe that the patient has been subject to abuse or neglect by a parent or guardian; or if the patient is a minor whose custody has been transferred to a legal custodian, as defined in s. 48.02(11) or for whom a guardian that is an agency of the state or a county has been appointed.

19. To state and local law enforcement agencies for the purpose of reporting an apparent crime committed on the premises of an inpatient treatment facility or nursing home, if the facility or home has treatment records subject to this section, or observed by staff or agents of any such facility or nursing home. Information

released under this subdivision is limited to identifying information that may be released under subd. 16. and information related to the apparent crime.

20. Except with respect to the treatment records of a subject individual who is receiving or has received services for alcoholism or drug dependence, to the spouse, parent, adult child or sibling of a subject individual, if the spouse, parent, adult child or sibling is directly involved in providing care to or monitoring the treatment of the subject individual and if the involvement is verified by the subject individual's physician, psychologist or by a person other than the spouse, parent, adult child or sibling who is responsible for providing treatment to the subject individual, in order to assist in the provision of care or monitoring of treatment. Except in an emergency as determined by the person verifying the involvement of the spouse, parent, adult child or sibling, the request for treatment records under this subdivision shall be in writing, by the requester. Unless the subject individual has been adjudged incompetent under ch. 880, the person verifying the involvement of the spouse, parent, adult child or sibling shall notify the subject individual about the release of his or her treatment records under this subdivision. Treatment records released under this subdivision are limited to the following:

a. A summary of the subject individual's diagnosis and prognosis.  
b. A listing of the medication which the subject individual has received and is receiving.  
c. A description of the subject individual's treatment plan.

21. To a mental health review officer for the purposes of s. 51.14.

22. To a representative of the board on aging and long-term care, in accordance with s. 49.498(5)(e).

23. To the department under s. 51.03(2) or to a sheriff, police department or district attorney for purposes of investigation of a death reported under s. 51.64(2)(a).

24. To the department of corrections for the purpose of obtaining information concerning a person required to register under s. 301.45. The department of corrections may disclose information that it receives under this subdivision as provided under s. 301.46.

25. If the treatment records do not contain information and the circumstances of the release do not provide information that would permit the identification of the individual.

26. To the department of corrections or to a sheriff, to determine if a person incarcerated is complying with the assessment or the driver safety plan ordered under s. 343.30(1q)(c).

(c) *Limitation on release of alcohol and drug treatment records.* Notwithstanding par. (b), whenever federal law or applicable federal regulations restrict, or as a condition to receipt of federal aids require that this state restrict the release of information contained in the treatment records of any patient who receives treatment for alcoholism or drug dependency in a program or facility to a greater extent than permitted under this section, the department may by rule restrict the release of such information as may be necessary to comply with federal law and regulations. Rules promulgated under this paragraph shall supersede this section with respect to alcoholism and drug dependency treatment records in those situations in which they apply.

(d) *Individual access.*

1. Access to treatment records by a subject individual during his or her treatment may be restricted by the director of the treatment facility. However, access may not be denied at any time to records of all medications and somatic treatments received by the individual.

2. The subject individual shall have a right, following discharge under s. 51.35(4), to a complete record of all medications and somatic treatments prescribed during admission or commitment and to a copy of the discharge summary which was prepared at the time of his or her discharge. A reasonable and uniform charge for reproduction may be assessed.

3. In addition to the information provided under subd. 2., the subject individual shall, following discharge, if the individual so requests, have access to and have the right to receive from the facility a photostatic copy of any or all of his or her treatment

records. A reasonable and uniform charge for reproduction may be assessed. The director of the treatment facility or such person's designee and the treating physician have a right to be present during inspection of any treatment records. Notice of inspection of treatment records shall be provided to the director of the treatment facility and the treating physician at least one full day, excluding Saturdays, Sundays and legal holidays, before inspection of the records is made. Treatment records may be modified prior to inspection to protect the confidentiality of other patients or the names of any other persons referred to in the record who gave information subject to the condition that his or her identity remain confidential. Entire documents may not be withheld in order to protect such confidentiality.

4. At the time of discharge all individuals shall be informed by the director of the treatment facility or such person's designee of their rights as provided in this subsection.

(dm) *Destruction, damage, falsification or concealment of treatment records.* No person may do any of the following:

1. Intentionally falsify a treatment record.

2. Conceal or withhold a treatment record with intent to prevent its release to the subject individual under par. (d), to his or her guardian appointed under ch. 880 or to persons with the informed written consent of the subject individual or with intent to prevent or obstruct an investigation or prosecution.

3. Intentionally destroy or damage records in order to prevent or obstruct an investigation or prosecution.

(e) *Notation of release of information.* Each time written information is released from a treatment record, a notation shall be made in the record by the custodian thereof that includes the following: the name of the person to whom the information was released; the identification of the information released; the purpose of the release; and the date of the release. The subject individual shall have access to such release data as provided in par. (d).

(f) *Correction of information.* A subject individual, or the parent, guardian or person in the place of a parent of a minor, or the guardian of an incompetent may, after having gained access to treatment records, challenge the accuracy, completeness, timeliness, or relevance of factual information in his or her treatment records and request in writing that the facility maintaining the record correct the challenged information. Such request shall be granted or denied within 30 days by the director of the treatment facility, the director of the county department under s. 51.42 or 51.437, or the secretary depending upon which person has custody of the record. Reasons for denial of the requested changes shall be given by the responsible officer and the individual shall be informed of any applicable grievance procedure or court review procedure. If the request is denied, the individual, parent, guardian or person in the place of a parent shall be allowed to insert into the record a statement correcting or amending the information at issue. The statement shall become a part of the record and shall be released whenever the information at issue is released.

(g) *Applicability.* Paragraphs (a), (b), (c), (dm) and (e) apply to all treatment records, including those on which written, drawn, printed, spoken, visual, electromagnetic or digital information is recorded or preserved, regardless of physical form or characteristics.

● **51.61 Patients rights.** (1) In this section, "patient" means any individual who is receiving services for mental illness, developmental disabilities, alcoholism or drug dependency, including any individual who is admitted to a treatment facility in accordance with this chapter or ch. 48 or 55 or who is detained, committed or placed under this chapter or ch. 48, 55, 971, 975 or 980, or who is transferred to a treatment facility under s. 51.35(3) or 51.37 or who is receiving care or treatment for those conditions through the department or a county department under s. 51.42 or 51.437 or in a private treatment facility. "Patient" does not include persons committed under ch. 975 who are transferred to or residing in any state prison listed under s. 302.01. In private hospitals and in public general hospitals, "patient" includes any individual who is admitted for the primary purpose of treatment of mental illness, developmental disability, alcoholism or drug abuse but does not include an individual who receives treatment in a hospital emergency room nor an individual who receives treatment on an outpatient basis at those hospitals, unless the individual is

otherwise covered under this subsection. Except as provided in sub. (2), each patient shall:

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

(b)1. Have the right to refuse to perform labor which is of financial benefit to the facility in which the patient is receiving treatment or service. Privileges or release from the facility may not be conditioned upon the performance of any labor which is regulated by this paragraph. Patients may voluntarily engage in therapeutic labor which is of financial benefit to the facility if such labor is compensated in accordance with a plan approved by the department and if:

a. The specific labor is an integrated part of the patient's treatment plan approved as a therapeutic activity by the professional staff member responsible for supervising the patient's treatment;

b. The labor is supervised by a staff member who is qualified to oversee the therapeutic aspects of the activity;

c. The patient has given his or her written informed consent to engage in such labor and has been informed that such consent may be withdrawn at any time; and

d. The labor involved is evaluated for its appropriateness by the staff of the facility at least once every 120 days.

2. Patients may also voluntarily engage in noncompensated therapeutic labor which is of financial benefit to the facility, if the conditions for engaging in compensated labor under this paragraph are met and if:

a. The facility has attempted to provide compensated labor as a first alternative and all resources for providing compensated labor have been exhausted;

b. Uncompensated therapeutic labor does not cause layoffs of staff hired by the facility to otherwise perform such labor; and

c. The patient is not required in any way to perform such labor. Tasks of a personal housekeeping nature are not to be considered compensable labor.

3. Payment to a patient performing labor under this section shall not be applied to costs of treatment without the informed, written consent of such patient. This paragraph does not apply to individuals serving a criminal sentence who are transferred from a state correctional institution under s. 51.37(5) to a treatment facility.

(cm) Have the rights specified under subd. 1. to send and receive sealed mail, subject to the limitations specified under subd. 2.

1. Patients have an unrestricted right to send sealed mail and receive sealed mail to or from legal counsel, the courts, government officials, private physicians, and licensed psychologists, and have reasonable access to letter writing materials including postage stamps. A patient shall also have a right to send sealed mail and receive sealed mail to or from other persons, subject to physical examination in the patient's presence if there is reason to believe that such communication contains contraband materials or objects that threaten the security of patients, prisoners, or staff. Such reasons shall be written in the individual's treatment record. The officers and staff of a facility may not read any mail covered by this subdivision.

2. The rights of a patient detained or committed under ch. 980 to send and receive sealed mail are subject to the following limitations:

a. An officer or staff member of the facility at which the patient is placed may delay delivery of the mail to the patient for a reasonable period of time to verify whether the person named as the sender actually sent the mail; may open the mail and inspect it for contraband; or may, if the officer or staff member cannot determine whether the mail contains contraband, return the mail to the sender along with notice of the facility mail policy.

b. The director of the facility or his or her designee may, in accordance with the standards and the procedure under sub. (2) for denying a right for cause, authorize a member of the facility treatment staff to read the mail, if the director or his or her designee has reason to believe that the mail could pose a threat to security at the facility or seriously interfere with the treatment, rights, or safety of others.

(d) Except in the case of a person who is committed for alcoholism, have the right to petition the court for review of the commitment order or for withdrawal of the order or release from commitment as provided in s. 51.20(16).

(e) Except in the case of a patient who is admitted or transferred under s. 51.35(3) or 51.37 or under ch. 971 or 975, have the right to the least restrictive conditions necessary to achieve the purposes of admission, commitment or protective placement, under programs, services and resources that the county board of supervisors is reasonably able to provide within the limits of available state and federal funds and of county funds required to be appropriated to match state funds.

(f) Have a right to receive prompt and adequate treatment, rehabilitation and educational services appropriate for his or her condition, under programs, services and resources that the county board of supervisors is reasonably able to provide within the limits of available state and federal funds and of county funds required to be appropriated to match state funds.

(fm) Have the right to be informed of his or her treatment and care and to participate in the planning of his or her treatment and care.

(g) Have the following rights, under the following procedures, to refuse medication and treatment:

1. Have the right to refuse all medication and treatment except as ordered by the court under subd. 2., or in a situation in which the medication or treatment is necessary to prevent serious physical harm to the patient or to others. Medication and treatment during this period may be refused on religious grounds only as provided in par. (h).

2. At or after the hearing to determine probable cause for commitment but prior to the final commitment order, other than for a subject individual who is alleged to meet the commitment standard under s. 51.20(1)(a)2.e., the court shall, upon the motion of any interested person, and may, upon its own motion, hold a hearing to determine whether there is probable cause to believe that the individual is not competent to refuse medication or treatment and whether the medication or treatment will have therapeutic value and will not unreasonably impair the ability of the individual to prepare for or participate in subsequent legal proceedings. If the court determines that there is probable cause to believe the allegations under this subdivision, the court shall issue an order permitting medication or treatment to be administered to the individual regardless of his or her consent. The order shall apply to the period between the date of the issuance of the order and the date of the final order under s. 51.20(13), unless the court dismisses the petition for commitment or specifies a shorter period. The hearing under this subdivision shall meet the requirements of s. 51.20 (5), except for the right to a jury trial.

3. Following a final commitment order, other than for a subject individual who is determined to meet the commitment standard under s. 51.20(1)(a)2.e., have the right to exercise informed consent with regard to all medication and treatment unless the committing court or the court in the county in which the individual is located, within 10 days after the filing of the motion of any interested person and with notice of the motion to the individual's counsel, if any, the individual and the applicable counsel under s. 51.20(4), makes a determination, following a hearing, that the individual is not competent to refuse medication or treatment or unless a situation exists in which the medication or treatment is necessary to prevent serious physical harm to the individual or others. A report, if any, on which the motion is based shall accompany the motion and notice of motion and shall include a statement signed by a licensed physician that asserts that the subject individual needs medication or treatment and that the individual is not competent to refuse medication or treatment, based on an examination of the individual by a licensed physician. The hearing under this subdivision shall meet the requirements of s. 51.20(5), except for the right to a jury trial. At the request of the subject individual, the individual's counsel or applicable counsel under s. 51.20(4), the hearing may be postponed, but in no case may the postponed hearing be held more than 20 days after a motion is filed.

3m. Following a final commitment order for a subject individual who is determined to meet the commitment standard under s. 51.20(1)(a)2.e., the court shall issue an order permitting

medication or treatment to be administered to the individual regardless of his or her consent.

4. For purposes of a determination under subd. 2. or 3., an individual is not competent to refuse medication or treatment if, because of mental illness, developmental disability, alcoholism or drug dependence, and after the advantages and disadvantages of and alternatives to accepting the particular medication or treatment have been explained to the individual, one of the following is true:

a. The individual is incapable of expressing an understanding of the advantages and disadvantages of accepting medication or treatment and the alternatives.

b. The individual is substantially incapable of applying an understanding of the advantages, disadvantages and alternatives to his or her mental illness, developmental disability, alcoholism or drug dependence in order to make an informed choice as to whether to accept or refuse medication or treatment.

(h) Have a right to be free from unnecessary or excessive medication at any time. No medication may be administered to a patient except at the written order of a physician. The attending physician is responsible for all medication which is administered to a patient. A record of the medication which is administered to each patient shall be kept in his or her medical records. Medication may not be used as punishment, for the convenience of staff, as a substitute for a treatment program, or in quantities that interfere with a patient's treatment program. Except when medication or medical treatment has been ordered by the court under par. (g) or is necessary to prevent serious physical harm to others as evidenced by a recent overt act, attempt or threat to do such harm, a patient may refuse medications and medical treatment if the patient is a member of a recognized religious organization and the religious tenets of such organization prohibit such medications and treatment. The individual shall be informed of this right prior to administration of medications or treatment whenever the patient's condition so permits.

(i)1. Except as provided in subd. 2., have a right to be free from physical restraint and isolation except for emergency situations or when isolation or restraint is a part of a treatment program. Isolation or restraint may be used only when less restrictive measures are ineffective or not feasible and shall be used for the shortest time possible. When a patient is placed in isolation or restraint, his or her status shall be reviewed once every 30 minutes. Each facility shall have a written policy covering the use of restraint or isolation that ensures that the dignity of the individual is protected, that the safety of the individual is ensured, and that there is regular, frequent monitoring by trained staff to care for bodily needs as may be required. Isolation or restraint may be used for emergency situations only when it is likely that the patient may physically harm himself or herself or others. The treatment director shall specifically designate physicians who are authorized to order isolation or restraint, and shall specifically designate licensed psychologists who are authorized to order isolation. If the treatment director is not a physician, the medical director shall make the designation. In the case of a center for the developmentally disabled, use shall be authorized by the director of the center. The authorization for emergency use of isolation or restraint shall be in writing, except that isolation or restraint may be authorized in emergencies for not more than one hour, after which time an appropriate order in writing shall be obtained from the physician or licensed psychologist designated by the director, in the case of isolation, or the physician so designated in the case of restraint. Emergency isolation or restraint may not be continued for more than 24 hours without a new written order. Isolation may be used as part of a treatment program if it is part of a written treatment plan, and the rights specified in this subsection are provided to the patient. The use of isolation as a part of a treatment plan shall be explained to the patient and to his or her guardian, if any, by the person who provides the treatment. A treatment plan that incorporates isolation shall be evaluated at least once every 2 weeks. Patients who have a recent history of physical aggression may be restrained during transport to or from the facility. Persons who are committed or transferred under s. 51.35(3) or 51.37 or under ch. 971 or 975, or who are detained or committed under ch. 980, and who, while under this status, are transferred to a hospital, as defined in s. 50.33(2), for medical

care may be isolated for security reasons within locked facilities in the hospital. Patients who are committed or transferred under s. 51.35(3) or 51.37 or under ch. 971 or 975, or who are detained or committed under ch. 980, may be restrained for security reasons during transport to or from the facility.

2. Patients in the maximum security facility at the Mendota Mental Health Institute may be locked in their rooms during the night shift and for a period of no longer than one hour and 30 minutes during each change of shift by staff to permit staff review of patient needs. Patients detained or committed under ch. 980 and placed in a facility specified under s. 980.065 may be locked in their rooms during the night shift, if they reside in a maximum or medium security unit in which each room is equipped with a toilet and sink, or if they reside in a unit in which each room is not equipped with a toilet and sink and the number of patients outside their rooms equals or exceeds the number of toilets in the unit, except that patients who do not have toilets in their rooms must be given an opportunity to use a toilet at least once every hour, or more frequently if medically indicated. Patients in the maximum security facility at the Mendota Mental Health Institute, or patients detained or committed under ch. 980 and placed in a facility specified under s. 980.065, may also be locked in their rooms on a unit-wide or facility-wide basis as an emergency measure as needed for security purposes to deal with an escape or attempted escape, the discovery of a dangerous weapon in the unit or facility or the receipt of reliable information that a dangerous weapon is in the unit or facility, or to prevent or control a riot or the taking of a hostage. A unit-wide or facility-wide emergency isolation order may only be authorized by the director of the unit or facility where the order is applicable or his or her designee. A unit-wide or facility-wide emergency isolation order affecting the Mendota Mental Health Institute must be approved within one hour after it is authorized by the director of the Mendota Mental Health Institute or the director's designee. An emergency order for unit-wide or facility-wide isolation may only be in effect for the period of time needed to preserve order while dealing with the situation and may not be used as a substitute for adequate staffing. During a period of unit-wide or facility-wide isolation, the status of each patient shall be reviewed every 30 minutes to ensure the safety and comfort of the patient, and each patient who is locked in a room without a toilet shall be given an opportunity to use a toilet at least once every hour, or more frequently if medically indicated. Each unit in the maximum security facility at the Mendota Mental Health Institute and each unit in a facility specified under s. 980.065 shall have a written policy covering the use of isolation that ensures that the dignity of the individual is protected, that the safety of the individual is secured, and that there is regular, frequent monitoring by trained staff to care for bodily needs as may be required. The isolation policies shall be reviewed and approved by the director of the Mendota Mental Health Institute or the director's designee, or by the director of the facility specified under s. 980.065 or his or her designee, whichever is applicable.

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

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

(L) Have the right to religious worship within the facility if the patient desires such an opportunity and a member of the clergy of the patient's religious denomination or society is available to the

facility. The provisions for such worship shall be available to all patients on a nondiscriminatory basis. No individual may be coerced into engaging in any religious activities.

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

(n) Have the right to confidentiality of all treatment records, have the right to inspect and copy such records, and have the right to challenge the accuracy, completeness, timeliness or relevance of information relating to the individual in such records, as provided in s. 51.30.

(o) Except as otherwise provided, have a right not to be filmed or taped, unless the patient signs an informed and voluntary consent that specifically authorizes a named individual or group to film or tape the patient for a particular purpose or project during a specified time period. The patient may specify in such consent periods during which, or situations in which, the patient may not be filmed or taped. If a patient is legally incompetent, such consent shall be granted on behalf of the patient by the patient's guardian. A patient in Goodland Hall at the Mendota Mental Health Institute, or a patient detained or committed under ch. 980 and placed in a facility specified under s. 980.065, may be filmed or taped for security purposes without the patient's consent, except that such a patient may not be filmed in patient bedrooms or bathrooms for any purpose without the patient's consent.

(p) Have reasonable access to a telephone to make and receive telephone calls within reasonable limits.

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

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

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

(t) Be permitted to see visitors each day.

(u) Have the right to present grievances under the procedures established under sub. (5) on his or her own behalf or that of others to the staff or administrator of the treatment facility or community mental health program without justifiable fear of reprisal and to communicate, subject to par. (p), with public officials or with any other person without justifiable fear of reprisal.

(v) Have the right to use his or her money as he or she chooses, except to the extent that authority over the money is held by another, including the parent of a minor, a court-appointed guardian of the patient's estate or a representative payee. If a treatment facility or community mental health program so approves, a patient or his or her guardian may authorize in writing the deposit of money in the patient's name with the facility or program. Any earnings attributable to the money accrue to the patient. The treatment facility or community mental health program shall maintain a separate accounting of the deposited money of each patient. The patient or his or her guardian shall receive, upon written request by the patient or guardian, a written monthly account of any financial transactions made by the treatment facility or community mental health program with respect to the patient's money. If a patient is discharged from a treatment facility or community mental health program, all of the patient's money, including any attributable accrued earnings, shall be returned to the patient. No treatment facility or community mental health program or employee of such a facility or program may act as representative payee for a patient for social security, pension, annuity or trust fund payments or other direct payments or monetary assistance unless the patient or his or her guardian has given informed written consent to do so or unless a representative payee who is acceptable to the patient or his or her guardian and the payer cannot be identified. A community mental health program or treatment facility shall give money of the patient to him or her upon request, subject to any limitations imposed by guardianship or representative payeeship, except that an inpatient facility may, as a part of its security procedures, limit the amount

of currency that is held by a patient and may establish reasonable policies governing patient account transactions.

(w)1. Have the right to be informed in writing, before, upon or at a reasonable time after admission, 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.

2. If the patient is a minor, if the patient's parents may be liable for the cost of the patient's care and treatment and if the patient's parents can be located with reasonable effort, the treatment facility or community mental health program shall notify the patient's parents of any liability that the parents may have for the cost of the patient's care and treatment and of their right to receive information under subd. 3., except that a minor patient's parents may not be notified under this subdivision if the minor patient is receiving care under s. 51.47 without the consent of the minor patient's parent or guardian.

3. A patient, a patient's relative who may be liable for the cost of the patient's care and treatment or a patient's guardian may request information about charges for care and treatment services at the treatment facility or community mental health program. If a treatment facility or community mental health program receives such a request, the treatment facility or community mental health program shall promptly provide to the individual making the request written information about the treatment facility's or community mental health program's charges for care and treatment services. Unless the request is made by the patient, the guardian of a patient adjudged incompetent under ch. 880, the parent or guardian of a minor who has access to the minor's treatment records under s. 51.30(5)(b)1. or a person designated by the patient's informed written consent under s. 51.30(4)(a) as a person to whom information may be disclosed, information released under this subdivision is limited to general information about the treatment facility's or community mental health program's charges for care and treatment services and may not include information which may not be disclosed under s. 51.30.

(x) Have the right to be treated with respect and recognition of the patient's dignity and individuality by all employees of the treatment facility or community mental health program and by licensed, certified, registered or permitted providers of health care with whom the patient comes in contact.

**51.61(2)** A patient's rights guaranteed under sub. (1)(p) to (t) may be denied for cause after review by the director of the facility, and may be denied when medically or therapeutically contraindicated as documented by the patient's physician or licensed psychologist in the patient's treatment record. The individual 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 in an informal hearing before the director of the facility or his or her designee. There shall be documentation of the grounds for withdrawal of rights in the patient's treatment record. After an informal hearing is held, a patient or his or her representative may petition for review of the denial of any right under this subsection through the use of the grievance procedure provided in sub. (5) or, alternatively or in addition to the use of such procedure, may bring an action under sub. (7).

**51.61(3)** The rights accorded to patients under this section apply to patients receiving services in outpatient and day-service treatment facilities, as well as community mental health programs, insofar as applicable.

**51.61(4)(a)** Each facility which conducts research upon human subjects shall establish a research and human rights committee consisting of not less than 5 persons with varying backgrounds to assure complete and adequate review of research activities commonly conducted by the facility. The committee shall be sufficiently qualified through the maturity, experience and expertise of its members and diversity of its membership to ensure respect for its advice and counsel for safeguarding the rights and welfare of human subjects. In addition to possessing the professional competence necessary to review specific activities, the committee shall be able to ascertain the acceptability of proposals in terms of commitments of the facility and federal regulations, applicable law, standards of professional conduct and practice, and community attitudes.

(b) No member of a committee may be directly involved in the

research activity or involved in either the initial or continuing review of an activity in which he or she has a conflicting interest, except to provide information requested by the committee.

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

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

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

**51.61(5)(a)** The department shall establish procedures to assure protection of patients' rights guaranteed under this chapter, and shall, except for the grievance procedures of the Mendota and Winnebago mental health institutes and the state centers for the developmentally disabled, implement a grievance procedure which complies with par. (b) to assure that rights of patients under this chapter are protected and enforced by the department, by service providers and by county departments under ss. 51.42 and 51.437. The procedures established by the department under this subsection apply to patients in private hospitals or public general hospitals.

(b) The department shall promulgate rules that establish standards for the grievance procedure used as specified in par. (a) by the department, county departments under ss. 51.42 and 51.437 and service providers. The standards shall include all of the following components:

1. Written policies and procedures regarding the uses and operation of the grievance system.

2. A requirement that a person, who is the contact for initiating and processing grievances, be identified within the department and in each county department under ss. 51.42 and 51.437 and be specified by each service provider.

3. An informal process for resolving grievances.

4. A formal process for resolving grievances, in cases where the informal process fails to resolve grievances to the patient's satisfaction.

5. A process for notification of all patients of the grievance process.

6. Time limits for responses to emergency and nonemergency grievances, as well as time limits for deciding appeals.

7. A process which patients may use to appeal unfavorable decisions within the department or county department under s. 51.42 or 51.437 or through the service provider.

8. A process which may be used to appeal final decisions under subd. 7. of the department, county department under s. 51.42 or 51.437 or service provider to the department of health and family services.

9. Protections against the application of sanctions against any complainant or any person, including an employee of the department, county department under s. 51.42 or 51.437 or service provider who assists a complainant in filing a grievance.

(c) Each county department of community programs shall attach a statement to an application for recertification of its community mental health programs or treatment facilities that are operated by or under contract with the county. The statement shall indicate if any complaints or allegations of violations of rights established under this section were made during the certification period immediately before the period of recertification that is requested and shall summarize any complaints or allegations made. The statement shall contain the date of the complaint or allegation, the disposition of the matter and the date of disposition. The department shall consider the statement in reviewing the application for recertification.

(d) No person may intentionally retaliate or discriminate against any patient or employee for contacting or providing information to any official or to an employee of any state protection and advocacy agency, or for initiating, participating in, or testifying in a grievance procedure or in an action for any remedy authorized under this section. Whoever violates this paragraph may be fined not more than \$1,000 or imprisoned for not more than 6 months or both.

**51.61(6)** Subject to the rights of patients provided under this chapter, the department, county departments under s. 51.42 or 51.437, and any agency providing services under an agreement

with the department or those county departments have the right to use customary and usual treatment techniques and procedures in a reasonable and appropriate manner in the treatment of patients who are receiving services under the mental health system, for the purpose of ameliorating the conditions for which the patients were admitted to the system. The written, informed consent of any patient shall first be obtained, unless the person has been found not competent to refuse medication and treatment under s. 51.61(1)(g) or the person is a minor 14 years of age or older who is receiving services for alcoholism or drug abuse or a minor under 14 years of age who is receiving services for mental illness, developmental disability, alcoholism, or drug abuse. In the case of a minor, the written, informed consent of the parent or guardian is required, except as provided under an order issued under s. 51.13(1)(c) or 51.14(3)(h) or (4)(g). If the minor is 14 years of age or older and is receiving services for mental illness or developmental disability, the written, informed consent of the minor and the minor's parent or guardian is required. A refusal of either a minor 14 years of age or older or the minor's parent or guardian to provide written, informed consent for admission to an approved inpatient treatment facility is reviewable under s. 51.13(1)(c)1. and a refusal of either a minor 14 years of age or older or the minor's parent or guardian to provide written, informed consent for outpatient mental health treatment is reviewable under s. 51.14.

**51.61(7)(a)** Any patient whose rights are protected under this section who suffers damage as the result of the unlawful denial or violation of any of these rights may bring an action against the person, including the state or any political subdivision thereof, which unlawfully denies or violates the right in question. The individual may recover any damages as may be proved, together with exemplary damages of not less than \$100 for each violation and such costs and reasonable actual attorney fees as may be incurred.

(b) Any patient whose rights are protected under this section may bring an action against any person, including the state or any political subdivision thereof, which willfully, knowingly and unlawfully denies or violates any of his or her rights protected under this section. The patient may recover such damages as may be proved together with exemplary damages of not less than \$500 nor more than \$1,000 for each violation, together with costs and reasonable actual attorney fees. It is not a prerequisite to an action under this paragraph that the plaintiff suffer or be threatened with actual damages.

(c) Any patient whose rights are protected under this section may bring an action to enjoin the unlawful violation or denial of rights under this section and may in the same action seek damages as provided in this section. The individual may also recover costs and reasonable actual attorney fees if he or she prevails.

(d) Use of the grievance procedure established under sub. (5) is not a prerequisite to bringing an action under this subsection.

**51.61(7m)** Whoever intentionally deprives a patient of the ability to seek redress for the alleged violation of his or her rights under this section by unreasonably precluding the patient from doing any of the following may be fined not more than \$1,000 or imprisoned for not more than 6 months or both:

(a) Using the grievance procedure specified in sub. (5).

(b) Communicating, subject to sub. (1) (p), with a court, government official or staff member of the protection and advocacy agency that is designated under s. 51.62 or with legal counsel.

**51.61(8)** Any informed consent which is required under sub. (1)(a) to (i) may be exercised by the patient's legal guardian if the patient has been adjudicated incompetent and the guardian is so empowered, or by the parent of the patient if the patient is a minor.

**51.61(9)** The department shall promulgate rules to implement this section.

**51.61(10)** No person who, in good faith, files a report with the appropriate examining board concerning the violation of rights under this section by persons licensed, certified, registered or permitted under ch. 441, 446, 450, 455 or 456, or who participates in an investigation of an allegation by the appropriate examining board, is liable for civil damages for the filing or participation.

• **73.0301 License denial, nonrenewal, discontinuation, suspension and revocation based on tax delinquency. (1)**

Definitions. In this section:

(a) "Credential" has the meaning given in s. 440.01(2)(a), but does not include a registration as an inactive licensee under s. 452.12(6)(b).

(b) "Credentialing board" means a board, examining board or affiliated credentialing board in the department of regulation and licensing that grants a credential.

(c) "Liable for delinquent taxes" means that a person has exhausted all legal remedies to challenge the assertion that the person owes taxes, including penalties, interest, fees and costs, under ch. 71, 72, 76, 77, 78, 125 or 139 and sufficient time has elapsed so that the person is delinquent in the payment of those taxes.

(d) "License" means any of the following:

1. An approval specified in s. 29.024 (2r) or a license specified in s. 169.35.

2. A license issued by the department of health and family services under s. 48.66(1)(a) to a child welfare agency, group home, shelter care facility or day care center, as required by s. 48.60, 48.625, 48.65 or 938.22(7).

3. A license, certificate of approval, provisional license, conditional license, certification, certification card, registration, permit, training permit or approval specified in s. 50.35, 50.49(6)(a) or (10), 51.038, 51.04, 51.42(7)(b) 11., 51.421(3)(a), 51.45(8), 146.40(3) or (3m), 146.50(5)(a) or (b), (6g)(a), (7) or (8)(a) or (f), 250.05(5), 252.23(2), 252.24(2), 254.176, 254.20(3), 255.08(2)(a) or 343.305(6)(a) or a permit for operation of a campground specified in s. 254.47(1).

3m. A license or certificate issued by the department of workforce development under s. 102.17(1)(c), 103.275(2)(b), 103.91(1), 103.92(3), 104.07(1) or (2) or 105.13(1).

5. A license, as defined in s. 101.02(20)(a).

6. A license or certificate of registration issued by the department of financial institutions, or a division of it, under ss. 138.09, 138.12, 217.06, 218.0101 to 218.0163, 218.02, 218.04, 218.05, 224.72, 224.93 or under subch. III of ch. 551.

7. A license described in s. 218.0114(14)(a) and (g), a license described in s. 218.0114(14)(b), (c) or (e), a license issued under s. 218.11, 218.12, 218.22, 218.32, 218.41, 343.61 or 343.62, a buyer identification card issued under s. 218.51 or a certificate of registration issued under s. 341.51.

7m. A license issued under s. 562.05 or 563.24.

8. A license, registration or certification specified in s. 299.07(1)(a).

9. A credential.

10. A license or permit granted by the department of public instruction.

11. A license to practice law.

12. A license issued under s. 628.04, 632.68(2) or (4) or 633.14 or a temporary license issued under s. 628.09.

13. A license issued by the ethics board under s. 13.63(1).

14. A permit under s. 170.12.

(e) "Licensing department" means the department of administration; the board of commissioners of public lands; the department of commerce; the ethics board; the department of financial institutions; the department of health and family services; the department of natural resources; the department of public instruction; the department of regulation and licensing; the department of workforce development; the office of the commissioner of insurance; or the department of transportation.

(f) "Nondelinquency certificate" means a certificate that the department of revenue issues to a person and that states that the person is not delinquent in the payment of taxes, including penalties, interest, fees and costs, under ch. 71, 72, 76, 77, 78, 125 or 139.

**73.0301(2) Duties and Powers of Licensing Departments.**

(a) Each licensing department and the supreme court, if the supreme court agrees, shall enter into a memorandum of understanding with the department of revenue under sub. (4)(a) that requires the licensing department or supreme court to do all of the following:

1. Request the department of revenue to certify whether an

applicant for a license or license renewal or continuation is liable for delinquent taxes. With respect to an applicant for a license granted by a credentialing board, the department of regulation and licensing shall make a request under this subdivision. This subdivision does not apply to the department of transportation with respect to licenses described in sub. (1)(d)7.

2. Request the department of revenue to certify whether a license holder is liable for delinquent taxes. With respect to a holder of a license granted by a credentialing board, the department of regulation and licensing shall make a request under this subdivision.

(b) Each licensing department and the supreme court, if the supreme court agrees, shall do all of the following:

1.a. If, after a request is made under par. (a)1. or 2., the department of revenue certifies that the license holder or applicant for a license or license renewal or continuation is liable for delinquent taxes, revoke the license or deny the application for the license or license renewal or continuation. The department of transportation may suspend licenses described in sub. (1)(d)7. in lieu of revoking those licenses. A suspension, revocation or denial under this subd. 1. a. is not subject to administrative review or, except as provided in subd. 2., judicial review. With respect to a license granted by a credentialing board, the department of regulation and licensing shall make a revocation or denial under this subd. 1. a.

b. Mail a notice of suspension, revocation or denial under subd. 1. a. to the license holder or applicant. The notice shall include a statement of the facts that warrant the suspension, revocation or denial and a statement that the license holder or applicant may, within 30 days after the date on which the notice of denial, suspension or revocation is mailed, file a written request with the department of revenue to have the certification of tax delinquency on which the suspension, revocation or denial is based reviewed at a hearing under sub. (5) (a). With respect to a license granted by a credentialing board, the department of regulation and licensing shall mail a notice under this subd. 1. b.

2. If notified by the department of revenue that the department of revenue has affirmed a certification of tax delinquency after a hearing under sub. (5)(a), affirm a suspension, revocation or denial under subd. 1.a. A license holder or applicant may seek judicial review under ss. 227.52 to 227.60, except that the review shall be in the circuit court for Dane County, of an affirmation of a revocation or denial under this subdivision. With respect to a license granted by a credentialing board, the department of regulation and licensing shall make an affirmation under this subdivision.

3. If a person submits a nondelinquency certificate issued under sub. (5)(b)1., reinstate the license or grant the application for the license or license renewal or continuation, unless there are other grounds for suspending or revoking the license or for denying the application for the license or license renewal or continuation. If reinstatement is required under this subdivision, a person is not required to submit a new application or other material or to take a new test. No separate fee may be charged for reinstatement of a license under this subdivision. With respect to a license granted by a credentialing board, the department of regulation and licensing shall reinstate a license or grant an application under this subdivision.

4. If a person whose license has been suspended or revoked or whose application for a license or license renewal or continuation has been denied under subd. 1. a. submits a nondelinquency certificate issued under sub. (3)(a)2., reinstate the license or grant the person's application for the license or license renewal or continuation, unless there are other grounds for not reinstating the license or for denying the application for the license or license renewal or continuation. With respect to a license granted by a credentialing board, the department of regulation and licensing shall reinstate a license or grant an application under this subdivision.

(c)1. Each licensing department and the supreme court may require a holder of a license to provide the following information upon request:

a. If the license holder is an individual and has a social security number, the license holder's social security number.

Am. If the applicant is an individual and does not have a

social security number, a statement made or subscribed under oath or affirmation that the applicant does not have a social security number. The form of the statement shall be prescribed by the department of workforce development. A license issued in reliance upon a false statement submitted under this subd. 1.am. is invalid.

b. If the license holder is not an individual, the license holder's federal employer identification number.

2. A licensing department may not disclose any information received under subd. 1. a. or b. to any person except to the department of revenue for the sole purpose of requesting certifications under par. (b)2. in accordance with the memorandum of understanding under sub. (4) or to the department of workforce development for the purpose of administering s. 49.22.

**73.0301(3) Duties and Powers of Department of Revenue.**

(a) The department of revenue shall do all of the following:

1. Enter into a memorandum of understanding with each licensing department and the supreme court, if the supreme court agrees, under sub. (4)(a).

2. Upon the request of any applicant for issuance, renewal, continuation or reinstatement of a license whose license has been previously revoked or whose application for a license or license renewal or continuation has been previously denied under sub. (2)(b)1. a., issue a nondelinquency certificate to the applicant if the applicant is not liable for delinquent taxes.

(b) If a request for certification is made under sub. (2)(a)1. or 2., the department of revenue may, in accordance with a memorandum of understanding entered into under par. (a)1., certify to the licensing department or the supreme court that the applicant or license holder is liable for delinquent taxes.

**73.0301(4) Memorandum of Understanding.**

(a) Each memorandum of understanding shall include procedures that do all of the following:

1. Establish requirements for making requests under sub. (2)(a)1. and 2., including specifying the time when a licensing department or the supreme court shall make requests under sub. (2)(a)1. and 2., and for making certifications under sub. (3)(b).

2. Implement the requirements specified in sub. (2)(b)3. and 4.

(b) Factors such as the need to issue licenses in a timely manner, the convenience of applicants, the impact on collecting delinquent taxes, the effects on program administration and whether a suspension, revocation or denial under sub. (2)(b)1.a. will have an impact on public health, safety or welfare or the environment shall be considered in establishing requirements under par. (a)1.

**73.0301(5) Hearing.**

(a) The department of revenue shall conduct a hearing requested by a license holder or applicant for a license or license renewal or continuation under sub. (2)(b)1. b. or by an applicant for certification or recertification or a certificate holder under s. 73.03(50) or 73.09(7m)(b) to review a certification or determination of tax delinquency that is the basis of a denial or revocation of a license in accordance with this section or of a certificate, certification or recertification under s. 73.03(50) or 73.09(7m). A hearing under this paragraph is limited to questions of mistaken identity of the license or certificate holder or applicant and of prior payment of the delinquent taxes for which the department of revenue certified or determined the license or certificate holder or applicant is liable. At a hearing under this paragraph, any statement filed by the department of revenue, the licensing department or the supreme court, if the supreme court agrees, may be admitted into evidence and is prima facie evidence of the facts that it contains. Notwithstanding ch. 227, a person entitled to a hearing under this paragraph is not entitled to any other notice, hearing or review, except as provided in sub. (2)(b)2.

(b) After a hearing conducted under par. (a), the department of revenue shall do one of the following:

1. Issue a nondelinquency certificate to a license holder or an applicant for a license or license renewal or continuation if the department determines that the license holder or applicant is not liable for delinquent taxes. For a hearing requested by an applicant for certification or recertification or a certificate holder

under s. 73.03(50) or 73.09(7m)(b), the department shall grant a certification or recertification or reinstate a certification if the department determines that the applicant or certificate holder is not liable for delinquent taxes, unless there are other grounds for denying the application or revoking the certification.

2. Provide notice that the department of revenue has affirmed its certification of tax delinquency to a license holder; to an applicant for a license, a license renewal or a license continuation; and to the licensing department or the supreme court, if the supreme court agrees. For a hearing requested by an applicant for certification or recertification or a certificate holder under s. 73.03(50), or 73.09(7m)(b), the department of revenue shall provide notice to the applicant or certificate holder that the department of revenue has affirmed its determination of tax delinquency.

**CHAPTER 121 SCHOOL FINANCE**

• **121.53 School bus insurance.** (1) No motor vehicle may be used as a school bus unless a policy of bodily injury and property damage liability insurance, issued by an insurer authorized to transact business in this state, is maintained thereon. The policy shall provide property damage liability coverage with a limit of not less than \$10,000. The policy also shall provide bodily injury liability coverage with limits of not less than \$75,000 for each person and, subject to such limit for each person, total limits as follows:

(a) \$150,000 for each accident for each such motor vehicle having a seating capacity of 7 passengers or less.

(b) \$200,000 for each accident for each such motor vehicle having a seating capacity of 8 to 15 passengers.

(c) \$250,000 for each accident for each such motor vehicle having a seating capacity of 16 to 24 passengers.

(d) \$375,000 for each accident for each such motor vehicle having a seating capacity of 25 to 36 passengers.

(e) \$1,000,000 for each accident for each such motor vehicle having a seating capacity of 37 or more passengers.

**CHAPTER 165 DEPARTMENT OF JUSTICE**

• **165.83 Criminal identification, records and statistics.** (1) Definitions. As used in this section and s. 165.84:

(b) "Law enforcement agency" means a governmental unit of one or more persons employed full time by the state or a political subdivision of the state for the purpose of preventing and detecting crime and enforcing state laws or local ordinances, employees of which unit are authorized to make arrests for crimes while acting within the scope of their authority.

**CHAPTER 252 COMMUNICABLE DISEASES**

• **252.04 Immunization program.** (1) The department shall carry out a statewide immunization program to eliminate mumps, measles, rubella (German measles), diphtheria, pertussis (whooping cough), poliomyelitis and other diseases that the department specifies by rule, and to protect against tetanus. Any person who immunizes an individual under this section shall maintain records identifying the manufacturer and lot number of the vaccine used, the date of immunization and the name and title of the person who immunized the individual. These records shall be available to the individual or, if the individual is a minor, to his or her parent, guardian or legal custodian upon request.

**252.04(2)** Any student admitted to any elementary, middle, junior or senior high school or into any day care center or nursery school shall, within 30 school days, present written evidence to the school, day care center or nursery school of having completed the first immunization for each vaccine required for the student's grade and being on schedule for the remainder of the basic and recall (booster) immunization series for mumps, measles, rubella (German measles), diphtheria, pertussis (whooping cough), poliomyelitis, tetanus and other diseases that the department specifies by rule or shall present a written waiver under sub. (3).

**252.04(3)** The immunization requirement is waived if the student, if an adult, or the student's parent, guardian or legal custodian submits a written statement to the school, day care center or nursery school objecting to the immunization for reasons

of health, religion or personal conviction. At the time any school, day care center or nursery school notifies a student, parent, guardian or legal custodian of the immunization requirements, it shall inform the person in writing of the person's right to a waiver under this subsection.

**252.04(4)** The student, if an adult, or the student's parent, guardian or legal custodian shall keep the school, day care center or nursery school informed of the student's compliance with the immunization schedule.

**252.04(5)(a)** By the 15th and the 25th school day after the student is admitted to a school, day care center or nursery school, the school, day care center or nursery school shall notify in writing any adult student or the parent, guardian or legal custodian of any minor student who has not met the immunization or waiver requirements of this section. The notices shall cite the terms of those requirements and shall state that court action and forfeiture penalty could result due to noncompliance. The notices shall also explain the reasons for the immunization requirements and include information on how and where to obtain the required immunizations.

(b)1. A school, day care center or nursery school may exclude from the school, day care center or nursery school any student who fails to satisfy the requirements of sub. (2).

2. Beginning on July 1, 1993, if the department determines that fewer than 98% of the students in a day care center, nursery school or school district who are subject to the requirements of sub. (2) have complied with sub. (2), the day care center or nursery school shall exclude any child who fails to satisfy the requirements of sub. (2) and the school district shall exclude any student enrolled in grades kindergarten to 6 who fails to satisfy the requirements of sub. (2).

3. Beginning on July 1, 1995, if the department determines that fewer than 99% of the students in a day care center, nursery school or school district who are subject to the requirements of sub. (2) have complied with sub. (2), the day care center or nursery school shall exclude any child who fails to satisfy the requirements of sub. (2) and the school district shall exclude any student enrolled in grades kindergarten to 6 who fails to satisfy the requirements of sub. (2). 4. No student may be excluded from public school under this paragraph for more than 10 consecutive school days unless, prior to the 11th consecutive school day of exclusion, the school board provides the student and the student's parent, guardian or legal custodian with an additional notice, a hearing and the opportunity to appeal the exclusion, as provided under s. 120.13(1)(c)3.

**252.04(6)** The school, day care center or nursery school shall notify the district attorney of the county in which the student resides of any minor student who fails to present written evidence of completed immunizations or a written waiver under sub. (3) within 60 school days after being admitted to the school, day care center or nursery school. The district attorney shall petition the court exercising jurisdiction under chs. 48 and 938 for an order directing that the student be in compliance with the requirements of this section. If the court grants the petition, the court may specify the date by which a written waiver shall be submitted under sub. (3) or may specify the terms of the immunization schedule. The court may require an adult student or the parent, guardian or legal custodian of a minor student who refuses to submit a written waiver by the specified date or meet the terms of the immunization schedule to forfeit not more than \$25 per day of violation.

**252.04(7)** If an emergency arises, consisting of a substantial outbreak as determined by the department by rule of one of the diseases specified in sub. (2) at a school or in the municipality in which the school is located, the department may order the school to exclude students who are not immunized until the outbreak subsides.

**252.04(8)** The department shall provide the vaccines without charge, if federal or state funds are available for the vaccines, upon request of a school district or a local health department. The department shall provide the necessary professional consultant services to carry out an immunization program, under the requirements of sub. (9), in the jurisdiction of the requesting local health department. Persons immunized may not be charged for vaccines furnished by the department.

**252.04(9)(a)** An immunization program under sub. (8) shall be supervised by a physician, selected by the school district or local health department, who shall issue written orders for the administration of immunizations that are in accordance with written protocols issued by the department.

(b) If the physician under par. (a) is not an employee of the county, city, village or school district, receives no compensation for his or her services under par. (a) and acts under par. (a) in accordance with written protocols issued by the department, he or she is a state agent of the department for the purposes of ss. 165.25(6), 893.82(3) and 895.46.

(c) The department may disapprove the selection made under par. (a) or may require the removal of a physician selected.

**252.04(10)** The department shall, by rule, prescribe the mechanisms for implementing and monitoring compliance with this section. The department shall prescribe, by rule, the form that any person immunizing a student shall provide to the student under sub. (1).

**252.04(11)** Annually, by July 1, the department shall submit a report to the legislature under s. 13.172(3) on the success of the statewide immunization program under this section.

#### **CHAPTER 346 RULES OF THE ROAD**

- **346.62 Reckless driving. (1)** In this section:
  - (a) "Bodily harm" has the meaning designated in s. 939.22 (4).
  - (b) "Great bodily harm" has the meaning designated in s. 939.22(14).
  - (c) "Negligent" has the meaning designated in s. 939.25(2).
  - (d) "Vehicle" has the meaning designated in s. 939.22(44), except that for purposes of sub. (2m) "vehicle" has the meaning given in s. 340.01(74).

**346.62(2)** No person may endanger the safety of any person or property by the negligent operation of a vehicle.

**346.62(2m)** No person may recklessly endanger the safety of any person by driving a vehicle on or across a railroad crossing in violation of s. 346.44(1) or through, around or under any crossing gate or barrier at a railroad crossing in violation of s. 346.44(2).

**346.62(3)** No person may cause bodily harm to another by the negligent operation of a vehicle.

**346.62(4)** No person may cause great bodily harm to another by the negligent operation of a vehicle.

- **346.63 Operating under influence of intoxicant or other drug. (1)** No person may drive or operate a motor vehicle while:

(a) Under the influence of an intoxicant, a controlled substance, a controlled substance analog or any combination of an intoxicant, a controlled substance and a controlled substance analog, under the influence of any other drug to a degree which renders him or her incapable of safely driving, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely driving; or (am) The person has a detectable amount of a restricted controlled substance in his or her blood.

(b) The person has a prohibited alcohol concentration.

(c) A person may be charged with and a prosecutor may proceed upon a complaint based upon a violation of any combination of par. (a), (am), or (b) for acts arising out of the same incident or occurrence. If the person is charged with violating any combination of par. (a), (am), or (b), the offenses shall be joined. If the person is found guilty of any combination of par. (a), (am), or (b) for acts arising out of the same incident or occurrence, there shall be a single conviction for purposes of sentencing and for purposes of counting convictions under ss. 343.30(1q) and 343.305. Paragraphs (a), (am), and (b) each require proof of a fact for conviction which the others do not require.

(d) In an action under par. (am) that is based on the defendant allegedly having a detectable amount of methamphetamine, gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol in his or her blood, the defendant has a defense if he or she proves by a preponderance of the evidence that at the time of the incident or occurrence he or she had a valid prescription for methamphetamine or one of its metabolic precursors, gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol.

**346.63(2)(a)** It is unlawful for any person to cause injury to

another person by the operation of a vehicle while:

1. Under the influence of an intoxicant, a controlled substance, a controlled substance analog or any combination of an intoxicant, a controlled substance and a controlled substance analog, under the influence of any other drug to a degree which renders him or her incapable of safely driving, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely driving; or

2. The person has a prohibited alcohol concentration.

3. The person has a detectable amount of a restricted controlled substance in his or her blood.

(am) A person may be charged with and a prosecutor may proceed upon a complaint based upon a violation of any combination of par. (a) 1., 2., or 3. for acts arising out of the same incident or occurrence. If the person is charged with violating any combination of par. (a)1., 2., or 3. in the complaint, the crimes shall be joined under s. 971.12. If the person is found guilty of any combination of par. (a)1., 2., or 3. for acts arising out of the same incident or occurrence, there shall be a single conviction for purposes of sentencing and for purposes of counting convictions under ss. 343.30(1q) and 343.305. Paragraph(a) 1., 2., and 3. each require proof of a fact for conviction which the others do not require.

(b)1. In an action under this subsection, the defendant has a defense if he or she proves by a preponderance of the evidence that the injury would have occurred even if he or she had been exercising due care and he or she had not been under the influence of an intoxicant, a controlled substance, a controlled substance analog or a combination thereof, under the influence of any other drug to a degree which renders him or her incapable of safely driving, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely driving, did not have a prohibited alcohol concentration described under par. (a) 2., or did not have a detectable amount of a restricted controlled substance in his or her blood.

2. In an action under par. (a) 3. that is based on the defendant allegedly having a detectable amount of methamphetamine, gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol in his or her blood, the defendant has a defense if he or she proves by a preponderance of the evidence that at the time of the incident or occurrence he or she had a valid prescription for methamphetamine or one of its metabolic precursors, gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol.

**346.63(2m)** If a person has not attained the legal drinking age, as defined in s. 125.02 (8m), the person may not drive or operate a motor vehicle while he or she has an alcohol concentration of more than 0.0 but not more than 0.08. One penalty for violation of this subsection is suspension of a person's operating privilege under s. 343.30 (1p). The person is eligible for an occupational license under s. 343.10 at any time. If a person arrested for a violation of this subsection refuses to take a test under s. 343.305, the refusal is a separate violation and the person is subject to revocation of the person's operating privilege under s. 343.305(10)(em).

**346.63(3)** In this section:

(a) "Drive" means the exercise of physical control over the speed and direction of a motor vehicle while it is in motion.

(b) "Operate" means the physical manipulation or activation of any of the controls of a motor vehicle necessary to put it in motion.

**346.63(4)** If a person is convicted under sub. (1) or a local ordinance in conformity therewith, or sub. (2), the court shall proceed under s. 343.30(1q).

**346.63(5)(a)** No person may drive or operate a commercial motor vehicle while the person has an alcohol concentration of 0.04 or more but less than 0.08.

(b) A person may be charged with and a prosecutor may proceed upon a complaint based on a violation of par. (a) or sub. (1)(a) or both for acts arising out of the same incident or occurrence. If the person is charged with violating both par. (a) and sub. (1) (a), the offenses shall be joined. Paragraph (a) and sub. (1) (a) each require proof of a fact for conviction which the other does not require. If the person is found guilty of violating

both par. (a) and sub. (1) (a) for acts arising out of the same incident or occurrence, there shall be a single conviction for purposes of sentencing and for purposes of counting convictions. Each conviction shall be reported to the department and counted separately for purposes of suspension or revocation of the operator's license and disqualification.

**346.63(6)(a)** No person may cause injury to another person by the operation of a commercial motor vehicle while the person has an alcohol concentration of 0.04 or more but less than 0.08. (b) A person may be charged with and a prosecutor may proceed upon a complaint based upon a violation of par. (a) or sub. (2)(a)1. or both for acts arising out of the same incident or occurrence. If the person is charged with violating both par. (a) and sub. (2)(a)1. in the complaint, the crimes shall be joined under s. 971.12. If the person is found guilty of violating both par. (a) and sub. (2)(a)1. for acts arising out of the same incident or occurrence, there shall be a single conviction for purposes of sentencing and for purposes of counting convictions. Paragraph (a) and sub. (2)(a)1. each require proof of a fact for conviction which the other does not require.

(c) Under par. (a), the person charged has a defense if it appears by a preponderance of the evidence that the injury would have occurred even if he or she had not been under the influence of an intoxicant, a controlled substance, a controlled substance analog or a combination thereof, under the influence of any other drug to a degree which renders him or her incapable of safely driving, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely driving or did not have an alcohol concentration described under par. (a).

**346.63(7)(a)** No person may drive or operate or be on duty time with respect to a commercial motor vehicle under any of the following circumstances:

1. While having an alcohol concentration above 0.0.

2. Within 4 hours of having consumed or having been under the influence of an intoxicating beverage, regardless of its alcohol content.

3. While possessing an intoxicating beverage, regardless of its alcohol content. This subdivision does not apply to possession of an intoxicating beverage if the beverage is unopened and is manifested and transported as part of a shipment.

(b) A person may be charged with and a prosecutor may proceed upon complaints based on a violation of this subsection and sub. (1)(a) or (b) or both, or sub. (1)(a) or (5)(a), or both, for acts arising out of the same incident or occurrence. If the person is charged with violating this subsection and sub. (1) or (5), the proceedings shall be joined. If the person is found guilty of violating both this subsection and sub. (1) or (5) for acts arising out of the same incident or occurrence, there shall be a single conviction for purposes of sentencing and for purposes of counting convictions. This subsection and subs. (1) and (5) each require proof of a fact for conviction which the others do not require. Each conviction shall be reported to the department and counted separately for purposes of suspension or revocation of the operator's license and disqualification.

#### **CHAPTER 347 EQUIPMENT OF VEHICLES**

##### • **347.48 Safety belts and child safety restraint systems. (1) Safety Belts Required.**

(a) No person may buy, sell, lease, trade or transfer a motor vehicle other than an automobile at retail from or to Wisconsin residents unless the vehicle is equipped with safety belts installed for use as required under 49 CFR 571, and no such vehicle may be operated in this state unless such belts remain installed.

(b) No person may buy, sell, lease, trade or transfer an automobile that is required under 49 CFR 571 to be equipped with safety belts from or to a resident of this state unless the front designated seating positions of the automobile are equipped with safety belts installed for use as required under 49 CFR 571 and unless each rear outboard designated seating position of the automobile is equipped with a safety belt consisting of a combination of a pelvic and upper torso restraint that conforms to standards for a Type 2 seat belt assembly under 49 CFR 571.209, and no automobile may be operated in this state unless such belts remain installed. Nothing in this section applies to antique

reproductions.

**347.48(2m) Required Use.**

(a) In this subsection, "properly restrained" means wearing a safety belt approved by the department under sub. (2) and fastened in a manner prescribed by the manufacturer of the safety belt which permits the safety belt to act as a body restraint.

(b) If a motor vehicle is required to be equipped with safety belts in this state, no person may operate that motor vehicle unless the person is properly restrained in a safety belt.

(c) If a motor vehicle is required to be equipped with safety belts in this state, no person may operate that motor vehicle unless he or she reasonably believes that each passenger who is at least 4 years old and not more than 15 years old and who is seated at a designated seating position in the front seat required under 49 CFR 571 to have a safety belt installed or at a designated seating position in the seats, other than the front seats, for which a shoulder harness has been installed is properly restrained.

(d) If a motor vehicle is required to be equipped with safety belts in this state, no person who is at least 4 years old and who is seated at a designated seating position in the front seat required under 49 CFR 571 to have a safety belt installed or at a designated seating position in the seats, other than the front seats, for which a shoulder harness has been installed may be a passenger in that motor vehicle unless the person is properly restrained.

(dm) Paragraphs (b), (c) and (d) do not apply to the operation of an authorized emergency vehicle by a law enforcement officer or other authorized operator under circumstances in which compliance could endanger the safety of the operator or another.

(dr) Paragraph (b) does not apply to the operator of a vehicle while on a route which requires the operator to make more than 10 stops per mile involving an exit from the vehicle in the scope of his or her employment. Paragraphs (c) and (d) do not apply to a passenger while on a route which requires the passenger to make more than 10 stops per mile involving an exit from the vehicle in the scope of his or her employment.

(e) The department shall, by rule, exempt from the requirements under pars. (b) to (d) persons who, because of a physical or medical condition, cannot be properly restrained in a safety belt.

**Cross Reference:** See also ch. Trans 315, Wis. adm. code.

(f)1. This subsection does not apply if the motor vehicle is a taxicab or is not required to be equipped with safety belts under sub. (1) or 49 CFR 571.

2. This subsection does not apply to a privately owned motor vehicle while being operated by a rural letter carrier for the delivery of mail or while being operated by a delivery person for the delivery of newspapers or periodicals.

3. This subsection does not apply to a motor vehicle while being operated by a land surveying crew while conducting a land survey along or upon the highway.

7. This subsection does not apply to a farm truck or dual purpose farm truck while being used in conjunction with the planting or harvesting of crops and not being operated upon the highway.

(g) Evidence of compliance or failure to comply with par. (b), (c) or (d) is admissible in any civil action for personal injuries or property damage resulting from the use or operation of a motor vehicle. Notwithstanding s. 895.045, with respect to injuries or damages determined to have been caused by a failure to comply with par. (b), (c) or (d), such a failure shall not reduce the recovery for those injuries or damages by more than 15%. This paragraph does not affect the determination of causal negligence in the action. (gm) Notwithstanding s. 349.02, a law enforcement officer may not stop or inspect a vehicle solely to determine compliance with this subsection or sub. (1) or (2) or a local ordinance in conformity with this subsection, sub. (1) or (2) or rules of the department. This paragraph does not limit the authority of a law enforcement officer to issue a citation for a violation of this subsection or sub. (1) or (2) or a local ordinance in conformity with this subsection, sub. (1) or (2) or rules of the department observed in the course of a stop or inspection made for other purposes, except that a law enforcement officer may not

take a person into physical custody solely for a violation of this subsection or sub. (1) or (2) or a local ordinance in conformity with this subsection, sub. (1) or (2) or rules of the department.

**CHAPTER 448 MEDICAL PRACTICES**

• **448.01 Definitions.** In this chapter: (5) "Physician" means an individual possessing the degree of doctor of medicine or doctor of osteopathy or an equivalent degree as determined by the medical examining board, and holding a license granted by the medical examining board.

**448.01(6)** "Physician assistant" means an individual licensed by the medical examining board to provide medical care with physician supervision and direction.

**CHAPTER 450 PHARMACY EXAMINING BOARD**

• **450.01 Definitions.** In this chapter:  
(15) "Pharmacist" means a person licensed by the board under s. 450.03 or 450.05.

**CHAPTER 938 JUVENILE JUSTICE CODE**

• **938.02 Definitions.** In this chapter:  
(10m) "Juvenile" means a person who is less than 18 years of age, except that for purposes of investigating or prosecuting a person who is alleged to have violated a state or federal criminal law or any civil law or municipal ordinance, "juvenile" does not include a person who has attained 17 years of age.

**938.02(13)** "Parent" means either a biological parent, a husband who has consented to the artificial insemination of his wife under s. 891.40, or a parent by adoption. If the juvenile is a nonmarital child who is not adopted or whose parents do not subsequently intermarry under s. 767.60, "parent" includes a person acknowledged under s. 767.62 (1) or a substantially similar law of another state or adjudicated to be the biological father. "Parent" does not include any person whose parental rights have been terminated.

• **938.34 Disposition of juvenile adjudged delinquent.** If the court adjudges a juvenile delinquent, the court shall enter an order deciding one or more of the dispositions of the case as provided in this section under a care and treatment plan. A disposition under sub. (4m) must be combined with a disposition under sub. (4n). In deciding the dispositions for a juvenile who is adjudicated delinquent, the court shall consider the seriousness of the act for which the juvenile is adjudicated delinquent and may consider any other delinquent act that is read into the record and dismissed at the time of the adjudication. The dispositions under this section are:

(1) Counseling. Counsel the juvenile or the parent, guardian or legal custodian.

**938.34(2)** Supervision.

(a) Place the juvenile under the supervision of an agency, the department, if the department approves, or a suitable adult, including a friend of the juvenile, under conditions prescribed by the court including reasonable rules for the juvenile's conduct, designed for the physical, mental and moral well-being and behavior of the juvenile.

(b) If the juvenile is placed in the juvenile's home under the supervision of an agency or the department, order the agency or department to provide specified services to the juvenile and the juvenile's family, which may include but are not limited to individual, family or group counseling, homemaker or parent aide services, respite care, housing assistance, day care or parent skills training.

(c) Order the juvenile to remain at his or her home or other placement for a period of not more than 30 days under rules of supervision specified in the order.

**938.34(2g)** Volunteers in Probation Program. If the juvenile is adjudicated delinquent for the commission of an act that would constitute a misdemeanor if committed by an adult, if the chief judge of the judicial administrative district has approved under s. 973.11(2) a volunteers in probation program established in the juvenile's county of residence and if the court determines that volunteer supervision under that volunteers in probation program will likely benefit the juvenile and the community, placement of the juvenile with that volunteers in probation program under such conditions as the court determines are reasonable and appropriate.

These conditions may include, but need not be limited to, any of the following:

(a) A directive to a volunteer to provide for the juvenile a role model, informal counseling, general monitoring and monitoring of the conditions established by the court, or any combination of these functions.

(b) Any other disposition that the court may impose under this section.

**938.34(2m)** Teen Court Program. Order the juvenile to be placed in a teen court program if all of the following conditions apply:

(a) The chief judge of the judicial administrative district has approved a teen court program established in the juvenile's county of residence and the judge determines that participation in the teen court program will likely benefit the juvenile and the community.

(b) The juvenile is alleged to have committed a delinquent act that would be a misdemeanor if committed by an adult.

(c) The juvenile admits or pleads no contest in open court, with the juvenile's parent, guardian or legal custodian present, to the allegations that the juvenile committed the delinquent act.

(d) The juvenile has not successfully completed participation in a teen court program during the 2 years before the date of the alleged delinquent act.

**938.34(2r)** Intensive Supervision. Order the juvenile to participate in an intensive supervision program under s. 938.534.

**938.34(3)** Placement. Designate one of the following as the placement for the juvenile:

(a) The home of a parent or other relative of the juvenile, except that the court may not designate the home of a parent or other relative of the juvenile as the juvenile's placement if the parent or other relative has been convicted under s. 940.01 of the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional homicide, of a parent of the juvenile, and the conviction has not been reversed, set aside or vacated, unless the court determines by clear and convincing evidence that the placement would be in the best interests of the juvenile. The court shall consider the wishes of the juvenile in making that determination.

(b) The home of a person who is not required to be licensed if placement is for less than 30 days, except that the court may not designate the home of a person who is not required to be licensed as the juvenile's placement if the person has been convicted under s. 940.01 of the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional homicide, of a parent of the juvenile, and the conviction has not been reversed, set aside, or vacated, unless the court determines by clear and convincing evidence that the placement would be in the best interests of the juvenile. The court shall consider the wishes of the juvenile in making that determination.

(c) A foster home or treatment foster home licensed under s. 48.62 or a group home licensed under s. 48.625.

(cm) A group home described in s. 48.625(1m) if the juvenile is at least 12 years of age, is a custodial parent, as defined in s. 49.141(1)(b), or an expectant mother, is receiving inadequate care, and is in need of a safe and structured living arrangement.

(d) A residential treatment center operated by a child welfare agency licensed under s. 48.60.

(e) An independent living situation effective on or after the juvenile's 17th birthday, either alone or with friends, under such supervision as the court considers appropriate, but only if the juvenile is of sufficient maturity and judgment to live independently and only upon proof of a reasonable plan for supervision by an appropriate person or agency.

(f) A secure detention facility or juvenile portion of a county jail that meets the standards promulgated by the department by rule, or in a place of nonsecure custody designated by the court, subject to all of the following:

1. The placement may be for any combination of single or consecutive days totalling not more than 30. The juvenile shall be given credit against the period of detention or nonsecure custody imposed under this paragraph for all time spent in secure detention in connection with the course of conduct for which the detention or nonsecure custody was imposed.

2. The order may provide that the juvenile may be released

from the secure detention facility, juvenile portion of the jail or place of nonsecure custody during specified hours to attend school, to work at the juvenile's place of employment or to attend or participate in any activity which the court considers beneficial to the juvenile.

3. The use of placement in a secure detention facility or in a juvenile portion of a county jail as a disposition under this paragraph is subject to the adoption of a resolution by the county board of supervisors under s. 938.06 (5) authorizing the use of those placements as a disposition.

**938.34(4h)** Serious Juvenile Offender PROGRAM. Place the juvenile in the serious juvenile offender program under s. 938.538, but only if all of the following apply:

(a) The juvenile is 14 years of age or over and has been adjudicated delinquent for committing a violation of s. 939.31, 939.32(1)(a), 940.03, 940.21, 940.225(1), 940.305, 940.31, 941.327(2)(b)4., 943.02, 943.10(2), 943.23(1g), 943.32(2), 948.02(1), 948.025(1), or 948.30(2) or the juvenile is 10 years of age or over and has been adjudicated delinquent for attempting or committing a violation of s. 940.01 or for committing a violation of 940.02 or 940.05.

(b) The judge finds that the only other disposition that would be appropriate for the juvenile would be placement of the juvenile in a secured correctional facility under sub. (4m).

• **938.345 Disposition of juvenile adjudged in need of protection or services.** (1) If the court finds that the juvenile is in need of protection or services, the court shall enter an order deciding one or more of the dispositions of the case as provided in s. 938.34 under a care and treatment plan except that the order may not do any of the following:

(e) Place any juvenile not specifically found under chs. 46, 49, 51, 115 and 880 to be developmentally disabled or mentally ill or to be a child with a disability, as defined in s. 115.76 (5), in facilities which exclusively treat those categories of juveniles.

• **938.78 Confidentiality of records.** (1) In this section, unless otherwise qualified, "agency" means the department, a county department or a licensed child welfare agency.

**938.78(2)(a)** No agency may make available for inspection or disclose the contents of any record kept or information received about an individual in its care or legal custody, except as provided under sub. (3) or s. 938.371, 938.38(5)(b) or (d) or (5m)(d), or 938.51 or by order of the court.

(ag) Paragraph (a) does not prohibit an agency from making available for inspection or disclosing the contents of a record, upon the request of the parent, guardian, or legal custodian of the juvenile who is the subject of the record or upon the request of the juvenile, if 14 years of age or over, to the parent, guardian, legal custodian, or juvenile, unless the agency finds that inspection of the record by the juvenile, parent, guardian, or legal custodian would result in imminent danger to anyone.

(am) Paragraph (a) does not prohibit an agency from making available for inspection or disclosing the contents of a record, upon the written permission of the parent, guardian, or legal custodian of the juvenile who is the subject of the record or upon the written permission of the juvenile, if 14 years of age or over, to the person named in the permission if the parent, guardian, legal custodian, or juvenile specifically identifies the record in the written permission, unless the agency determines that inspection of the record by the person named in the permission would result in imminent danger to anyone.

(b)1. Paragraph (a) does not apply to the confidential exchange of information between an agency and another social welfare agency, a law enforcement agency, the victim-witness coordinator, a fire investigator under s. 165.55(15), a public school district or a private school regarding an individual in the care or legal custody of the agency. A social welfare agency that obtains information under this paragraph shall keep the information confidential as required under this section and s. 48.78. A law enforcement agency that obtains information under this paragraph shall keep the information confidential as required under ss. 48.396(1) and 938.396(1). A public school that obtains information under this paragraph shall keep the information confidential as required under s. 118.125 and a private school that obtains information under this paragraph shall keep the information

confidential in the same manner as is required of a public school under s. 118.125.

1m. An agency may enter into an interagency agreement with a school board, a private school, a law enforcement agency, or another social welfare agency providing for the routine disclosure of information under subd. 1. to the school board, private school, law enforcement agency, or other social welfare agency.

2. On petition of an agency to review pupil records, as defined in s. 118.125(1)(d), other than pupil records that may be disclosed without court order under s. 118.125(2) or (2m), for the purpose of providing treatment or care for an individual in the care or legal custody of the agency, the court may order the school board of the school district, or the governing body of the private school, in which an individual is enrolled to disclose to the agency the pupil records of the individual as necessary for the agency to provide that treatment or care. The agency may use the pupil records only for the purpose of providing treatment or care and may make the pupil records available only to employees of the agency who are providing treatment or care for the individual.

(d) Paragraph (a) does not prohibit the department of health and family services or a county department from disclosing information about an individual formerly in the legal custody or under the supervision of that department under s. 48.34(4m), 1993 stats., or formerly under the supervision of that department or county department under s. 48.34(4n), 1993 stats., or s. 938.34(4d) or (4n) to the department of corrections, if the individual is at the time of disclosure any of the following:

1. The subject of a presentence investigation under s. 972.15.
2. Under sentence to the Wisconsin state prisons under s. 973.15.
3. Subject to an order under s. 48.366 or 938.183 and placed in a state prison under s. 48.366(8) or 938.183.
4. On probation to the department of corrections under s. 973.09.
5. On parole under s. 302.11 or ch. 304 or on extended supervision under s. 302.113 or 302.114.

(e) Paragraph (a) does not prohibit the department from disclosing information about an individual adjudged delinquent under s. 938.183 or 938.34 for a sexually violent offense, as defined in s. 980.01(6), to the department of justice, or a district attorney or a judge acting under ch. 980 or to an attorney who represents a person subject to a petition under ch. 980. The court in which the petition under s. 980.02 is filed may issue any protective orders that it determines are appropriate concerning information disclosed under this paragraph.

(g) Paragraph (a) does not prohibit an agency from disclosing information about an individual in its care or legal custody on the written request of the department of regulation and licensing or of any interested examining board or affiliated credentialing board in that department for use in any investigation or proceeding relating to any alleged misconduct by any person who is credentialed or who is seeking credentialing under ch. 448, 455 or 457. Unless authorized by an order of the court, the department of regulation and licensing and any examining board or affiliated credentialing board in that department shall keep confidential any information obtained under this paragraph and may not disclose the name of or any other identifying information about the individual who is the subject of the information disclosed, except to the extent that redisclosure of that information is necessary for the conduct of the investigation or proceeding for which that information was obtained.

**938.78(3)** If a juvenile adjudged delinquent under s. 48.12, 1993 stats., or s. 938.12 or found to be in need of protection or services under s. 48.13(12), 1993 stats., or s. 48.13(14), 1993 stats., or s. 938.13(12) or (14) on the basis of a violation of s. 943.23(1m) or (1r), 1999 stats., or s. 941.10, 941.11, 941.20, 941.21, 941.23, 941.235, 941.237, 941.24, 941.26, 941.28, 941.295, 941.298, 941.30, 941.31, 941.32, 941.325, 943.02, 943.03, 943.04, 943.10(2)(a), 943.23(1g), 943.32(2), 948.02, 948.025, 948.03, 948.05, 948.055, 948.60, 948.605, or 948.61 or any crime specified in ch. 940 has escaped from a secured correctional facility, residential care center for children and youth, secured group home, inpatient facility, as defined in s. 51.01(10),

secure detention facility, or juvenile portion of a county jail, or from the custody of a peace officer or a guard of such a facility, center, or jail, or has been allowed to leave a secured correctional facility, residential care center for children and youth, secured group home, inpatient facility, secure detention facility, or juvenile portion of a county jail for a specified time period and is absent from the facility, center, home, or jail for more than 12 hours after the expiration of the specified period, the department or county department having supervision over the juvenile may release the juvenile's name and any information about the juvenile that is necessary for the protection of the public or to secure the juvenile's return to the facility, center, home, or jail. The department of corrections shall promulgate rules establishing guidelines for the release of the juvenile's name or information about the juvenile to the public.

## APPENDIX F

### HFS 12 CAREGIVER BACKGROUND CHECKS

#### Subchapter I — General Provisions

- HFS 12.01 Authority and purpose.  
HFS 12.02 Applicability.  
HFS 12.03 Definitions.

#### Subchapter II — Background Checks

- HFS 12.04 Contracting for background checks.  
HFS 12.05 Sanctions.  
HFS 12.06 Determining whether an offense is substantially related to client care.

Note: Chapter HFS 12 was repealed and recreated as an emergency rule effective February 13, 2000. Chapter HFS12 as it existed August 31, 2000 was repealed and recreated, Register, August, 2000, effective September 1, 2000.

#### Subchapter I — General Provisions

**HFS 12.01 Authority and purpose.** This chapter is promulgated under the authority of s. 48.685 (1) (ag) 1. a., (2) (d), (4), (5) (a), (6) (b) and (c), Stats.; and s. 50.065 (1) (ag) 1. a., (d), (f), (2) (d), (4), (5), (6) (b) and (c), Stats.; and s. 227.11 (2), Stats., to protect from harm clients served by department-regulated programs, children placed in foster homes licensed by county departments of social or human services or private child-placing agencies or children who are being adopted, and children served in day care programs contracted by local school boards under s. 120.13 (14), Stats., by requiring uniform background information screening of persons regulated and persons who are employees of or under contract to regulated entities or who are nonclient residents of regulated entities.

**Note:** Administrative rules governing county certified day care centers appear in ch. DWD 55.

**History:** Cr. Register, August, 2000, No. 536, eff. 9-1-00.

**HFS 12.02 Applicability. (1) SCOPE.** (a) *Persons and agencies affected.* This chapter applies to the department; to applicants for regulatory approval from the department; to persons, agencies and entities that have received regulatory approval from the department; to county department and child-placing agencies that license foster homes and approve applications for adoption home studies; to foster home license applicants and licensees and applicants for an adoption home study; to school boards that establish or contract for daycare programs under s. 120.13 (14), Stats., and to applicants and persons under contract to a school board to operate a day care program under s. 120.13(14), Stats.

(b) *Entities covered.* The entities subject to this chapter are those regulated under: chs. HFS 34, 38, 40, 45, 46, 52, 54, 55, 56, 57, 59, 61, 63, 82, 83, 88, 89, 110, 111, 112, 124, 127, 131, 132, 133, and 134, any other direct client care or treatment program that may be licensed or certified or registered by the department.

**History:** Cr. Register, August, 2000, No. 536, eff. 9-1-00.

**HFS 12.03 Definitions.** In this chapter:

- (1) "Adoption home study" means an evaluation of a prospective adoptive family under ch. HFS 51 or 54.  
(2) "Agency" means the department, a county department or a school board or a child welfare agency licensed under s. 48.60, Stats., as a child-placing agency.  
(3) "Background information disclosure form" means the department's form, HFS 64, on which a person provides certain information concerning the person's background.  
(4) "Bar" means, as a noun, that a person is not permitted to receive regulatory approval, or be employed as a caregiver by or under contract with an entity, or to reside as a nonclient at an entity.  
(5) "Caregiver" has the meaning specified in s. 48.685 (1) (ag) or 50.065 (1) (ag), Stats., whichever is applicable.  
(6) "Client" means a person who receives direct care or treatment services from an entity. For the purposes of this chapter, "client" includes an adopted child for whom an adoption assistance payment is being made under s. 48.975, Stats.

- HFS 12.07 Reporting background changes and nonclient residency.  
HFS 12.08 Armed forces background searches.  
HFS 12.09 Transmittal of background check information.  
HFS 12.10 Maintaining confidentiality of background information disclosure forms.  
HFS 12.11 Supervision pending receipt of caregiver background checks.

#### Subchapter III — Rehabilitation Review

- HFS 12.12 Rehabilitation process for persons who have committed certain offenses.

(7) "Contractor" has the meaning specified in ss. 48.685 (1) (ar) and 50.065 (1) (bm), Stats.

(8) "County department" means a county department of social services established under s. 46.215 or 46.22, Stats., or a county department of human services established under s. 46.21 (2m) or 46.23, Stats.

(9) "Department" means the Wisconsin department of health and family services.

(10) "Direct contact" has the meaning specified in ss. 48.685(1) (ar) and 50.065 (1) (br), Stats.

(11) "Entity" has the meaning specified in s. 48.685 (1) (b) or 50.065 (1) (c), Stats., whichever is applicable.

(12) "Foster home" means any facility operated by a person required to be licensed under s. 48.62 (1) (a), Stats., in which care and maintenance are provided for no more than 4 foster children, or, if all are siblings, for no more than 6 children, and also includes a treatment foster home that also provides structured professional treatment by trained individuals, and a home licensed for placement of children for adoption under s. 48.833, Stats., for whom adoption assistance will be provided under s. 48.975, Stats.

(13) "Hospital" means a facility approved as a hospital under s. 50.35, Stats.

(14) "Nonclient resident" has the meaning specified in ss. 48.685 (1) (bm) and 50.065 (1) (cn), Stats.

(15) "Personal care worker agency" means a home health agency licensed under s. 50.49, Stats., and ch. HFS 133 and certified as a personal care worker agency under s. HFS 105.17 (1).

(16) "Regular" means, in terms of direct contact with clients, contact that is scheduled, planned, expected, or otherwise periodic.

(17) "Regulatory approval" means:

(a) For purposes of s. 48.685, Stats., any of the following:

1. Issuance by the department of a license or certification or the continuation or renewal of a license or certification, or approval of a prospective adoptive parent application for a home study.

2. Issuance or renewal by a county department or child-placing agency of a foster home or treatment foster home license under s. 48.62 or 48.75, Stats., including a home licensed for placement of children for adoption under s. 48.833, Stats., for whom adoption assistance will be provided under s. 48.975, Stats., and includes approval of pre-adoptive applicants who contract for a home study with a licensed private child placing agency for approval of a placement of a child for adoption.

**Note:** Administrative rules governing county certified day care centers appear in ch. DWD 55.

3. Approval by a school board under s. 120.13 (14), Stats., of day care services established by or contracted with a day care provider.

(b) For purposes of s. 50.065, Stats., issuance by the department of an entity license, certification, certificate of approval or registration, or approval by the department of the continuation of an entity license, certification, certificate of approval or registration.

(18) "Rehabilitation review" refers to an agency or tribal process where a person who is eligible under s. 48.685 (5) (a) or 50.065 (5), Stats., may seek the removal of a bar from regulatory

approval, from employment as a caregiver at or contracting with an entity, or from residency at an entity.

(19) "School board" means the school board or board of school directors in charge of the schools of a school district.

(20) "Serious crime" has the meaning specified in s. 48.685 (1) (c) or 50.065 (1) (e), Stats., whichever is applicable.

(21) "Supportive home care service agency" means a home health agency licensed under s. 50.49, Stats., and ch. HFS 133.

(22) (a) "Treatment foster home" means a family-oriented facility operated by a person or persons required to be licensed under s. 48.62 (1) (b), Stats., in which treatment, care and maintenance are provided for no more than 4 foster children.

(b) "Treatment foster home" includes a placement for adoption under s. 48.833, Stats., of a child for whom adoption assistance will be provided under s. 48.975, Stats., after adoption is finalized.

(c) "Treatment foster home" does not include a shift-staffed facility, except as permitted under s. HFS 38.02 (2) (d).

(23) "Tribal governing body" means an elected tribal governing body of a federally recognized American Indian tribe.

(24) "Tribe" has the meaning specified in ss. 48.685 (1) (e) and 50.065 (1) (g), Stats.

(25) "Under the entity's control" means an entity does all of the following:

(a) Determines whether a person employed by or under contract with the entity who has direct, regular contact with clients served by the entity may provide care, treatment, or other similar support service functions to clients.

(b) Directs or oversees one or more of the following:

1. The policies or procedures the person must follow in performing his or her duties.

2. The conditions under which the person performs his or her duties.

3. The tasks the person performs.

4. The person's work schedule.

5. The supervision or evaluation of the person's work or job performance, including imposing discipline or awarding performance awards.

6. The compensation the person receives for performing his or her duties.

**History:** Cr. Register, August, 2000, No. 536, eff. 9-1-00; correction in (12) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2001, No. 544.

### Subchapter II — Background Checks

#### HFS 12.04 Contracting for background checks.

(1) An entity may enter into and shall retain an agreement or contract with any entity identified under s. 48.685 (1) (b) or 50.065(1) (c), Stats., or with any college, or university, including any vocational or technical college or school, or temporary employment agency or other person, to have the entity, school, temporary employment agency, or other person obtain and retain required background information related to caregivers, including contractors, students, or temporary employees, who, as part of their curriculum, must participate in clinical or practicum experiences at an entity.

(2) An entity that enters into an agreement or contract under sub. (1) shall obtain, at a minimum, from the other entity, university, college or technical school, temporary employment agency, or other person contracted with, and shall retain so that it may be promptly retrieved for inspection by the agency, a letter indicating the name or names and social security numbers, if available, of the caregivers, including temporary employees, contractors, or students, listing any convictions learned of during the course of the required background checks, along with any substantiated findings of misconduct, licensure denial or restriction or any other credential limitation found by either the department or the department of regulation and licensing.

**Note:** To obtain a master copy of the HFS – 64 Background Information Disclosure Form, in order to reproduce it, either download the form from the Department's internet web site at [www.dhfs.state.wi.us/caregiver/index.htm](http://www.dhfs.state.wi.us/caregiver/index.htm), or you may request a copy of the form from the agency that regulates your entity.

**Note:** The only persons who may access information maintained by a county department regarding a substantiated report of child abuse or neglect against a person are those identified in s. 49.981 (7), Stats.

**History:** Cr. Register, August, 2000, No. 536, eff. 9-1-00.

**HFS 12.05 Sanctions.** (1) SANCTIONABLE ENTITY ACTIONS. An entity that commits any of the following acts may be subject to any of the sanctions specified in sub. (2):

(a) Hires, employs, or contracts with a caregiver, or permits to reside at an entity a nonclient resident, where the entity knows or should have known the caregiver or nonclient resident is barred under s. 48.685 (4m) (b) or 50.065 (4m) (b), Stats.

(b) Violates any provision of initial background information gathering or periodic background information gathering required by s. 48.685 or 50.065, Stats.

(2) ENTITY SANCTIONS. Any of the following sanctions may be imposed on any entity that commits any of the acts described in sub. (1):

(a) A forfeiture not to exceed \$1,000.

(b) A requirement that the entity submit to the agency a written corrective action plan specifying corrections that will be made to the identified personnel screening practices needing correction and that the entity implement the plan.

(c) At entity expense, attendance at agency-designated personnel screening training or other appropriate training.

(d) Specific conditions or limitations placed on the license, certification or registration or on a school board-issued contract, including denial, revocation, nonrenewal or suspension of regulatory approval issued by the department, or denial, nonrenewal or termination by a school board of a contract with a day care provider under s. 120.13 (14), Stats.

(e) For a person licensed to operate a child welfare agency, shelter care facility, group foster home or day care facility, any sanction or penalty described in s. 48.715, Stats.

(f) A requirement that the entity use, at entity expense, a temporary employment agency for screening and hiring personnel.

(3) SANCTIONABLE INDIVIDUAL ACTIONS. Any person who is required to complete a background information disclosure form and who commits any of the following actions may be subject to any of the sanctions specified in sub. (4):

(a) Fails to complete and submit the background information disclosure form to the appropriate agency or entity.

(b) Knowingly gives false information on or knowingly omits information from the background information disclosure form submitted to an agency or entity.

(c) After submitting a background information disclosure form to an agency or entity, subsequently fails to report any information about a conviction for a crime or other act or offense requested on the background information disclosure form, about a substantiated finding of abuse or neglect or a client or of misappropriation of a client's property, or, in the case of a position for which the person must be credentialed by the department of regulation and licensing, about a licensure denial, restriction, or other license limitation by either the department or the department of regulation and licensing.

(4) INDIVIDUAL SANCTIONS. All of the following sanctions may be imposed by an agency on any person who commits any of the acts described in sub. (3):

(a) A forfeiture not to exceed \$1,000.

(b) Denial or revocation of regulatory approval or the termination of a contract.

(c) Denial or termination of eligibility to reside at the entity.

(d) Special conditions or limitations placed upon the person, including restriction to an off-premises location during business hours or otherwise restricting the person's contact with clients.

**History:** Cr. Register, August, 2000, No. 536, eff. 9-1-00.

**HFS 12.06 Determining whether an offense is substantially related to client care.** To determine whether a crime, delinquency adjudication under s. 48.685 (5m) or 50.065(5m), Stats., or conduct relating to a governmental finding of abuse or neglect of another or of misappropriation of another's property is substantially related to the care of a client, the agency or entity may consider all of the following:

- (1) In relation to the job, any of the following:
- (a) The nature and scope of the job's client contact.
  - (b) The nature and scope of the job's discretionary authority and degree of independence in judgment relating to decisions or actions that affect the care of clients.
  - (c) The opportunity the job presents for committing similar offenses.
  - (d) The extent to which acceptable job performance requires the trust and confidence of clients or a client's parent or guardian.
  - (e) The amount and type of supervision received in the job.
- (2) In relation to the offense, any of the following:
- (a) Whether intent is an element of the offense.
  - (b) Whether the elements or circumstances of the offense are substantially related to the job duties.
  - (c) Any pattern of offenses.
  - (d) The extent to which the offense relates to vulnerable clients.
  - (e) Whether the offense involves violence or a threat of harm.
  - (f) Whether the offense is of a sexual nature.
- (3) In relation to the person, any of the following:
- (a) The number and type of offenses the person committed or for which the person has been convicted.
  - (b) The length of time between convictions or offenses, and the employment decision.
  - (c) The person's employment history, including references, if available.
  - (d) The person's participation in or completion of pertinent programs of a rehabilitative nature.
  - (e) The person's probation or parole status.
  - (f) The person's ability to perform or to continue to perform the job consistent with the safe and efficient operation of the program and the confidence of the clients served including, as applicable, their parents or guardians.
  - (g) The age of the person on the date of conviction or dates of conviction.

**Note:** A person refused employment or who has had his or her employment terminated and believes he or she may have been discriminated against, may file a complaint under s. 111.335, Stats., with the Equal Rights Division, Department of Workforce Development, P.O. Box 8928, Madison, WI 53708-8928 or telephone 608-266-6860.

**History:** Cr. Register, August, 2000, No. 536, eff. 9-1-00.

**HFS 12.07 Reporting background changes and nonclient residency.** (1) An entity shall include in its personnel or operating policies a provision that requires caregivers to notify the entity as soon as possible, but no later than the person's next working day, when any of the following occurs.

- (a) The person has been convicted of any crime.
- (b) The person has been or is being investigated by any governmental agency for any other act, offense, or omission, including an investigation related to the abuse or neglect, or threat of abuse or neglect, to a child or other client, or an investigation related to misappropriation of a client's property.
- (c) The person has a governmental finding substantiated against them of abuse or neglect of a client or of misappropriation of a client's property.
- (d) In the case of a position for which the person must be credentialed by the department of regulation and licensing, the person has been denied a license, or the person's license has been restricted or otherwise limited.

(2) When any of the following occurs relative to a signatory or other legal party to the entity application for regulatory approval or under which a contract under s. 120.13 (14), Stats., is signed, or relative to a nonclient resident at the entity, an entity shall, as soon as possible, but no later than the regulatory agency's next business day, report the information to the agency that gave regulatory approval, or the school board with which the day care entity contracts under s. 120.13 (14), Stats.

- (a) The person has been convicted of any crime.
- (b) The person has been or is being investigated by any governmental agency for any other act, offense, or omission, including an investigation related to the abuse or neglect, or threat

of abuse or neglect, to a child or other client, or an investigation related to misappropriation of a client's property.

(c) The person has a governmental finding substantiated against them of abuse or neglect of a client or of misappropriation of a client's property.

(d) In the case of a position for which the person must be credentialed by the department of regulation and licensing, the person has been denied a license, or the person's license has been restricted or otherwise limited.

(3) When a person begins residing at or is expected to reside at an entity, or the signatory for licensure changes, the entity shall, as soon as possible, but no later than the regulatory agency's next business day, report the residency, expected residency, or signatory change to the agency that gave regulatory approval or to the school board that the day care entity contracts with under s. 120.13(14), Stats., and submit to the regulatory agency a completed background information disclosure form for the new nonclient resident or new signatory.

**History:** Cr. Register, August, 2000, No. 536, eff. 9-1-00.

**HFS 12.08 Armed forces background searches.** If a person who is the subject of a background search under s. 48.685 or 50.065, Stats., served in a branch of the U.S. armed forces, including any reserve component, the agency or entity shall make a good faith effort to obtain the discharge status of that person, either from the discharge papers issued to the person or from the armed forces branch in which the person served. If the discharge status is other than honorable, the agency or entity shall obtain information on the nature and circumstances of the discharge.

**History:** Cr. Register, August, 2000, No. 536, eff. 9-1-00.

**HFS 12.09 Transmittal of background check information.**

(1) When an entity sends a required background information disclosure form to the department under s. 48.685 (3) (a), Stats., the entity shall include in the transmittal all the following:

- (a) Any reason for denial or revocation of a license or denial of an adoption application.
- (b) The date of the license denial or revocation or adoption application denial.

(2) A child-placing agency or county department shall provide the department with written information about each person to whom the child-placing agency or county department denies a license or adoption home study approval for a reason specified in s. 48.685 (4m) (a), Stats., including all the following:

- (a) The reason for denial or revocation of a license or denial of adoption application.
- (b) The date of the license denial or revocation or adoption application denial.

**Note:** Send the information required in subs. (1) and (2) to the Bureau of Regulation and Licensing, Division of Children and Family Services, P. O. Box 8916, 1 West Wilson Street, Madison, WI 53708-8916.

(3) In addition to the persons specified in s. 48.685 (6) (b) 2., Stats., an entity shall send a completed background information disclosure form to the county department for a person who is licensed or an adoptive parent applicant studied by a county department.

(4) In addition to the persons specified in s. 48.685 (6) (b) 3., Stats., an entity shall send a completed background information disclosure form to the child-placing agency for a person who is in a home studied for adoptive parent applicant approval.

**History:** Cr. Register, August, 2000, No. 536, eff. 9-1-00.

**HFS 12.10 Maintaining confidentiality of background information disclosure forms.** Agencies and entities shall retain all required completed department background information forms in a manner that ensures prompt retrieval of the forms for inspection and shall comply with applicable federal and state confidentiality laws.

**History:** Cr. Register, August, 2000, No. 536, eff. 9-1-00.

**HFS 12.11 Supervision pending receipt of caregiver background checks.** Entity supervision required under ss. 48.685 (4m) (c) and 50.065 (4m) (c), Stats., shall include at a minimum periodic direct observation of the person.

**History:** Cr. Register, August, 2000, No. 536, eff. 9-1-00.

**HFS 12.12 Rehabilitation process for persons who have committed certain offenses. (1) GENERAL PROVISIONS.**

(a) An agency shall conduct rehabilitation reviews as described in this section for persons who are eligible to receive rehabilitation review under this section for any of the following:

1. Entities the agency regulates.
2. Persons an entity employs.
3. Persons an entity contracts with.
4. Nonclient residents of an entity.

(b) 1. A tribal governing body may conduct rehabilitation reviews under ss. 48.685 (5) and 50.065 (5), Stats., if a plan submitted under s. 48.685 (5d) or 50.065 (5d), Stats., has been approved by the department.

2. Tribes desiring to conduct rehabilitation reviews shall send a rehabilitation review plan required under ss. 48.685 (5d) and 50.065 (5d), Stats., to the department.

**Note:** Send rehabilitation review plans to the Office of Legal Counsel, Department of Health and Family Services, P.O. Box 7850, 1 West Wilson St., Rm 651, Madison, WI 53707-7850.

**(2) ELIGIBILITY TO REQUEST REHABILITATION REVIEW.** (a) Any person who is ineligible under s. 50.065 (4m) (a) or (b), or 48.685(4m) (a) or (b), Stats., to receive regulatory approval, to be employed as a caregiver, or to contract with or reside at an entity, may request a rehabilitation review if the person meets both of the following conditions:

1. The person has not requested a rehabilitation review for a similar type of regulatory approval, job function or nonclient resident status within the preceding year. In this subdivision, "similar" means comparable regulatory approval, or a comparable job function or activity.

**Note:** Examples of "similarity" and "comparability" are positions that require a comparable level of direct contact with children; a comparable level of unsupervised client access; a previous review involved family day care and the applicant is seeking licensing for group day care; or the applicant sought a group home license and now is seeking a child-caring institution license.

2. If the person is a foster home license applicant under s. 48.62, Stats., or an applicant for an adoption home study, the person has not been convicted of a serious crime under s. 48.685 (5)(bm) 1., 2. or 3., Stats., another crime listed in section III of the appendix that results in a permanent bar, or a similar serious crime in another jurisdiction or, if the person was convicted of a crime under s. 48.685 (5) (bm) 4., Stats., the crime was committed more than 5 years before the background check was requested.

(b) If a person is eligible to request a rehabilitation review, the agency or tribe from which the person is seeking regulatory approval, or the entity with whom the person is seeking employment as a caregiver or a contract, or where the person wishes to reside shall give the person information on rehabilitation review eligibility criteria and on how to obtain the rehabilitation review request form.

**Note:** To obtain a master copy of the Department's Rehabilitation Review Request Form (EXS-263) in order to reproduce it, either download the form from the Department's internet site at [www.dhfs.state.wi.us/caregiver/index.htm](http://www.dhfs.state.wi.us/caregiver/index.htm), or request a copy of the form from, as appropriate, the agency that regulates the entity or from the entity.

**(3) INITIATING A REHABILITATION REVIEW REQUEST.**

To request a rehabilitation review, an eligible person shall do all of the following:

(a) Obtain a rehabilitation review request form developed by the department or applicable tribe and submit the completed form to the agency that regulates the entity, or to the applicable tribe, or for day care programs established under s. 120.13 (14), Stats., to the school board.

(b) Submit any supporting documents and information required by the applicable rehabilitation review request form to the same agency, tribe, or school board.

**(4) PROCESSING REHABILITATION REVIEW REQUESTS.**

(a) *Rehabilitation review panel.* When an eligible person has filed a complete rehabilitation review request form along with all required additional and supporting information, the applicable

agency, tribe, or school board shall appoint a review panel of at least 2 persons to review the information submitted. The panel may request additional information from the person or from other agencies or persons familiar with the person requesting the review.

(b) *Time frame.* If the application form and any requested supporting materials are not complete within 90 days of the date the application is submitted, and the person requesting the review does not have good cause for the failure to submit a complete application form or supporting materials, the rehabilitation approval shall be denied.

(c) *Requester appearance.* The person requesting the rehabilitation review shall have an opportunity to appear before the review panel to answer any questions the panel members may have.

(d) *Rehabilitation decision formulation and factors.* After reviewing the information obtained, the review panel shall decide whether the person has demonstrated, by clear and convincing evidence, that the person is rehabilitated for purposes of receiving regulatory approval, employment as a caregiver, or contracting with or residing at an entity. The panel shall consider at least the following factors, as applicable:

1. Personal reference checks and comments from employers, persons, and agencies familiar with the applicant and statements from therapists, counselors and other professionals.

2. Evidence of successful adjustment to, compliance with or proof of successful completion of parole, probation, incarceration or work release privileges.

3. Proof that the person has not had subsequent contacts with law enforcement agencies leading to probable cause to arrest or evidence of noncompliance leading to investigations by other regulatory enforcement agencies.

4. Any pending or existing criminal or civil arrest warrants, civil judgments or other legal enforcement actions or injunctions against the person.

5. Any aggravating or mitigating circumstances surrounding the crime, act or offense.

6. Evidence of rehabilitation, such as public or community service, volunteer work, recognition by other public or private authorities for accomplishments or efforts or attempts at restitution, and demonstrated ability to develop positive social interaction and increased independence or autonomy of daily living.

7. The amount of time between the crime, act or offense and the request for rehabilitation review, and the age of the person at the time of the offense.

8. Whether the person is on the sexual offender registry under s. 301.45, Stats., or on a similar registry in another jurisdiction.

9. A victim's impact statement, if appropriate.

10. Employment history, including evidence of acceptable performance or competency in a position and dedication to the person's profession.

11. The nature and scope of the person's contact with clients in the position requested.

12. The degree to which the person would be directly supervised or working independently in the position requested.

13. The opportunity presented for someone in the position to commit similar offenses.

14. The number, type and pattern of offenses committed by the person.

15. Successful participation in or completion of recommended rehabilitation, treatment or programs.

16. Unmet treatment needs.

17. The applicant's veracity.

**(5) REHABILITATION DECISIONS.** (a) *Review panel decision.* The review panel shall decide whether to approve, defer, or deny rehabilitation approval, and shall issue a written decision to that effect, as follows:

1. If the review panel finds sufficient evidence to support rehabilitation approval, the decision shall indicate, as applicable, whether the person is eligible for regulatory approval, employment as a caregiver, or contracting with or residency at an entity. The decision shall describe the scope of the rehabilitation approval

and state any conditions or limitations placed on the approval, such as whether the approval is only for employment doing certain job functions or the eligibility for regulatory approval is only to operate certain entity types.

2. If the review panel decides to defer a rehabilitation decision, the panel decision shall state the reasons for the deferral. Unless otherwise agreed to by the requester, the panel may defer a final decision for a period of not more than 6 months from the initial decision date.

3. If the review panel decides to deny approval of the rehabilitation request, the decision shall explain the reasons for the denial and inform the requester that he or she may appeal the decision as described in s. 48.685 (5c) or 50.065 (5c), Stats., as applicable, by filing a written request for review of the decision within 10 days of receipt.

**Note:** Pursuant to s. 48.685 (5c), Stats., or 50.065 (5c), Stats., submit an appeal to the following, as appropriate: 1. To appeal a Department denial of a rehabilitation approval, send the appeal request to the Department of Health and Family Services, Office of Legal Counsel, P.O. Box 7850, Madison, WI 53707-7850. 2. To appeal a school board denial of a rehabilitation approval, send the appeal request to the Superintendent of the Department of Public Instruction, 125 South Webster St., Madison, WI 53703; or call 608-266-3390. 3. To appeal a county denial of a rehabilitation approval, send the appeal request to the appropriate county. When any of the preceding rehabilitation appeals are denied, a further appeal is available under ch. 227, Stats.

Send a request for a ch. 227, Stats., hearing to appeal any of the preceding Department, Department of Public Instruction or county denials of rehabilitation appeals to the Division of Hearings and Appeals, P. O. Box 7875, Madison, WI 53707-7875. The request may be delivered in person to that office at 5005 University Avenue, Suite 201, Madison, Wisconsin.

**Note:** Any person who is listed in the Department's caregiver misconduct registry under ch. HFS 13 as having a substantiated finding of abuse or neglect of a client or misappropriation of a client's property as the result of an action the person took while working as a nurse aide in a federally certified nursing home or intermediate care facility for persons with mental retardation (ICF/MR) is permanently prohibited from being employed, in any capacity, in a federally-certified nursing home or a federally-certified ICF/MR. If such a person obtains a rehabilitation approval, the person is eligible to be considered for regulatory approval, for employment as a caregiver, or for non-client residency at or contracting with other entities covered by ss. 50.065 and 48.685, Stats. See 42 CFR 483.13 and 483.420 for federal regulations relating to nurse aides.

(b) *Burden of proof.* A person who appeals under par. (a) 3. shall bear the burden of proving, by a preponderance of the evidence, that the agency or tribe abused its discretion in deciding that the person did not show sufficient evidence to support rehabilitation approval.

(c) *Review panel decision distribution.* The review panel shall send its decision to the requester and a copy, if appropriate, to the entity. If the agency conducting the rehabilitation review is other than the department or a tribe, the review panel shall also, within 10 days of sending its decision, send a completed copy of the department's required reporting form regarding any rehabilitation decision to the department. If the entity conducting the rehabilitation review is a tribe, the review panel shall also send a copy of the decision to the same address accompanied by a copy of the requester's application materials.

**Note:** Rehabilitation decisions should be addressed to the Office of Legal Counsel, Department of Health and Family Services, P. O. Box 7850, 1 W. Wilson St., Room 651, Madison, WI 53707-7850.

(d) *Maintaining rehabilitation decision documentation.* The review panel shall maintain a file containing a copy of the original written decision and any decisions from filed appeals that may result. The agency or tribe shall maintain in the file the rehabilitation review request and all materials or information obtained or notes made as part of the rehabilitation review decision.

#### (6) REHABILITATION APPROVAL COMPLIANCE AND WITHDRAWALS.

(a) *Approval conditions.* A person who receives rehabilitation approval shall comply with all conditions and limitations imposed with that approval.

(b) *Rehabilitation approval violation--mandatory withdrawal.* An agency or tribe that has granted a person a rehabilitation approval shall withdraw the approval if the agency or tribe learns that the person is no longer eligible under s. 50.065 (4m) (a) or (b), or 48.685 (4m) (a) or (b), Stats., for regulatory approval, to be employed as a caregiver, or to contract with or reside at an entity.

(c) *Rehabilitation approval violation--summary suspension.* An agency or tribe that granted a person a rehabilitation approval may immediately temporarily rescind the rehabilitation approval when the agency or tribe has knowledge that the person has done either of the following:

1. The person has failed to comply with or abide by any conditions or limitations imposed with the rehabilitation approval.

2. The person knowingly submitted false information or withheld pertinent information relevant to the rehabilitation request that otherwise could or would have affected the review panel's decision to grant the rehabilitation approval.

(d) *Informing agencies or tribes.* An agency, entity or tribe other than the agency or tribe that granted a rehabilitation approval, that becomes aware that any person has violated his or her rehabilitation approval under par. (b) or (c), shall inform the agency or tribe that granted the approval, of the violation.

(e) *Review of summary suspensions.* 1. Within 10 working days of temporarily rescinding a rehabilitation approval under par. (c), the approving agency or tribe shall determine whether the new information related to an approval violation under par. (c) is valid and represents a risk of harm to the client. If the new information is valid and does represent a risk of harm to the client, the approving agency or tribe shall withdraw the rehabilitation approval, thereby re-imposing, as applicable, the person's bar from regulatory approval, from employment as a caregiver or from contracting with or residing at an entity.

2. An agency, entity, or tribe, as applicable, that determines the new information related to an approval violation under par. (c) represents a risk of harm to a client shall also immediately take appropriate measures to protect clients until any appeal filed under par. (g) is exhausted. Appropriate measures may include a repeal of regulatory approval, termination of employment as a caregiver or of approval to reside at an entity, contract termination, reassigning the person away from duties involving direct regular contact with clients or placing the person on temporary leave.

(f) *Withdrawal decisions.* When an agency or tribe withdraws a rehabilitation approval, it shall issue a written decision to that effect. The decision shall explain the reasons for the withdrawal and inform the requester whether he or she may appeal under par. (g).

(g) *Appeal rights.* Any person who has his or her rehabilitation approval withdrawn under par. (c) may file an appeal of this decision as provided in sub. (5) (a).

(h) *Withdrawal reporting.* When an agency or tribe that granted a rehabilitation approval withdraws the approval, and the withdrawal results in a bar to regulatory approval, to eligibility to work as a caregiver, or to contracting with or residing at an entity, the approving agency or tribe shall immediately report the withdrawal to the subunit of the department responsible for collecting this information.

**Note:** Send reports of withdrawn rehabilitation approval to: Office of Legal Counsel, Department of Health and Family Services, P. O. Box 7850, 1 West Wilson Street, Room 651, Madison, WI 53707-7850.

(7) SCOPE OF AGENCY OR TRIBE REHABILITATION APPROVAL. (a) *Agency approval limitations.* An agency may grant rehabilitation approval only within the scope of its regulatory authority. The approval applies to all types of entities, job activities and functions the agency regulates, unless the agency specifies otherwise in the form of limitations or conditions expressed in the written rehabilitation approval decision.

(b) *Tribe approval limitations.* A tribe may only grant rehabilitation approvals within the scope of its own employment, contracting, or licensing authority.

(c) *Rehabilitation approval transfers.* 1. When an agency, tribe, or entity learns from the department's background information disclosure form or in any other way that an applicant for regulatory approval, for employment as a caregiver, or for a contract with or permission to reside at an entity has had a rehabilitation review, the agency, tribe, or entity shall request from the rehabilitation review agency or tribe a copy of the rehabilitation review decision. If the rehabilitation review decision was an approval, the agency, tribe or entity shall determine whether the approval may be applied to the regulatory approval, employment as a caregiver, or contract with or residency at an entity that the applicant currently seeks.

2. Except as specified in subd. 3., an agency, entity, or tribe may review and accept a rehabilitation granted to a person by another agency or tribe if the receiving agency or tribe determines both of the following:

a. The crime, act, or offense that required the person to request rehabilitation review is not substantially related to the person's job duties.

b. Any limitations or conditions imposed with the rehabilitation approval continue to be able to be met.

3. No rehabilitation approval granted by a tribe may be transferred outside of the tribe's employment or contracting authority.

4. Before transferring a rehabilitation approval under subd. 1., an agency, tribe, or entity shall verify with the department that the applicant has had a rehabilitation review, and if so, the date and status of that review and whether any reason other than the one the applicant reported on the background information disclosure form exists that requires the applicant to request a rehabilitation review.

5. If the decision of the agency or tribe that conducted the rehabilitation review is to deny approval of transferring the rehabilitation approval, the agency, entity, or tribe shall determine whether the applicant for regulatory approval, for employment as a caregiver, or for contracting with or residency at an entity is eligible to seek another rehabilitation review under sub. (2), and if so, shall inform the person of his or her eligibility.

**Note:** Examples of circumstances in which approvals may or may not be transferable include the following:

1. An approval to be a foster parent by one county or child-placing agency is not, unless approved by the other county or child-placing agency, transferable to the other county or child-placing agency.

2. An approval by the department for a person to work as a shipping clerk in a hospital or nursing home would be transferable to another entity or job function or activity regulated under ch. 50, Stats., as long as limitations or conditions, if any, imposed with the rehabilitation approval are able to be met.

3. A rehabilitation approval for employment at a children's day care or a child caring institution is not transferable to a hospital or nursing home or vice versa.

4. A rehabilitation approval is not transferable from a group day care center to a family day care center if the department's rehabilitation approval imposed limits or conditions.

5. A rehabilitation approval is transferable from one department-regulated child care residential setting to another as long as any limitations or conditions can be met.

#### APPENDIX A OFFENSES AFFECTING CAREGIVER ELIGIBILITY SEPTEMBER, 2000

#### INTRODUCTION

This document lists Wisconsin crimes and other offenses that the Wisconsin State Legislature, under the Caregiver Law, ss. 48.685 and 50.065, Stats., has determined either require rehabilitation review approval before a person may receive regulatory approval, may work as a caregiver, may reside as a nonclient resident at or contract with an entity, or that act to permanently bar a person from receiving regulatory approval to be a foster parent.

**Note:** This table reflects changes in the caregiver law made by 1999 Wisconsin Act 9.

If a person has been convicted of a crime in another state or jurisdiction, the entity or regulatory agency must locate on the table below the Wisconsin crime that is identical or most similar to the crime for which the person was convicted and apply the consequence identified. This instruction also applies if the person was convicted in Wisconsin, but the statute number or crime title has been changed or amended. For example, convictions under Chapter 961, the Uniform Controlled Substances Act, were previously convictions under Chapter 161.

Notwithstanding s. 111.335, Stats., ss. 48.685 (5m) and 50.065 (5m), Stats., permit a regulatory agency to deny regulatory approval or an entity to refuse to employ, contract with or permit to reside at the entity a person whom the regulatory agency or entity determines has been convicted of a crime that is "substantially related" to the care of a client. The agency or entity may review a conviction to make that determination when: (a) The person has been convicted in Wisconsin or another state or jurisdiction of any crime that is not listed in this appendix; or (b) The person has been convicted of a crime that is listed in part III. of this appendix for foster care purposes only.

Under the Caregiver Law, current limitations on a person's professional credentials may limit the person's eligibility for employment or licensure in a position for which the person must be credentialed by the department of regulation and licensing.

If a Background Information Disclosure form, a caregiver background check, or any other information shows that a person was convicted of any of the offenses immediately below within 5 years before the information was obtained, the department, county department, child welfare agency, school board, or entity, as applicable, shall make every reasonable effort to contact the clerk of courts to obtain a copy of the criminal complaint and judgment of conviction relating to that conviction.

940.19 (1) Misdemeanor battery  
940.195 Battery to an unborn child  
940.20 Battery, special circumstances  
941.30 Reckless endangerment  
942.08 Invasion of privacy  
947.01 Disorderly conduct  
947.013 Harassment

<b>I. Entities and Programs Serving Only Persons 18 Years of Age or Older</b>	
<b>CONVICTIONS</b>	
Regulatory approval, employment as a caregiver, and nonclient residency at or contracting with an entity are prohibited until rehabilitation approval is received, for all programs and entities that serve only clients 18 years of age or older.	
<b>Wis. Stats.</b>	<b>Crime</b>
940.01	First degree intentional homicide
940.02	1st degree reckless homicide
940.03	Felony murder
940.05	2nd degree intentional homicide
940.12	Assisting suicide
940.19 (2) through (6)	Battery (felony)
940.22 (2) or (3)	Sexual exploitation by therapist; duty to report
940.225 (1), (2), or (3)	1st, 2nd, or 3rd degree sexual assault
940.285	Abuse of vulnerable adults (misdemeanor or felony)
940.29	Abuse of residents of a penal facility
940.295	Abuse or neglect of patients and residents (misdemeanor or felony)
948.02 (1)	1st degree sexual assault of a child
948.025	Repeated acts of sexual assault of a child
948.03 (2) (a)	Physical abuse of a child – intentional – cause great bodily harm
<b>OTHER OFFENSES</b>	
--- Finding by a governmental agency of neglect or abuse of a client, or of misappropriation of a client's property	
--- Finding by a governmental agency of child abuse or neglect	
<b>II. Entities and Programs Serving Any Clients Under the Age of 18</b>	
<b>CONVICTIONS</b>	
Regulatory approval, employment as a caregiver, and nonclient residency at and contracting with an entity are prohibited until rehabilitation approval is received, for all entities and programs that serve any clients who are under the age of 18. (For additional federal foster care bars, see part III. below.)	
<b>Wis. Stats.</b>	<b>Crime</b>
940.01	First degree intentional homicide
940.02	1st degree reckless homicide
940.03	Felony murder
940.05	2nd degree intentional homicide
940.12	Assisting suicide
940.19 (2) through (6)	Battery (felony)
940.22 (2) or (3)	Sexual exploitation by therapist; duty to report
940.225 (1), (2), or (3)	1st, 2nd, or 3rd degree sexual assault
940.285	Abuse of vulnerable adults (misdemeanor or felony)
940.29	Abuse of residents of a penal facility
940.295	Abuse or neglect of patients & residents (misdemeanor or felony)
948.02 (1) or (2)	1st or 2nd degree sexual assault of a child
948.025	Repeated acts of sexual assault of same child
948.03 (2) (a), (b), or (c)	Physical abuse of a child – intentional causation of bodily harm
948.05	Sexual exploitation of a child
948.055	Causing a child to view or listen to sexual activity
948.06	Incest with a child
948.07	Child enticement
948.08	Soliciting a child for prostitution
948.11 (2)(a) or (am)	Exposing child to harmful material or harmful descriptions or narrations (felony)
948.12	Possession of child pornography
948.13	Child sex offender working with children
948.21 (1)	Neglect of a child – resulting in death (felony)
948.30	Abduction of another's child; constructive custody
<b>OTHER OFFENSES</b>	
--- Finding by a governmental agency of neglect or abuse of a client, or of misappropriation of a client's property	
--- Finding by a governmental agency of child abuse or neglect	

HFS 57 GROUP FOSTER CARE ANNOTATED  
APPENDIX F

<b>III. Foster Care</b>		
<b>CONVICTIONS</b>		
By federal or state law, for <b>Foster Homes and Treatment Foster Homes</b> , regulatory approval, employment as a caregiver, and nonclient residency at and contracting with an entity are barred as follows:		
Permanent bar =	Conviction acts as permanent bar.	
Spouse =	Permanent bar applies when spouse was the victim in the offense.	
5 years =	Bar is for 5 years from time crime committed.	
Spouse / 5 years / R =	If spouse was the victim, bar is permanent. In other cases, bar is for 5 years from time crime committed; then must show rehabilitation.	
Spouse / 5 years =	If spouse was the victim, bar is permanent. In other cases, bar is for 5 years from time crime committed.	
Bar w/ rehab =	Regulatory approval, employment as a caregiver, and nonclient residency at and contracting with an entity are barred until rehabilitation approval is received.	
Wis. Stats.	Crime	Federal law / Foster Care Bar
940.01	First degree intentional homicide	Permanent bar
940.02	1st degree reckless homicide	Permanent bar
940.03	Felony murder	Permanent bar
940.05	2nd degree intentional homicide	Permanent bar
940.06	2nd degree reckless homicide	Permanent bar
940.12	Assisting suicide	Bar w/ rehab
940.19(2) - (6)	Battery (felony)	Spouse / 5 years / R
940.20	Battery – special circumstances	5 years
940.20(1) or (1m)	Battery – special circumstances	Spouse
940.203	Battery or threat to judge	5 years
940.205	Battery or threat to a Department of Revenue employee	5 years
940.207	Battery or threat to a Department of Commerce or DWD employee	5 years
940.21	Mayhem	Permanent bar
940.22(2) or (3)	Sexual exploitation by therapist; duty to report	Bar w/ rehab
940.225(1), (2), or (3)	1st, 2nd, or 3rd degree sexual assault	Permanent bar
940.23	Reckless injury	Permanent bar
940.285	Abuse of vulnerable adults (misdemeanor or felony)	Bar w/ rehab
940.29	Abuse of residents of a penal facility	Bar w/ rehab
940.295	Abuse or neglect of patients or residents (misdemeanor or felony)	Bar w/ rehab
940.305	Taking hostages	Permanent bar
940.31	Kidnapping	Permanent bar
941.20(2) or (3)	Endangers safety by use of a dangerous weapon	Permanent bar
941.21	Disarming a peace officer	Permanent bar
943.10(2)	Burglary while armed	Permanent bar
943.23(1g), (1m) or (1r)	Operating motor vehicle without owner's consent (OMVWOC)	Permanent bar
948.02(1), (2), (3), or (3m)	1st or 2nd degree sexual assault of a child; failure to act; penalty enhancement	Permanent bar
948.025	Repeated acts of sexual assault of a child	Permanent bar
948.03(2), (3), or (4)	Physical abuse of a child	Permanent bar
948.04	Causing mental harm to a child	Permanent bar
943.32(2)	Robbery with dangerous weapon	Permanent bar
948.05	Sexual exploitation of a child	Permanent bar
948.055	Causing a child to view or listen to sexual activity	Permanent bar
948.06	Incest with a child	Permanent bar
948.07	Child enticement	Permanent bar
948.08	Soliciting a child for prostitution	Permanent bar
948.095	Sexual assault of student by school staff	Permanent bar
948.11(2)(a) or (am)	Exposing child to harmful material or harmful descriptions or narrations (felony)	Permanent bar
948.12	Possession of child pornography	Permanent bar
948.13	Child sex offender working with children	Permanent bar
948.20	Abandonment of a child	Permanent bar
948.21(1)	Neglect of a child – resulting in death (felony)	Permanent bar
948.22	Failure to support (felony)	Permanent bar
948.23	Concealing death of a child	Permanent bar
948.24	Unauthorized placement for adoption	Permanent bar
948.30	Abduction of another's child; constructive custody	Permanent bar
948.31	Interference with custody by parent or others	Permanent bar
948.35	Solicitation of a child to commit a felony	Permanent bar
948.36	Use of a child to commit a class A felony	Permanent bar

HFS 57 GROUP FOSTER CARE ANNOTATED  
APPENDIX F

948.40	Contributing to the delinquency of a minor (felony)	Permanent bar
948.51	Hazing (felony)	Permanent bar
948.60	Possession of a dangerous weapon by a person under 18 (felony)	Permanent bar
948.605 (3)	Gun-free school zones; discharge of firearm in a school zone (felony)	Permanent bar
948.61	Dangerous weapons other than firearms on school premises (felony)	Permanent bar
948.62	Receiving stolen property from a child (felony)	Permanent bar
---	<b>All other Chapter 948 crimes that are felonies</b>	<b>Permanent bar</b>
961.41(1)	Manufacture, distribution or delivery (felony)	5 years
961.41(1m)	Possession with intent to manufacture, distribute, or deliver (felony)	5 years
961.41(3g)	Possession (felony)	5 years
961.43(1)(a)	Acquire or obtain possession of controlled substances by fraud, misrepresentation, or forgery, deception, or subterfuge (felony)	5 years
961.43(1)(b)	To possess/make a counterfeit substance or to duplicate the appearance, packaging, form or label of a controlled substance (felony)	5 years
961.455	Using a child for illegal drug distribution or manufacturing purposes (felony)	5 years
961.46	Distribution to persons under 18 (felony)	5 years
961.465	Distribution to prisoners	5 years
961.49	Distribution of or possession with intent to deliver at or near certain places	5 years
961.492	Distribution of or possession with intent to deliver on public transit (felony)	5 years
---	<b>All other ch. 961 offenses that are felonies</b>	<b>5 years</b>
<b>OTHER OFFENSES</b>		
--- Finding by a governmental agency of neglect or abuse of a client, or of misappropriation of a client's property Bar w/ rehab		
--- Finding by a governmental agency of child abuse or neglect Bar w/ rehab		

## APPENDIX G

### HFS 92 CONFIDENTIALITY OF TREATMENT RECORDS

HFS 92.01 Introduction.  
 HFS 92.02 Definitions.  
 HFS 92.03 General requirements.  
 HFS 92.04 Disclosure without informed consent.  
 HFS 92.05 Patient access to treatment records.  
 HFS 92.06 Minors and incompetents.  
 HFS 92.07 Privileged communications.

HFS 92.08 Criminal commitments.  
 HFS 92.09 Grievance procedure.  
 HFS 92.10 Discipline of employees.  
 HFS 92.11 Employee orientation.  
 HFS 92.12 Retention periods.  
 HFS 92.13 Certification of compliance.

**Note:** Chapter HSS 92 was renumbered chapter HFS 92 under s. 13.93(2m)(b)1., Stats., and corrections made under s. 13.93(2m)(b)6. and 7., Stats., Register, September, 1999, No. 525.

**HFS 92.01 Introduction. (1) SCOPE.** This chapter applies to all records of persons who are receiving treatment or who at any time received treatment for mental illness, developmental disabilities, alcohol abuse or drug abuse from the department, a board established under s. 46.23, 51.42 or 51.437, Stats., or treatment facilities and persons providing services under contract with the department, a board or a treatment facility whether the services are provided through a board or not. Private practitioners practicing individually who are not providing services to boards are not deemed to be treatment facilities and their records are not governed by this chapter.

**(2) STATUTORY AUTHORITY.** This chapter is promulgated pursuant to s. 51.30(12), Stats., which directs the department to promulgate rules to implement s. 51.30, Stats.

**History:** Cr. Register, May, 1984, No. 341, eff. 6-1-84.

**HFS 92.02 Definitions.** In this chapter:

**(1) "Board"** means the community board established under s. 46.23, 51.42 or 51.437, Stats.

**(a) "51-board"** means a community board established under s. 51.42 or 51.437, Stats.

**(b) "Human services board"** means a combined board established under s. 46.23, Stats.

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

**(3) "Department"** means the department of health and family services.

**(4) "Director"** has the meaning designated in s. 51.01(6), Stats.

**(5) "Discharge"** has the meaning designated in s. 51.01(7), Stats.

**(6) "Inpatient facility"** has the meaning designated in s. 51.01(10), Stats.

**(7) "Patient"** means any individual who is receiving or who at any time has received services for mental illness, developmental disabilities, alcoholism or drug dependence from the department, a board, a treatment facility, or from persons providing services under contract to the department, a board or a treatment facility.

**(8) "Program director"** means the administrative director appointed by the board.

**(9) "Pupil records"** has the meaning designated in s. 118.125(1)(d), Stats.

**(10) "Qualified staff"** means only those board staff or department staff who require confidential information for a valid reason connected with their assignment in the administration of services provided by the board or department.

**(11) "Service provider"** means a person who provides services under contract to the department, a board or a treatment facility, including any employee, consultant, volunteer, agency or organization providing any assessment, treatment or other service or rendering any consultation or opinion regarding any patient assessment, need for service or course of treatment, whether as a contractor, subcontractor or in any other capacity.

**(12) "Somatic treatment"** means treatment by physical means.

**Note:** Somatic treatments include administration of medications, psychosurgery and electroconvulsive shock.

**(13) "Treatment"** has the meaning designated in s. 51.01(17), Stats., namely, those psychological, educational, social, chemical, medical or somatic techniques designed to bring

about rehabilitation of a mentally ill, alcoholic, drug dependent or developmentally disabled person.

**(14) "Treatment director"** has the meaning designated in s. 51.01(18), Stats., except that in a hospital as defined under s. 50.33(2)(a), Stats., the treatment director is the patient's primary physician.

**(15) "Treatment facility"** has the meaning designated in s. 51.01(19), Stats., namely, any publicly or privately operated facility or unit of a facility providing treatment of alcoholic, drug dependent, mentally ill or developmentally disabled persons, including but not limited to inpatient and outpatient treatment programs and rehabilitation programs.

**(16) "Treatment records"** has the meaning designated in s. 51.30(1)(b), Stats., namely, all records concerning individuals who are receiving or who at any time have received services for mental illness, developmental disabilities, alcoholism, or drug dependence which are maintained by the department, by boards and their staffs, and by treatment facilities. "Treatment records" include written, computer, electronic and microform records, but do not include notes or records maintained for personal use by an individual providing treatment services for the department, a board, or a treatment facility if the notes or records are not available to others.

**History:** Cr. Register, May, 1984, No. 341, eff. 6-1-84.

**HFS 92.03 General requirements. (1) TREATMENT RECORDS.** (a) All treatment records or spoken information which in any way identifies a patient are considered confidential and privileged to the subject individual.

(b) If notes or records maintained for personal use are to be made available to other persons, they shall be placed in the treatment record, become part of that record and be governed by this chapter.

(c) The department and every board, treatment facility and service provider shall designate in writing one or more persons to serve as record custodians.

(d) The department and every board, treatment facility and service provider shall develop a notice describing the agency's treatment record access procedures. The notice shall be prominently displayed and made available for inspection and copying.

(e) Information requests shall be filled as soon as practicable. If a request is denied, specific reasons shall be given for denying the request.

(f) No personally identifiable information contained in treatment records may be released in any manner, including oral disclosure, except as authorized under s. 51.30, Stats., this chapter or as otherwise provided by law.

(g) Whenever requirements of federal law regarding alcoholism and drug dependence services in 42 CFR Part 2 require restrictions on the disclosure of treatment records greater than the restrictions required by this section, the federal requirements shall be observed.

(h) No personally identifiable information in treatment records may be re-released by a recipient of the treatment record unless re-release is specifically authorized by informed consent of the subject individual, by this chapter or as otherwise required by law.

(i) Any disclosure or re-release, except oral disclosure, of confidential information shall be accompanied by a written statement which states that the information is confidential and disclosure without patient consent or statutory authorization is prohibited by law.

(j) Members and committees of boards shall not have access to treatment records. In meetings of boards and board committees, the program directors shall ensure that patient identities are not revealed or made obvious by description of particular patient situations.

(k) All treatment records shall be maintained in a secure manner to ensure that unauthorized persons do not have access to the records.

(L) Pupil records of minor patients in educational programs within treatment facilities, which are disclosed pursuant to s. 118.125, Stats., shall not contain any information from other treatment records unless there is specific informed consent for release of that information as required under s. HFS 92.06.

(m) No treatment record information may be released to a person previously unknown to the agency unless there is reasonable assurance regarding the person's identity.

(n) Whenever information from treatment records is disclosed, that information shall be limited to include only the information necessary to fulfill the request.

(o) Any request by a treatment facility for written information shall include a statement that the patient has the right of access to the information as provided under ss. HFS 92.05 and 92.06.

(p) The conditions set forth in this section shall be broadly and liberally interpreted in favor of confidentiality to cover a record in question.

**Note:** If a person requesting information does not qualify for it under the section cited in this chapter, other sections should be reviewed to determine if the requester qualifies under another section.

#### (2) DISCLOSURE OF PATIENT STATUS IN RESPONSE TO INQUIRIES.

(a) No person may disclose information or acknowledge whether an individual has applied for, has received or is receiving treatment except with the informed consent of the individual, as authorized under s. 51.30(4)(b), Stats., or as otherwise required by law and as governed by this subsection.

(b) The department and each board and treatment facility shall develop written procedures which include a standard, noncommittal response to inquiries regarding whether or not a person is or was receiving treatment. All staff who normally deal with patient status inquiries shall be trained in the procedures.

(3) INFORMED CONSENT. Informed consent shall be in writing and shall comply with requirements specified in s. 51.30(2), Stats., and this subsection.

(a) Informed consent shall be valid only if voluntarily given by a patient who is substantially able to understand all information specified on the consent form. A guardian may give consent on behalf of the guardian's ward. If the patient is not competent to understand and there is no guardian, a temporary guardian shall be sought in accordance with s. 880.15, Stats.

(b) Informed consent is effective only for the period of time specified by the patient in the informed consent document.

(c) A copy of each informed consent document shall be offered to the patient or guardian and a copy shall be maintained in the treatment record.

(d) Each informed consent document shall include a statement that the patient has a right to inspect and receive a copy of the material to be disclosed as required under ss. HFS 92.05 and 92.06.

(e) Any patient or patient representative authorized under s. 51.30(5), Stats., may refuse authorization or withdraw authorization for disclosure of any information at any time. If this occurs, an agency not included under s. 51.30(4)(b), Stats., that requests release of information requiring informed consent shall be told only that s. 51.30, Stats., prohibit release of the information requested.

#### (4) RELEASE OF TREATMENT RECORDS AFTER DEATH.

(a) Consent for the release of treatment records of a deceased patient may be given by an executor, administrator or other court-appointed personal representative of the estate.

(b) If there is no appointment of a personal representative, the consent may be given by the patient's spouse or, if there is none, by any responsible member of the patient's family.

(c) Disclosures required under federal or state laws involving the collection of death statistics and other statistics may be made without consent.

**History:** Cr. Register, May, 1984, No. 341, eff. 6-1-84.

#### HFS 92.04 Disclosure without informed consent.

(1) AUDITS AND EVALUATION. (a) Treatment records may be disclosed for management audits, financial audits or program monitoring and evaluation but only as authorized under s. 51.30(4)(b)1., Stats., and this subsection.

(b) A record of all audits and evaluations shall be maintained at each treatment facility.

(c) Auditors and evaluators shall provide the treatment facility with written documentation regarding their authority to audit or evaluate by reference to statutes, administrative rules or certification by the department.

(2) BILLING OR COLLECTION. (a) Treatment records may be released for billing or collection purposes only as authorized under s. 51.30(4)(b)2., Stats., and this subsection.

(b) Any information specified in ch. HFS 1 may be released to the collection authority under ss. 46.03(18) and 46.10, Stats.

**Note:** Under ss. 46.03(18) and 46.10, Stats., the department is the collection authority for all services provided by the department or boards. Where collection authority has not been delegated, the department's bureau of collections is the only qualified service organization for collections allowed by Wisconsin law. Where collections have been delegated, boards or facilities are agencies of the department for billing and collection purposes.

(c) Patient information may be released to county departments of public welfare or social services only in accordance with the provisions of sub. (13).

(d) Patient information may be released to third-party payers only with informed consent.

(e) Each agency with billing and collection responsibility shall develop further written procedures as needed to ensure confidentiality of billing and collection information. These procedures shall be made available to the department upon request.

**Note:** Further confidentiality provisions on billing and collections are specified in ss. HFS 1.05 and 1.06.

(3) RESEARCH. Treatment records may be released for purposes of research only as authorized under s. 51.30(4)(b)3., Stats.

(4) COURT ORDER. (a) Treatment records may be released pursuant to a lawful court order only as authorized under s. 51.30(4)

(b) 4, Stats., and this subsection.

**Note:** If a treatment facility director, program director or department official believes that the court order is unlawful, that person should bring the order to the attention of his or her agency's legal counsel.

(b) A subpoena, unless signed by a judge of a court of record, is not sufficient to authorize disclosure.

(c) A court order regarding confidential drug or alcohol treatment information shall be in compliance with 42 CFR Part 2, Subpart E.

**Note:** When a subpoena signed by an attorney or the clerk of court requires the record custodian to appear at the hearing with the records, the custodian should assert the privilege and refuse to turn the records over until ordered to do so by the circuit judge.

#### (5) PROGRESS DETERMINATION AND ADEQUACY OF TREATMENT.

(a) Treatment records may be made accessible to department and board staff to determine progress and adequacy of treatment or to determine whether a person should be transferred, discharged or released, but only as authorized under s. 51.30(4)(b)5., Stats., and this subsection.

(b) Treatment information as specified under s. 51.30(4)(b)10, Stats., may also be released to the following state employees and department board members concerning persons under their jurisdiction:

1. Members of the parole board;
2. Members of the special review board for sex crimes;
3. Employees of the juvenile offender review program; and

HFS 57 GROUP FOSTER CARE ANNOTATED  
APPENDIX G

4. Members of the juvenile corrections reception center's joint planning and review committee.

**(6) WITHIN THE TREATMENT FACILITY.** (a) Treatment records maintained in the facility or as computerized records by the provider of data-processing services to the facility may be made available to treatment staff within the facility only as authorized under s. 51.30(4)(b)6., Stats., and this subsection. (b) Confidential information may be released to students or volunteers only if supervised by staff of the facility.

(c) Treatment records may be taken from the facility only by staff directly involved in the patient's treatment, or as required by law.

**(7) WITHIN THE DEPARTMENT.** Treatment records may be made available to department staff only as authorized under s. 51.30(4)(b)7., Stats., and this chapter. Information may be disclosed to qualified staff of the department from the treatment records of persons who have been committed by a court to the care and custody of the department or who are voluntarily admitted to an institution of the department under chs. 51, 55, 971, or 975, Stats., or who are under probation or parole supervision.

**(8) MEDICAL EMERGENCY.** Treatment records may be released to a physician or designee for a medical emergency only as authorized under s. 51.30(4)(b)8., Stats.

**(9) TRANSFER OF PERSON INVOLUNTARILY COMMITTED.** (a) Treatment records may be released to a treatment facility which is to receive an involuntarily committed person only as authorized under s. 51.30(4)(b)9., Stats., and this subsection.

(b) When an individual is to be transferred, the treatment director or designee shall review the treatment record to ensure that no information is released other than that which is allowed under this subsection.

(c) If a summary of somatic treatments or a discharge summary is prepared, a copy of the summary shall be placed in the treatment record.

(d) A discharge summary which meets discharge summary criteria established by administrative rules or accreditation standards shall be considered to meet the requirements for a discharge summary specified under s. 51.30(4)(b)9., Stats.

(e) Treatment information may be disclosed only to the extent that is necessary for an understanding of the individual's current situation.

(f) Disclosure of information upon transfer of a voluntary patient requires the patient's informed consent, a court order or other provision of law.

**(10) PERSONS UNDER THE RESPONSIBILITY OR SUPERVISION OF A CORRECTIONAL FACILITY OR PROBATION AND PAROLE AGENCY.** (a) Information from treatment records may be released to probation and parole agencies and correctional facilities only as authorized under s. 51.30(4)(b)10., Stats., 42 CFR 2.31 and 2.35 and this subsection.

(b) In addition to the probation and parole agent, only the following persons may have access to information from treatment records:

1. The probation and parole agent's supervisor;
2. The patient's social worker, the social worker's supervisor and their superiors; and
3. Consultants or employees of the division of corrections who have clinical assignments regarding the patients.

(c) When a patient is transferred back from a treatment facility to a correctional facility the confidential information disclosed to the correctional facility shall be restricted to information authorized under s. 51.30(4)(b)9., Stats.

(d) When a patient is under supervision of a probation and parole agent the confidential information disclosed to the agent shall be restricted to information authorized under s. 51.30(4)(b)10., Stats.

(e) Every person receiving evaluation or treatment under ch. 51, Stats., as a condition of probation or parole shall be notified of the provisions of this subsection by the person's probation and parole agent prior to receiving treatment.

**(11) COUNSEL, GUARDIAN AD LITEM, COUNSEL FOR THE INTERESTS OF THE PUBLIC, COURT-APPOINTED EXAMINER.** (a) Treatment records or portions of treatment

records may be made accessible to the patient's counsel or guardian ad litem only as authorized under s. 51.30 (4) (b) 11., Stats., and this section, to the counsel for the interest of the public only as authorized under s. 51.30(4)(b)14., Stats., and this section and to the court appointed examiner only as authorized under s. 51.20(9)(a), Stats., and this section.

**Note:** 2001 Wis. Act 16 repealed s. 51.30 (4) (b) 14., Stats.

(b) A patient's attorney or guardian ad litem, or both, shall have access to alcohol and drug abuse patient treatment records only as authorized under 42 CFR 2.15 and 2.35.

(c) At times other than during normal working hours, patients' attorneys or guardians ad litem, or both, shall have access to those records directly available to staff on duty.

(d) Counsel for the interests of the public may have access to alcohol or drug abuse treatment records only with informed consent of the patient or as authorized under 42 CFR 2.61 to 2.67.

(e) A copy of the records shall be provided upon request. At times other than normal working hours, copies shall be provided only if copy equipment is reasonably available.

**(12) NOTICE TO CORRECTIONAL OFFICER OF CHANGE IN STATUS.**

(a) A treatment facility shall notify the correctional officer of any change in the patient's status as required under s. 51.30 (4) (b) 12., Stats.

(b) Release of information from records of alcohol and drug abuse patients shall be in compliance with 42 CFR Part 2, Subpart C.

**(13) BETWEEN A SOCIAL SERVICES DEPARTMENT AND A 51 BOARD.** (a) Limited confidential information may be released between a social service department and a 51-board, but only as authorized under s. 51.30(4)(b)15., Stats.

(b) Limited confidential information regarding alcohol and drug abuse patients may be released between a social services department and a 51-board only with the patient's informed consent as authorized under 42 CFR 2.31 and with a qualified service agreement under 42 CFR 2.11 (n) and (p).

**(14) BETWEEN SUB-UNITS OF A HUMAN SERVICES DEPARTMENT AND BETWEEN THE HUMAN SERVICES DEPARTMENT AND CONTRACTED SERVICE PROVIDERS.** Confidential information may be exchanged between sub-units of a human services department, which is the administrative staff of a board organized under s. 46.23, Stats., and between the human services department and service providers under contract to the human services department, as authorized under s. 46.23(3)(e), Stats.

**(15) RELEASE TO LAW ENFORCEMENT OFFICERS.** Release of limited confidential information to law enforcement officers without a patient's informed consent is permitted only to enable a law enforcement officer to take charge of and return a patient on unauthorized absence from the treatment facility, pursuant to s. 51.39, Stats., to enable a law enforcement officer to determine if an individual is on unauthorized absence from the treatment facility, pursuant to s. 51.30(4)(b)13, Stats., or by order of a court.

(a) The treatment director may disclose only the following information to the law enforcement officer acting pursuant to s. 51.39, Stats.:

1. Date, time and manner of escape;
2. Description and picture of the patient;
3. Addresses and phone numbers of relatives or other persons who might be contacted by the patient; and

4. Any other information determined by the treatment director to be of assistance in locating the patient, including advice regarding any potential danger involved in taking custody of the patient.

(b) Any access by law enforcement officers to confidential records other than as provided for in par. (a) and s. 51.30(4)(b)13., Stats., requires a court order.

1. A court order authorizing access to alcoholism or drug dependence treatment records shall comply with the requirements of 42 CFR 2.61 to 2.67.

2. A subpoena, unless signed by a judge of a court of record, does not authorize disclosure of treatment records.

(c) Access to treatment records is not authorized for any local, state or federal investigatory agency conducting pre-employment or other clearances or investigating crimes unless the agency presents a statement signed by the patient giving informed consent or a court order.

(d) Access by law enforcement authorities, when allowed pursuant to informed consent or court order, shall always pertain to a specific situation or case. In any situation involving court orders which appear to give authorization for broad or blanket access to records, the treatment director, the program director or the secretary of the department or designee shall seek appropriate legal counsel before disclosing any records.

**(16) UNAUTHORIZED ABSENCE.** Information from treatment records of patients admitted under s. 971.14 or 971.17, Stats., or under ch. 975, Stats., or transferred under s. 51.35(3) or 51.37, Stats., and who are on unauthorized absence from a treatment facility, may be released only as authorized under s. 51.30(4)(b)12m., Stats.

**History:** Cr. Register, May, 1984, No. 341, eff. 6-1-84.

**HFS 92.05 Patient access to treatment records.**

**(1) ACCESS DURING TREATMENT.** (a) Every patient shall have access to his or her treatment records during treatment to the extent authorized under s. 51.30(4)(d)1., Stats., and this subsection.

(b) The treatment facility director or designee may only deny access to treatment records other than records of medication and somatic treatment.

1. Denial may be made only if the director has reason to believe that the benefits of allowing access to the patient are outweighed by the disadvantages of allowing access.

2. The reasons for any restriction shall be entered into the treatment record.

(c) Each patient, patient's guardian and parent of a minor patient shall be informed of all rights of access upon admission or as soon as clinically feasible, as required under s. 51.61(1)(a), Stats., and upon discharge as required under s. 51.30(4)(d)4., Stats. If a minor is receiving alcohol or other drug abuse treatment services, the parents shall be informed that they have a right of access to the treatment records only with the minor's consent or in accordance with 42 CFR 2.15.

(d) The secretary of the department or designee, upon request of a director, may grant variances from the notice requirements under par. (c) for units or groups or patients who are unable to understand the meaning of words, printed material or signs due to their mental condition but these variances shall not apply to any specific patient within the unit or group who is able to understand. Parents or guardians shall be notified of any variance.

**(2) ACCESS AFTER DISCHARGE FOR INSPECTION OF TREATMENT RECORDS.** (a) After discharge from treatment, a patient shall be allowed access to inspect all of his or her treatment records with one working day notice to the treatment facility, board or department, as authorized under s. 51.30(4)(d)3., Stats., and this subsection.

(b) A patient making a request to inspect his or her records shall not be required to specify particular information. Requests for "all information" or "all treatment records" shall be acceptable.

(c) When administrative rules or accreditation standards permit the treatment facility to take up to 15 days or some other specified period after discharge to complete the discharge summary, the discharge summary need not be provided until it is completed in accordance with those rules or standards.

**(3) COPIES OF TREATMENT RECORDS.** (a) After being discharged a patient may request and shall be provided with a copy of his or her treatment records as authorized by s. 51.30(4)(d), Stats., and as specified in this subsection.

(b) Requests for information under this subsection shall be processed within 5 working days after receipt of the request.

(c) A uniform and reasonable fee may be charged for a copy of the records. The fee may be reduced or waived, as appropriate, for those clients who establish inability to pay.

(d) The copy service may be restricted to normal working hours.

**(4) MODIFICATION OF TREATMENT RECORDS.** (a) A patient's treatment records may be modified prior to inspection by

the patient but only as authorized under s. 51.30(4)(d)3., Stats., and this subsection.

(b) Modification of a patient's treatment records prior to inspection by the patient shall be as minimal as possible.

1. Each patient shall have access to all information in the treatment record, including correspondence written to the treatment facility regarding the patient, except that these records may be modified to protect confidentiality of other patients.

2. The names of the informants providing the information may be withheld but the information itself shall be available to the patient.

(c) Under no circumstances may an entire document or acknowledgement of the existence of the document be withheld from the patient in order to protect confidentiality of other patients or informants.

(d) Any person who provides or seeks to provide information subject to a condition of confidentiality shall be told that the provided information will be made available to the patient although the identity of the informant will not be revealed.

(e) The identity of an informant providing information and to whom confidentiality has not been pledged shall be accessible to the patient as provided under this chapter.

**(5) CORRECTION OF FACTUAL INFORMATION.** (a) Correction of factual information in treatment records may be requested by persons authorized under s. 51.30(4)(f), Stats., or by an attorney representing any of those persons. Any requests, corrections or denial of corrections shall be in accordance with s. 51.30(4)(f), Stats., and this section.

(b) A written request shall specify the information to be corrected and the reason for correction and shall be entered as part of the treatment record until the requested correction is made or until the requester asks that the request be removed from the record.

(c) During the period that the request is being reviewed, any release of the challenged information shall include a copy of the information change request.

(d) If the request is granted, the treatment record shall be immediately corrected in accordance with the request. Challenged information that is determined to be completely false, irrelevant or untimely shall be marked through and specified as incorrect.

(e) If the request is granted, notice of the correction shall be sent to the person who made the request and, upon his or her request, to any specified past recipient of the incorrect information.

(f) If investigation casts doubt upon the accuracy, timeliness or relevance of the challenged information, but a clear determination cannot be made, the responsible officer shall set forth in writing his or her doubts and both the challenge and the expression of doubt shall become part of the record and shall be included whenever the questionable information is released.

(g) If the request is denied, the denial shall be made in writing and shall include notice to the person that he or she has a right to insert a statement in the record disputing the accuracy or completeness of the challenged information included in the record.

(h) Statements in a treatment record which render a diagnosis are deemed to be judgments based on professional expertise and are not open to challenge.

**History:** Cr. Register, May, 1984, No. 341, eff. 6-1-84.

**HFS 92.06 Minors and incompetents.** (1) Obtaining informed consent for release of information from the treatment records of minors, including developmentally disabled minors, and of incompetents and granting access by the parent or guardian and by the minor to treatment records shall be in accordance with s. 51.30(5), Stats., and this section.

(2) Information may be released from the alcohol or drug abuse treatment records of a minor only with the consent of both the minor and the minor's parent, guardian or person in the place of a parent, except that outpatient or detoxification services information, with the qualifications about these services indicated in s. 51.47(2), Stats., shall be disclosed only with the consent of the minor provided that the minor is 12 years of age or older.

**Note:** Section 42 CFR 2.14(b) provides that when a minor under state law can obtain treatment for alcohol abuse or drug abuse without the parent or guardian's approval, as under s.

51.47, Stats., only the minor's consent is required for disclosure of information from records of that treatment.

(3) A developmentally disabled minor aged 14 or older shall be notified of the right to file a written objection to access to treatment records by his or her parent, guardian or person in place of parent and that notice shall be documented in the treatment record.

(4) All sections of this chapter that are applicable to adults shall apply to any access to treatment records and disclosure of information from treatment records when the patient ceases to be a minor.

**History:** Cr. Register, May, 1984, No. 341, eff. 6-1-84.

**HFS 92.07 Privileged communications.** Communications between a physician or psychologist and patient or between an attorney and a client shall be privileged.

**Note:** Federal regulations regarding alcohol and drug dependence treatment records do not recognize the statutory exceptions to the physician and psychologist privilege in s. 905.04, Stats., or the attorney privilege in s. 905.03, Stats., but require either informed consent or a court order under 42 CFR 2.61 to 2.67 for disclosure of confidential information.

**History:** Cr. Register, May, 1984, No. 341, eff. 6-1-84.

**HFS 92.08 Criminal commitments.** Treatment records of persons committed under chs. 971 and 975, Stats., are covered by s. 51.30, Stats., and this chapter. Treatment records of persons sentenced to correctional facilities under criminal statutes and not receiving services from a board or a state mental health institute are not covered.

**History:** Cr. Register, May, 1984, No. 341, eff. 6-1-84.

**HFS 92.09 Grievance procedure.** Any failure to comply with provisions of s. 51.30, Stats., or this chapter may be processed as a grievance under s. 51.61(5), Stats., as provided in s. 51.30(8), Stats.

**History:** Cr. Register, May, 1984, No. 341, eff. 6-1-84.

**HFS 92.10 Discipline of employees.** Employees of the department, board, or public treatment facilities who violate requirements under s. 51.30, Stats., or this chapter may be disciplined in accordance with s. 51.30(11), Stats.

**History:** Cr. Register, May, 1984, No. 341, eff. 6-1-84.

**HFS 92.11 Employee orientation.** Directors and program directors shall ensure that persons whose regular duties include requesting, distributing, or granting access to treatment records are aware of their responsibility to maintain the confidentiality of information protected by this chapter and of the criminal and civil liabilities for violations of s. 51.30, Stats.

**History:** Cr. Register, May, 1984, No. 341, eff. 6-1-84.

**HFS 92.12 Retention periods. (1)** Treatment records shall be retained for at least 7 years after treatment has been completed, unless under this section they are to be retained for a longer period of time.

(2) In the case of a minor, records shall be retained until the person becomes 19 years of age or until 7 years after treatment has been completed, whichever is longer.

(3) Any record undergoing federal or state audit shall be maintained until completion of the audit.

(4) Records relating to legal actions shall be maintained until completion of the legal action.

(5) Records relating to billing or collections shall be maintained for periods of time specified in s. HFS 1.06.

**History:** Cr. Register, May, 1984, No. 341, eff. 6-1-84.

**HFS 92.13 Certification of compliance.** Each board shall include a clause in every purchase of service contract which states that the service provider agrees to abide by the requirements of this chapter.

**History:** Cr. Register, May, 1984, No. 341, eff. 6-1-84.

## APPENDIX H

### HFS 94 PATIENT RIGHTS AND RESOLUTION OF PATIENT GRIEVANCES

#### Subchapter I — General Provisions

- HFS 94.01 Authority, purpose and applicability.
- HFS 94.02 Definitions.
- HFS 94.03 Informed consent.
- HFS 94.04 Notification of rights.

#### Subchapter II — Patient Rights

- HFS 94.05 Limitation or denial of rights.
- HFS 94.06 Assistance in the exercise of rights.
- HFS 94.07 Least restrictive treatment and conditions.
- HFS 94.08 Prompt and adequate treatment.
- HFS 94.09 Medications and other treatment.
- HFS 94.10 Isolation, seclusion and physical restraints.
- HFS 94.11 Electroconvulsive therapy.
- HFS 94.12 Drastic treatment procedures.
- HFS 94.13 Research and human rights committee.
- HFS 94.14 Research.
- HFS 94.15 Labor performed by patients.
- HFS 94.16 Religious worship.
- HFS 94.17 Confidentiality of records.
- HFS 94.18 Filming and taping.
- HFS 94.19 Mail.
- HFS 94.20 Telephone calls.
- HFS 94.21 Visitors.
- HFS 94.22 Voting.
- HFS 94.23 Discharge of voluntary patients.
- HFS 94.24 Humane psychological and physical environment.
- HFS 94.25 Patient funds.

**Note:** Corrections in chapter HFS 94 made under s. 13.93 (2m) (b) 1., 6. and 7., Stats., Register, June, 1996, No. 486.

#### Subchapter I — General Provisions

##### HFS 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 or dependency or other drug abuse or dependency.

(2) **TO WHOM THE RULES APPLY.** (a) 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. HFS 61 and facilities licensed under ch. HFS 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.

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

(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.

**History:** Cr. Register, January, 1987, No. 373, eff. 2-1-87; correction in (2) made under s. 13.93(2m)(b)7., Stats., Register, June, 1995, No. 474; am. (1), renum. (2) to be (2)(a) and am., cr. (2)(b), Register, June, 1996, No. 486, eff. 7-1-96.

**HFS 94.02 Definitions.** In this chapter:

(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.

- HFS 94.26 Clothing and laundry.
- HFS 94.27 Storage space.
- HFS 94.28 Right to file grievances.
- HFS 94.29 Grievance resolution procedures.
- HFS 94.30 Compliance assurance.
- HFS 94.31 Application of other rules and regulations.

#### Subchapter III — Standards for Grievance Resolution Procedures

- HFS 94.40 System requirements.
- HFS 94.41 Program level review.
- HFS 94.42 Administrative review by county or state.
- HFS 94.43 State level review of county administrative decision.
- HFS 94.44 Final state review.
- HFS 94.45 Program coalitions.
- HFS 94.46 Multiple grievances by one client.
- HFS 94.47 Related grievances by several clients.
- HFS 94.48 Grievances involving several programs.
- HFS 94.49 Grievances presented on behalf of clients.
- HFS 94.50 Interim relief.
- HFS 94.51 Complaints related to the existence or operation of grievance resolution systems.
- HFS 94.52 Investigation by the department.
- HFS 94.53 Support for development of grievance resolution systems.
- HFS 94.54 Units of time.

(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. HFS 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. 51.437, Stats.

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

(10) "Department" means the Wisconsin department of health and family 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. HFS 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. HFS 94.49.
- (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. HFS 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.
- History:** Cr. Register, January, 1987, No. 373, eff. 2-1-87; r. and recr. Register, June, 1996, No. 486, eff. 7-1-96; correction in (8) made under s. 13.93(2m)(b)7., Stats., Register January 2002 No. 553.
- HFS 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:
- The benefits of the proposed treatment and services;
  - The way the treatment is to be administered and the services are to be provided;
  - The expected treatment side effects or risks of side effects which are a reasonable possibility, including side effects or risks of side effects from medications;
  - Alternative treatment modes and services;
  - The probable consequences of not receiving the proposed treatment and services;
  - 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
  - The right to withdraw informed consent at any time, in writing.

(2) An informed consent document is not valid unless the subject patient who has signed it is competent, that is, is substantially able to understand all significant information which has been explained in easily understandable language, or the consent form has been signed by the legal guardian of an incompetent patient or the parent of a minor, except that the patient's informed consent is always required for the patient's participation in experimental research, subjection to drastic treatment procedures or receipt of electroconvulsive therapy.

(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.

(3) The patient, or the person acting on the patient's behalf, shall be given a copy of the completed informed consent form, upon request.

(4) When informed consent is refused or withdrawn, no retaliation may be threatened or carried out.

**Note:** Additional requirements relating to refusal to participate in prescribed treatment are addressed under s. HFS. 94.09.

**History:** Cr. Register, January, 1987, No. 373, eff. 2-1-87; am. (1) (intro.); (a), (b), (d), (e), (f), cr. (2m), Register, June, 1996, No. 486, eff. 7-1-96.

**HFS 94.04 Notification of rights.** (1) Before or upon admission or, in the case of an outpatient, before treatment is begun, the patient shall be notified orally and given a written copy of his or her rights in accordance with s. 51.61 (1) (a), Stats., and this 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.

**Note:** The statute does not make distinctions among types of treatment facilities when it comes to protecting patients' rights. Some rights may be more applicable to patients in inpatient facilities than to patients in less restrictive facilities such as sheltered workshops or outpatient clinics. When informing patients of their rights, facility directors may emphasize those rights that are most applicable to the particular facility, program or services but s. 51.61, Stats., requires notification that other rights exist and may, under some circumstances, apply in a given situation.

(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.

(4) If a patient is unable to understand the notification of rights, written and oral notification shall be made to the parent or guardian, if available, at the time of the patient's admission or, in the case of an outpatient, before treatment is begun, and to the patient when the patient is able to understand.

(5) All notification of rights, both oral and written, shall be in language understood by the patient, including sign language, foreign language or simplified language when that is necessary. A simplified, printed version of patients rights shall be conspicuously posted in each patient area.

**Note:** A simplified version of patient rights in poster form is available from the Division of Disability and Elder Services, P.O. Box 7851, Madison, WI 53707.

**History:** Cr. Register, January, 1987, No. 373, eff. 2-1-87; am. (1), renum. (2), (3) to be (4), (5), cr. (2), (3), Register, June, 1996, No. 486, eff. 7-1-96.

#### **Subchapter II — Patient Rights**

**HFS 94.05 Limitation or denial of rights.** (1) No patient right may be denied except as provided under s. 51.61(2), Stats., and as otherwise specified in this chapter.

(2)(a) Good cause for denial or limitation of a right exists only when the director or designee of the treatment facility has reason to believe the exercise of the right would create a security problem, adversely affect the patient's treatment or seriously interfere with the rights or safety of others.

(b) Denial of a right may only be made when there are documented reasons to believe there is not a less restrictive way of protecting the threatened security, treatment or management interests.

(c) No right may be denied when a limitation can accomplish the stated purpose and no limitation may be more stringent than necessary to accomplish the purpose.

(3) At the time of the denial or limitation, written notice shall be provided to the patient and the guardian, if any, and a copy of that notice shall be placed in the patient's treatment record. The written notice shall:

(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.

(b) State the specific conditions required for restoring or granting the right at issue;

(c) State the expected duration of denial or limitation; and

(d) State the specific reason for the denial or limitation.

(4) Within 2 calendar days following the denial, written notice shall be sent as follows:

(a) If the patient is a county department patient, to the county department's 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 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:** Copies of the rights-denial form may be requested from the Department's website at [www.dhfs.wisconsin.gov](http://www.dhfs.wisconsin.gov) or by writing to the Division of Disability and Elder Services, 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. 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 when rendering a decision.

(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.

**History:** Cr. Register, January, 1987, No. 373, eff. 2-1-87; am. (3)(a), (4) (a), (5), r. and recr. (6), Register, June, 1996, No. 486, eff. 7-1-96.

#### **HFS 94.06 Assistance in the exercise of rights.**

(1) Each service provider shall assist patients in the exercise of all rights specified under ch. 51, Stats., and this chapter.

(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.

**History:** Cr. Register, January, 1987, No. 373, eff. 2-1-87; renum and am., cr. (2), Register, June, 1996, No. 486, eff. 7-1-96.

#### **HFS 94.07 Least restrictive treatment and conditions.**

(1) 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 allow the maximum amount of personal and physical freedom in accordance with s. 51.61(1)(e), Stats., and this section.

(2) No patient may be transferred to a setting which increases personal or physical restrictions unless the transfer is justified by documented treatment or security reasons or by a court order.

**Note:** Refer to ss. 51.35(1) and 55.06(9), Stats., for transfer requirements in cases that are different from those covered under s. 51.61(1)(e), Stats.

(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 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, Stats., placement, if any, that the patient is ready for placement in a less restrictive setting. The county department or the county social services department shall then act in accordance with s. 51.61(1)(e), Stats., to place the patient in a less restrictive setting.

(4) Inpatient and residential treatment facilities shall identify security measures in their policies and procedures and shall specify criteria for the use of each security-related procedure.

**History:** Cr. Register, January, 1987, No. 373, eff. 2-1-87; am. (1), (3), renum. (5) to be HFS 94.24 (3) (i), Register, June, 1996, No. 486, eff. 7-1-96.

**HFS 94.08 Prompt and adequate treatment.** 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.

**Note:** Educational requirements for school-age patients in inpatient facilities can be found under chs. 115 and 118, Stats.

**History:** Cr. Register, January, 1987, No. 373, eff. 2-1-87; am. Register, June, 1996, No. 486, eff. 7-1-96.

**HFS 94.09 Medications and other treatment.**

(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.

(2) A patient may refuse medications and any other treatment except as provided under s. 51.61 (1) (g) and (h), Stats., and this section.

(3) Any patient who does not agree with all or any part of his or her treatment plan shall be permitted a second consultation for review of the treatment plan as follows:

(a) An involuntary patient may request a second consultation from another staff member who is not directly providing treatment to the patient, and the treatment facility shall make the designated staff member available at no charge to the patient; and

(b) Any patient may, at his or her own expense, arrange for a second consultation from a person who is not employed by the treatment facility to review the patient's treatment record.

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

(4) 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 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. HFS 94.03 (2m).

(5) A voluntary patient may refuse any treatment, including medications, at any time and for any reason, except in an emergency, under the following conditions:

(a) If the prescribed treatment is refused and no alternative treatment services are available within the treatment facility, it is

not considered coercion if the facility indicates that the patient has a choice of either participating in the prescribed treatment or being discharged from the facility; and

(b) The treatment facility shall counsel the patient and, when possible, refer the patient to another treatment resource prior to discharge.

(6) The treatment facility shall maintain a patient treatment record for each patient which shall include:

(a) A specific statement of the diagnosis and an explicit description of the behaviors and other signs or symptoms exhibited by the patient;

(b) Documentation of the emergency when emergency treatment is provided to the patient;

(c) Clear documentation of the reasons and justifications for the initial use of medications and for any changes in the prescribed medication regimen; and

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

(7) A physician ordering or changing a patient's medication shall ensure that other members of the patient's treatment staff are informed about the new medication prescribed for the patient and the expected benefits and potential adverse side effects which may affect the patient's overall treatment.

(8) A physician ordering or changing a patient's medication shall routinely review the patient's prescription medication, including the beneficial or adverse effects of the medication and the need to continue or discontinue the medication, and shall document that review in the patient's treatment record.

(9) Each inpatient and residential treatment facility that administers medications shall have a peer review committee or other medical oversight mechanism reporting to the facility's governing body to ensure proper utilization of medications.

**History:** Cr. Register, January, 1987, No. 373, eff. 2-1-87; renum. (1) to (8) to be (2) to (9) and am. (4); cr. (1), (3) (c), (6) (d), Register, June, 1996, No. 486, eff. 7-1-96.

**HFS 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.

**History:** Cr. Register, January, 1987, No. 373, eff. 2-1-87; r. and recr. Register, June, 1996, No. 486, eff. 7-1-96.

**HFS 94.11 Electroconvulsive therapy.** (1) No patient may be administered electroconvulsive therapy except as specified under s. 51.61 (1) (k), Stats., and this section.

(2) The patient shall be informed that he or she has a right to consult with legal counsel, legal guardian, if any, and independent specialists prior to giving informed consent for electroconvulsive therapy.

(3) A treatment facility shall notify the program director prior to the planned use of electroconvulsive therapy on a county department patient.

(4) Electroconvulsive therapy may only be administered under the direct supervision of a physician.

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

**History:** Cr. Register, January, 1987, No. 373, eff. 2-1-87; cr. (5), Register, June, 1996, No. 486, eff. 7-1-96.

**HFS 94.12 Drastic treatment procedures.** (1) Drastic treatment procedures may only be used in an inpatient treatment facility or a center for the developmentally disabled as defined in s. 51.01(3),

Stats. No patient may be subjected to drastic treatment procedures except as specified under s. 51.61(1)(k), Stats., and this section.

(2) The patient shall be informed that he or she has a right to consult with legal counsel, legal guardian, if any, and independent specialists prior to giving informed consent for drastic treatment procedures.

(3) The treatment facility shall notify the program director prior to the planned use of drastic treatment procedures on county department patients.

(4) Each county department shall report monthly to the department the type and number of drastic treatment procedures used on county department patients.

**Note:** Reports required under sub. (4) should be sent to the area administrator in the appropriate Department regional office. The addresses of all regional offices are available from the Office of Strategic Finance, P.O. Box 7850, Madison, WI 53707.

**History:** Cr. Register, January, 1987, No. 373, eff. 2-1-87.

**HFS 94.13 Research and human rights committee.**

(1) An inpatient or residential treatment facility conducting or permitting research or drastic treatment procedures involving human subjects shall establish a research and human rights committee in accordance with 45 CFR 46, s. 51.61 (4), Stats., and this section.

(2) The committee shall include 2 members who are consumers or who represent either an agency or organization which advocates rights of patients covered by this chapter.

(3) The inpatient or residential treatment facility research and human rights committee shall designate a person to act as consent monitor who shall be authorized to validate informed consent and terminate a patient's participation in a research project or a drastic treatment procedure immediately upon violation of any requirement under this chapter or upon the patient's withdrawal of consent.

**History:** Cr. Register, January, 1987, No. 373, eff. 2-1-87.

**HFS 94.14 Research.** (1) All proposed research involving patients shall meet the requirements of s. 51.61 (1) (j), Stats., 45 CFR 46, and this section.

(2) No patient may be subjected to any experimental diagnostic or treatment technique or to any other experimental intervention unless the patient gives informed consent, the patient's informed consent is confirmed by the consent monitor and the research and human rights committee has determined that adequate provisions are made to:

- (a) Protect the privacy of the patient;
- (b) Protect the confidentiality of treatment records in accordance with s. 51.30, Stats., and ch. HFS 92;
- (c) Ensure that no patient may be approached to participate in the research unless the patient's participation is approved by the person who is responsible for the treatment plan of the patient; and
- (d) Ensure that the conditions of this section and other requirements under this chapter are met.

**History:** Cr. Register, January, 1987, No. 373, eff. 2-1-87; correction in (2)(b) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532.

**HFS 94.15 Labor performed by patients.** (1) Any labor performed by a patient which is of financial benefit to the treatment facility shall be conducted within the requirements under s. 51.61(1)(b), Stats., and this section.

(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) 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.

(4) Documentation shall be made in the treatment record of any compensated, uncompensated, voluntary or involuntary labor performed by any patient.

(5) The document used to obtain informed consent for application of a patient's wages toward the cost of treatment shall

conspicuously state that the patient has the right to refuse consent without suffering any adverse consequences.

**History:** Cr. Register, January, 1987, No. 373, eff. 2-1-87; am. (2), (3), Register, June, 1996, No. 486, eff. 7-1-96.

**HFS 94.16 Religious worship.** (1) All inpatients shall be allowed to exercise their right to religious worship as specified under s. 51.61(1)(L), Stats., and this section.

(2) The director of each treatment facility serving inpatients shall seek clergy to be available to meet the religious needs of the inpatients.

(3) The director or designee shall make reasonable provision for inpatients to attend religious services either inside or outside the facility, except for documented security reasons, and shall honor any reasonable request for religious visitation by the representative of any faith or religion.

(4) Visiting clergy shall have the same access to inpatients as staff clergy except that visiting clergy may be required to work with and be accompanied by staff clergy.

(5) A patient whose disruptive behavior interferes with other patients' right to worship shall be removed from worship services.

**History:** Cr. Register, January, 1987, No. 373, eff. 2-1-87.

**HFS 94.17 Confidentiality of records.** All treatment records are confidential. A patient or guardian may inspect, copy and challenge the patient's records as authorized under s. 51.30, Stats., and ch. HFS 92.

**History:** Cr. Register, January, 1987, No. 373, eff. 2-1-87; correction made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532.

**HFS 94.18 Filming and taping.** (1) No patient may be recorded, photographed, or filmed for any purpose except as allowed under s. 51.61 (1) (o), Stats., and this section.

(2) A photograph may be taken of a patient without the patient's informed consent only for the purpose of including the photograph in the patient's treatment record.

(3) The informed consent document shall specify that the subject patient may view the photograph or film or hear the recording prior to any release and that the patient may withdraw informed consent after viewing or hearing the material.

**History:** Cr. Register, January, 1987, No. 373, eff. 2-1-87.

**HFS 94.19 Mail.** (1) Each inpatient shall be allowed to send and receive sealed mail in accordance with s. 51.61(1)(cm)1., Stats., and this section.

(2) Any inpatient who has been determined indigent under the facility's operating policies shall, upon request, be provided with up to 2 stamped non-letterhead envelopes each week and with non-letterhead stationery and other letter-writing materials.

(3) Mail shall be delivered to inpatients promptly by the facility's normal distribution procedures.

(4) Upon request of an inpatient or his or her guardian, mail shall be opened by a facility staff member and read to him or her. The initial request shall be documented in the treatment record.

**History:** Cr. Register, January, 1987, No. 373, eff. 2-1-87; correction in (1) made under s. 13.93 (2m) (b) 7., Stats., Register December 2003 No. 576.

**HFS 94.20 Telephone calls.** (1) 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.

(2) Patients shall be permitted to make an unlimited number of private telephone calls to legal counsel and to receive an unlimited number of private telephone calls from legal counsel.

(3)(a) Except as provided in par. (b), 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 per day.

(b) This subsection does not prohibit a facility under s. 980.065, Stats., from recording patients' personal telephone calls or monitoring the resulting recordings.

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

(5) Treatment facilities shall provide the number of regular or pay telephones necessary to meet requirements of this section, subject to restrictions imposed by local telephone companies regarding installation of pay telephones.

**History:** Cr. Register, January, 1987, No. 373, eff. 2-1-87; am. (1), (3), (4), Register, June, 1996, eff 7-1-96; CR 00-151: am. (3) Register January 2002 No. 553, eff. 2-1-02.

**HFS 94.21 Visitors.** (1) Each inpatient shall be permitted to see visitors each day, as authorized by s. 51.61 (1) (t), Stats., and in accordance with this section.

(2) Adequate and reasonably private space shall be provided to accommodate visitors so that severe time limits need not be set on a visit.

(3) Every visitor who arrives during normal visiting hours shall be permitted to see the patient unless the patient refuses to see the visitor.

(4) The treatment facility may require prior identification of potential visitors and may search visitors but only when there are documented security reasons for screening or searching visitors.

(5) Visits may not be limited to less than one hour, except under documented special circumstances.

**History:** Cr. Register, January, 1987, No. 373, eff. 2-1-87.

**HFS 94.22 Voting.** (1) The director of each treatment facility serving inpatients shall ensure that inpatients have an opportunity to vote, unless they are otherwise restricted by law from voting, by:

(a) Surveying all patients 18 years of age or over to ascertain their interest in registering to vote, obtaining absentee ballots and casting ballots. The survey shall be conducted far enough before an election to allow sufficient time for voter registration and acquisition of absentee ballots;

(b) Making arrangements with state and local election officials to register voters and to enable interested inpatients to cast ballots at the facility; and

(c) With a patient's consent, assisting election officials in determining the patient's place of residence for voting purposes.

(2) A treatment facility director may not prohibit an inpatient from receiving campaign literature or placing political advertisements in his or her personal quarters and shall permit candidates to campaign during reasonably regulated times at designated locations on facility property.

**History:** Cr. Register, January, 1987, No. 373, eff. 2-1-87.

**HFS 94.23 Discharge of voluntary patients.**

(1) When a voluntary inpatient requests a discharge, the facility director or designee shall either release the patient or file a statement of emergency detention with the court as provided under ss. 51.10(5), 51.13(7)(b) and 51.15(10), Stats., and this section.

(2) If a voluntary inpatient requests a discharge and he or she has no other living quarters or is in need of other services to make the transition to the community, the following actions shall be taken by the facility director or designee prior to discharge:

(a) Counsel the patient and, when possible, assist the patient in locating living quarters;

(b) Inform the applicable program director, if any, of the patient's need for residential and other necessary transitional services; and

(c) If no living arrangements have been made by the time of discharge, refer the patient to an appropriate service agency for emergency living arrangements.

**History:** Cr. Register, January, 1987, No. 373, eff. 2-1-87.

**HFS 94.24 Humane psychological and physical environment.**

(1) **CLEAN, SAFE AND HUMANE ENVIRONMENT.** Treatment facilities shall provide patients with a clean, safe and humane environment as required under s. 51.61 (1) (m), Stats., and this section.

(2) **COMFORT, SAFETY AND RESPECT.** (a) Staff shall take reasonable steps to ensure the physical safety of all patients.

(b) Each patient shall be treated with respect and with recognition of the patient's dignity by all employees of the service provider and by all licensed, certified, registered or permitted providers of health care with whom the patient comes in contact.

(c) A treatment facility may fingerprint a patient only if the patient is unknown, has no means of identification, cannot otherwise be identified and fingerprinting is required for identification. This restriction does not apply to patients transferred to the facility

under s. 51.35 (3) or 51.37, Stats., or committed under ch. 971 or 975, Stats.

(d) Only inpatients may be subjected to a body search. All body searches shall be conducted as follows:

1. A personal search of an inpatient may be conducted by any facility staff member:

a. Before a patient leaves or enters the security enclosure of maximum security units;

b. Before a patient is placed in seclusion;

c. When there is documented reason to believe the patient has, on his or her person, objects or materials which threaten the safety or security of patients or other persons; or

d. If, for security reasons, the facility routinely conducts personal searches of patients committed under ch. 971 or 975, Stats.,

patients residing in the maximum security facility at the Mendota mental health institute or a secure mental health unit or facility under s. 980.065, Stats., and persons transferred under s. 51.35(3) or 51.37, Stats.;

2. A strip search of an inpatient may be conducted:

a. Only in a clean and private place;

b. Except in an emergency, only by a person of the same sex;

c. Only when all less intrusive search procedures are deemed inadequate; and

d. Only under circumstances specified under subd. 1. a. to c.;

3. A body cavity search of an inpatient may be conducted:

a. Only in a clean and private place;

b. Only by a physician and, whenever possible, by a physician of the same sex;

c. Only when all less intrusive search procedures are deemed inadequate; and

d. Only under circumstances specified under subd. 1. a. to c.

(e) The room and personal belongings of an inpatient may be searched only when there is documented reason to believe that security rules have been violated, except that searches may be conducted in forensic units, the maximum security facility at the Mendota mental health institute or a secure mental health unit or facility under s. 980.065, Stats., in accordance with written facility policies.

(f) Each inpatient shall be assisted to achieve maximum capability in personal hygiene and self-grooming and shall have reasonable access to:

1. Toilet articles;

2. Toothbrush and dentifrice;

3. A shower or tub bath at least once every 2 days, unless medically contraindicated;

4. Services of a barber or beautician on a regular basis; and

5. Shaving equipment and facilities.

(g) Each patient shall be given an opportunity to refute any accusations prior to initiation of disciplinary action.

(h) No patient may be disciplined for a violation of a treatment facility rule unless the patient has had prior notice of the rule.

(i) 1. Each inpatient shall have unscheduled access to a working flush toilet and sink, except when the patient is in seclusion or for security reasons or when medically contraindicated.

2. Upon request of the patient, the legal guardian of an incompetent patient or the parent of a minor, staff of the same sex shall be available to assist the patient in toileting or bathing.

3. Every patient in isolation or seclusion shall be provided an opportunity for access to a toilet at least every 30 minutes.

(j) Inpatients shall be allowed to provide their own room decorations except that a facility 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) **SOCIAL, RECREATIONAL AND LEISURE TIME ACTIVITIES.**

(a) Inpatients shall be provided access to current newspapers and magazines, and shall have reasonable access to radio and television upon request, except for documented security or safety reasons.

(b) An inpatient shall be allowed individual expression through music, art, reading materials and media except for any limitation that may be necessary for documented security or safety reasons.

(c) Inpatients may not be prevented from acquiring, at their own expense, printed material, a television, a radio, recordings or movies, except for documented security or safety reasons.

(d) Each inpatient shall have reasonable access to his or her own musical instruments and to art and writing supplies, along with reasonable access to appropriate space and supervision for the use of the instruments and supplies, except for documented security or safety reasons.

**Note:** Any denial or restriction of a patient's right to use his or her personal articles is governed by s. HFS 94.05 and s. 51.61 (2), Stats.

(e) Each inpatient shall be provided suitable opportunities for social interaction with members of both sexes, except for documented treatment, 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.

(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.

(i) Inpatients shall be permitted to conduct personal and business affairs in any lawful manner not otherwise limited by statute so long as these do not interfere with the patient's treatment plan, the orderly operation of the facility, security or the rights of other patients.

**(4) FOOD SERVICE.** (a) Each inpatient shall be provided a nutritional diet which permits a reasonable choice of appealing food served in a pleasant manner.

(b) Snacks between meals shall be accessible to inpatients on all living units, except when contraindicated for individual patients.

(c) All inpatients shall be allowed a minimum of 30 minutes per meal and additional time as feasible.

(d) Menu preparation shall take into account customary religious, cultural or strongly-held personal convictions of inpatients.

**History:** Cr. Register, January, 1987, No. 373, eff. 2-1-87; am. (2)(b), (j), (3)(b), (f), (g), cr. (3)(h), renum. (3)(i) from HSS 94.07(5), Register, June, 1996, No. 486, eff. 7-1-96; emerg. am. (2)(e), eff. 8-15-98; am. (2)(d) 1. d. and (e), Register, April, 1999, No. 520, eff. 5-1-99.

**HFS 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.

**History:** Cr. Register, June, 1996, No. 486, eff. 7-1-96.

**HFS 94.26 Clothing and laundry.** (1) Inpatients shall be permitted to wear their own clothing as authorized under s. 51.61(1)(q), Stats., and this section.

(2) If inpatients do not have enough of their own clothing, they shall be furnished with appropriate noninstitutional clothing of proper size as follows:

(a) There shall be sufficient clothing to allow each patient at least one change of underwear a day and 3 changes of clothing a week; and

(b) There shall be clothing which is appropriate for patients to wear out of doors and on trips or visits in all weather conditions.

(3) All inpatients shall be provided with laundry service or, if the patient can use a washer and dryer, with access to washers and dryers. Facilities shall take reasonable measures to prevent the loss of inpatients' clothing during use of laundry services.

**History:** Cr. Register, January, 1987, No. 373, eff. 2-1-87; renum. from HSS 94.25, Register, June, 1996, No. 486, eff. 7-1-96.

**HFS 94.27 Storage space.** (1) Each inpatient shall be provided sufficient and convenient space for clothing, toilet articles and other personal belongings, as required under s. 51.61(1)(r), Stats., and this section.

(2) Individual storage space shall be conveniently accessible to the patient, shall accommodate hanging of clothes and shall be lockable or otherwise made secure if requested by the patient.

(3) Personal storage space may be searched only if there is documented reason to believe a violation of the facility's security regulations has occurred and the patient is given the opportunity to be present during the search, except in forensic units where routine searches may be conducted in accordance with written facility policies.

**History:** Cr. Register, January, 1987, No. 373, eff. 2-1-87; renum. from HSS 94.26, Register, June, 1996, No. 486, eff. 7-1-96.

**HFS 94.28 Right to file grievances.** (1) A patient or a person acting on behalf of a patient may file a grievance under s. HFS 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 employee for contacting or providing information to any official or to an employee 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. HFS 94.29 or from communicating, subject to any valid telephone or visitor restriction under s. HFS 94.05, with a court, government official, grievance investigator or staff member of a protection and advocacy agency or with legal counsel.

**History:** Cr. Register, June, 1996, No. 486, eff. 7-1-96.

**HFS 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.

**History:** Renum. from HSS 94.27 (1) and am., Register, June, 1996, No. 486, eff. 7-1-96.

**HFS 94.30 Compliance assurance.** (1) Each treatment facility director and program director shall ensure that all of his or her employees who have any patient contact are aware of the requirements of this chapter and of the criminal and civil liabilities for violation of 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.

(2) In the event that a contracted treatment facility does not comply with an applicable requirement of this chapter, the county department shall notify the department of the specific non-compliance within 7 calendar days of its discovery.

**History:** Cr. Register, January, 1987, No. 373, eff. 2-1-87; renum. from HSS 94.28, Register, June, 1996, No. 486, eff. 7-1-96.

**HFS 94.31 Application of other rules and regulations.** In applying the requirements of this chapter, when a different state rule or federal regulation also applies to the protection of a particular right of patients, the different state rule or federal regulation shall be controlling if it does more to promote patient rights than the counterpart requirement in this chapter.

**History:** Cr. Register, January, 1987, No. 373, eff. 2-1-87; renum. from HSS 94.29, Register, June, 1996, No. 486, eff. 7-1-96.

#### **Subchapter III — Standards for Grievance Resolution Procedures**

**HFS 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. HFS 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 employee 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. HFS 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. HFS 94.49, 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. HFS 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. HFS 94.50;

(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 employee 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. HFS 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.

**History:** Cr. Register, June, 1996, No. 486, eff. 7-1-96; correction in (2)(d) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532.

**HFS 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 HFS 94.49 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. HFS 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. HFS 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. HFS 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. HFS 92 or this chapter or ch. 51, Stats.

2. "Unfounded" means that the grievance is without merit or not a matter within the jurisdiction of ch. HFS 92 or this chapter 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. HFS 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. HFS 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. HFS 94.42(1)(b)2. shall take immediate action to protect the client or clients, pending further investigation.

**History:** Cr. Register, June, 1996, No. 486, eff. 7-1-96; corrections in (3)(a)1. and 2. made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532.

**HFS 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. HFS 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. HFS 94.43. This office shall also be responsible for investigating complaints under s. HFS 94.51 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. HFS 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. HFS 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. HFS 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. HFS 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. HFS 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. HFS 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. HFS 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.

**History:** Cr. Register, June, 1996, No. 486, eff. 7-1-96; correction in (4) (a) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532.

**HFS 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. HFS 94.42(5), that person may seek a review of the decision by the office or unit designated by the secretary under s. HFS 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. HFS 94.42(1)(b)2. in the same manner as provided in s. HFS 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. HFS 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. HFS 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. HFS 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.

**History:** Cr. Register, June, 1996, No. 486, eff. 7-1-96.

**HFS 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. HFS 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.

**History:** Cr. Register, June, 1996, No. 486, eff. 7-1-96.

**HFS 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.

**History:** Cr. Register, June, 1996, No. 486, eff. 7-1-96.

**HFS 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.

**History:** Cr. Register, June, 1996, No. 486, eff. 7-1-96.

**HFS 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.

**History:** Cr. Register, June, 1996, No. 486, eff. 7-1-96.

**HFS 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.

**History:** Cr. Register, June, 1996, No. 486, eff. 7-1-96.

**HFS 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. HFS 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. HFS 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.

**History:** Cr. Register, June, 1996, No. 486, eff. 7-1-96; correction in (1) made under s. 13.93(2m)(b)7., Stats., Register, April, 2000, No. 532.

**HFS 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. HFS 94.44(1).

**History:** Cr. Register, June, 1996, No. 486, eff. 7-1-96.

**HFS 94.51 Complaints related to the existence or operation of grievance resolution systems.** (1) Clients or persons acting on behalf of clients under s. HFS 94.49 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. HFS 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. HFS 94.44(1).

(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.

**HFS 94.52 Investigation by the department.** The department may investigate any alleged violation of this chapter and shall, in accordance with ch. HFS 92, have access to treatment records and other materials and to individuals having information relating to the alleged violation.

**HFS 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. HFS 94.42.

**HFS 94.54 Units of time.** All time limits in this subchapter are expressed in calendar days unless otherwise noted.

**APPENDIX I****DEPARTMENT OF HEALTH AND FAMILY SERVICES**

Division of Children and Family Services  
PFS- 4098 Rev. Date (09/2005)

STATE OF WISCONSIN

**INSTRUCTIONS FOR ORDERING FORMS SHELTER CARE & GROUP FOSTER HOMES**

The majority of the forms and publications listed here are available from the DHFS/DCFS/BRL website [http://dhfs.wisconsin.gov/rl\\_dcfs/forms.htm](http://dhfs.wisconsin.gov/rl_dcfs/forms.htm) and may be reproduced as needed. If you do not have access to the Internet, or if the form or publication you want is not available online, contact your regional licensing office or complete a DMT-25 Forms/Publications Requisition. Indicate the form number and title and put your name and address in the “SHIP TO” area—this information must be provided in order for the request to be filled—and send the completed DMT-25 to the following address:

Department of Health and Family Services  
Division of Children and Family Services  
Forms Manager  
P.O. Box 8916  
Madison, WI 53708-8916

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<b><u>FORM #</u></b>	<b><u>FORM TITLE</u></b>
DMT-25	Forms/Publications Requisition
HFS-64	Background Information Disclosure
CFS-100A	ICPC Placement Request
CFS-100B	ICPC Report on Child's Placement Date or Change of Placement
PFS-101	It Shouldn't Hurt to be a Child
CFS-107	Foster Home Agreement Child Placed in Foster, Treatment Foster or Group Home
CFS-116	Foster Parent Insurance Program Claim of Loss or Damage ( <i>family-operated group foster homes only</i> )
CFS-117	Foster Parent Insurance Program Verification of Claim ( <i>family-operated group foster homes only</i> )
PFS-142	Understanding the Uniform Foster Care Rate ( <i>family-operated group foster homes only</i> )
CFS-297	Request for Exception
CFS-358	Licensing Checklist – Group Foster Homes for Children
CFS-361	Licensing Checklist – Shelter Care Facilities
CFS-367	Community Advisory Committee Documentation
CFS-379	Child Case Record Checklist - Group Foster Homes
CFS-383	Personnel Record Checklist - Group Foster Homes
CFS-384	Staff Health Report - Child Welfare Facilities
CFS-872A	Information for Foster Parents - Part A ( <i>family-operated group foster homes only</i> )
CFS-872B	Information for Foster Parents - Part B ( <i>family-operated group foster homes only</i> )
CFS-909	Fire Inspection - Group Foster Homes
DMT-974	Instructions for Completing Budget/Claim Forms to Recover Federal Foster Care Funds
DMT-975	Federal Reimbursement Budget – Schedule A
DMT-977	Operating Statement – Schedule B
DMT-978	Rate Computation Report – Schedule C
DMT-979	Physical Plant Utilization Square Footage Allocation – Schedule D
DMT-982	Allocation of Expenses by Function – Schedule E
PFS-2010	Foster/Treatment Foster and Family-Operated Group Home Insurance Program
CFS-2114	Continuing Education Record – Independent Reading / Video Viewing
CFS-2142	Staff Continuing Training Record - Child Welfare Programs
CFS-2146	Serious Incident Report
CFS-2198	Foster Parent Insurance Program Damage Claim Checklist
CFS-2261	Caregiver Background Check Substantially Related Investigation Report
CFS-2338	Medication Administration Record – Group Foster Homes for Children
CFS-2378	Policy / Procedure Checklist – Group Foster Homes for Children
CFS-2379	Medical Services Consent – Child Welfare Facilities
CFS-2380	Staff Orientation Requirements – Group Foster Homes
CFS-2381	Resident Orientation Requirements
CFS-2382A	Intake Information – Group Foster Home Resident
CFS-2382B	Intake Information– Group Foster Home Resident Under Age 6
CFS-2384	Fire Safety and Emergency Response Documentation – Group Foster Homes
CFS-2385	Fire Safety and Emergency Response Documentation – Shelter Care Facilities
PFS-4100	Personnel Requirements – Group Foster Homes for Children
DDE-6100	Client Rights Limitation or Denial Documentation

**APPENDIX J**  
**SUGGESTED PROCEDURE FOR MICROWAVE HEATING OF REFRIGERATED**  
**INFANT FORMULA**

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**Prior to heating:**

- Heat only 4 oz or more
- Heat only *refrigerated* formula
- Always *stand* the bottle up
- Always leave the bottle top *uncovered* to allow heat to escape

**Heating instructions (full power) (1 bottle):**

- 4oz bottles heat for no more than 30 seconds
- 8oz bottles heat for no more than 45 seconds

**Serving instructions:**

- Always replace nipple assembly; invert 10 times (vigorous shaking is unnecessary)
- Formula should be cool to the touch; formula warm to the touch may be too hot to serve
- Always *test* formula; place several drops on tongue or on top of the hand (not the inside wrist)

**Notes:**

- Playtex, Evenflo and Gerber unanimously recommend that microwaves are not used to heat formula in nursers with disposable plastic inserts because hot spots in the milk may weaken the seams.
  - Microwaving glass bottles may result in cracking or exploding and should be avoided.
  - When formula is microwaved, heat accumulates in the top of the bottle. Therefore, shake well and test the temperature by shaking some of the liquid on top of your hand. If heated formula feels warm to the touch, it is probably above body temperature and should not be used until it cools.
  - Bottles must be heated without a nipple or a cap and inverted at least 10 times prior to serving in order to avoid oral cavity and esophageal burns.
  - Licensing rules for group and family child care do not prohibit heating formula in a microwave. However, the use of microwaves for heating formula is not recommended by the department.
  - **Chapters HFS 45 Family Child Care Centers and HFS 46 Group Child Care Centers for Children prohibit the heating of breast milk in microwaves.**
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**Heating Solid Foods**

- Prior to heating: Microwaving solid baby foods in the jar is not recommended and foods should be transferred to a dish.
- Heating instructions: Babies should not be fed foods heated any higher than between 90 to 120 degrees Fahrenheit. This temperature is reached when 4 oz of solid food in a dish is heated for approximately 15 seconds on high power.
- Serving instructions: Always stir, let food stand 30 seconds and taste test before using. Food that is “baby-ready” should feel lukewarm to you.

**INDEX****A**

Activities .....	33
Activity planning .....	33
Admissions .....	29
Age requirement .....	19
Agency-operated group homes .....	11
Ages of the children .....	30
Allowance .....	49
Appeal procedure .....	79
Assault .....	15
Assessment .....	34
Attendance .....	35

**B**

Background information disclosure form	
Staff records .....	27
Bed	
Bunk bed .....	68
Furnishings .....	68, 69
Spacing .....	65
Bedroom requirements .....	64
Behavior intervention .....	17, 35
Discipline .....	44
Broken bone .....	15
Burn .....	15

**C**

Caregiver background check .....	18, 22, 23, 24
Reporting convictions charges offences .....	28
Staff records .....	27
Chain of command .....	26
Child .....	2
Child abuse .....	2
Child abuse and neglect .....	24
Child abuse or neglect .....	15
Child care for children of custodial parent .....	53
Child neglect .....	2
Children 6 years of age or younger .....	55
Staff training .....	56
Children of residents .....	53
Closure of group home .....	16
Clothing .....	49
Storage .....	65
Community advisory .....	71
Community Advisory Committee .....	69
Complaints .....	80
Concussion .....	15
Confidentiality .....	28, 61
Consent .....	37
Continuing education .....	25
Corporation-operated group home .....	2
Correctional aftercare placement .....	30
CPR .....	25
Cribs	
Bunk bed .....	57
Furnishings and bedding .....	57
Safety measures .....	57
Custodial parent .....	2
Custodial parents and expectant mothers .....	52

**D**

Damage to premises .....	16
Death of a resident .....	15

Definitions .....	1
Dental care .....	44
Department .....	2
Diapering .....	56
Dining areas .....	65
Discharge .....	31
Discharge of residents from out of state .....	16
Discharge plan .....	36
Discharge summary .....	31
Discontinuing or changing operations .....	17
Driver's record .....	27
Drowns .....	15
Drug overdose .....	15

**E**

Education	
School .....	50
Electrical systems .....	65
Emergency .....	9
Drills .....	9
Emergency Definition .....	2
Notification .....	9
Orientation .....	24
Telephone .....	9
Emergency notification .....	19
EPSDT .....	3
Evacuation drills .....	9
Evacuation training .....	25
Exceptions to rules .....	1
Exits .....	61
Expectant mothers .....	53

**F**

Family-operated group home .....	3, 11
Fire .....	16
Fire alarm .....	66
Fire drill .....	67
Fire evacuation .....	67
Fire extinguishers .....	68
Fire Safety .....	9
Fire safety inspection .....	18, 68
First aid	
Kit10	
Supplies .....	10
Training .....	25
Fit and qualified .....	3, 24, 70
Food .....	50
Allergy .....	60
Infant and toddler requirements .....	58
Menus .....	50
Nutrition and feeding .....	58
Requirements .....	50
Storage .....	50, 65
Furnishings and appliances .....	68

**G**

Group home .....	3
Agency-operated .....	2, 11
Capacity limits .....	69
Corporation-operated .....	75
Family-operated .....	3
Location .....	69
Manager .....	3, 21

Guardian .....3

---

**H**

Health .....20

Health exam

    Children .....30

    Staff .....27

    TB test .....23

HealthCheck

    Form .....23, 27

    Provider .....3

Heating cooling and ventilation .....63

HFS 94 posting .....37

Hiring and employment .....22

House rules .....4, 31

Household

    Duties .....49

    Member .....4

Hygiene .....49

---

**I**

Immunization .....58, 60

Independent living skills .....35

Infant .....55

Infant and toddler training .....25

Injury .....15

Inspections .....1

Insurance

    Homeowners .....12

    Renter's .....12

Insurance premiums .....11

Interstate compact on the Placement of Children .....16

Inventory .....60

---

**J**

Job description .....24, 26

---

**K**

Kitchen .....65

---

**L**

Laundry .....65

Law enforcement .....15

    Agency .....4

Legal custodian .....4

Legal custody .....4

License application .....70

License provisions .....75

License revocation .....76

Licensee .....4

Licensure prohibited .....72

Lighting .....63

Living space .....63

---

**M**

Mechanical restraint .....46

Medical care .....37

    Health Examination .....23

Medication .....38

    Administration .....38

    Adverse reaction .....39

    Allergies .....38

    Disposal .....40, 41

    Documentation .....39

    Errors .....40

    Policies and procedures .....8

Procedure .....38

Psychotropic medication .....42, 43

    Self administration .....38, 39

    Storage .....40

    Treatment plan .....39

Medication error .....15

Menus .....50

Misappropriation of client's property

    Reporting .....28

    Staff record .....28

---

**N**

Nitrate levels .....55

Non-ambulatory residents .....51

Non-custodial parents .....54

Non-discrimination statement .....8

---

**O**

Orientation

    Documentation .....27

    Plan .....26

    Resident .....30

    Staff .....24

    Volunteer .....22

Outbreak .....15

Outlets .....66

---

**P**

Paint .....66

Parent .....5

Permanency plan .....5

Personnel policies .....26

Personnel requirements .....19

*Pets and animals*

*Rabies* .....12

Physical custody .....5

Physical examination .....27

Physical or medication restraints .....17

Physical plant and environment .....61

Physical requirements .....23

Physical restraint .....46

Physician .....5

Placement of juvenile offenders .....17

Placing agency .....5

Plans of correction .....17

Poison .....15

Police report .....16

Policies and procedures .....8, 24

Post-Discharge Plan .....31, 36

Posting of license and citations .....76

Premises .....5

Principles for nurturing care .....32

Probationary and regular license .....74

Program director .....5, 20

Program statement .....7, 24

Prohibited measures

    Discipline .....44

Prone restraint .....46

Proof of insurance

    Vehicle insurance .....17

Psychotropic medication

    Resident rights .....42

---

**R**

Rates and bookkeeping .....10

Record retention

    Resident records .....61

Recreation.....	34
References.....	23
Relief help.....	6, 22
Definition.....	5
Religious training.....	34
Removal of resident.....	16
Renter's liability insurance.....	12
Reporting requirements.....	14
Resident.....	6
Resident care.....	32
Resident care staff.....	6
Supervision of residents.....	21
Resident ratios.....	33
Resident records.....	59
Resident rights.....	6
Clothing inventory.....	60
Denied or limited.....	60
Licensee responsibilities.....	36
Notification.....	31
Staff responsibility.....	29
Resident who is age 18.....	51
Respite care.....	6, 51
Supervision.....	52
Training.....	52
Restraint.....	15
Documentation and reporting.....	48
Restrains.....	46
Runaway.....	15

**S**

Safety precautions.....	65
Sanctions and penalties.....	76
Sanitation.....	68
Scheduling.....	33
School.....	35
Seat belts.....	14
Serious incidents.....	14
Serious juvenile offender.....	6, 30
Definition.....	6
Serious juvenile offenders	
Placement.....	17
Sewer.....	62
Sewage.....	62
Sexual assault.....	15
Shock.....	15
SIDS.....	55
Sleeping	
Arrangements.....	51
Smoke detectors.....	66
Space requirements.....	54, 63
Spending money.....	49
Sponsoring agency.....	6
Staff member.....	6, 19
Staff member and volunteer responsibilities.....	28
Staff Records.....	26
Staff to resident ratios.....	21
Stair.....	66
Stitches.....	15
Storage space.....	65
Study areas.....	65
Suffocates.....	15
Suicide attempt.....	15
Summary suspension of a license.....	78
Supervision.....	33
Definition.....	6

**T**

Telephone.....	12
Resident rights.....	34
Temperature.....	63
Food storage.....	65
Indoor.....	63
Theft.....	15
Time-outs.....	45
Toddler.....	55
Training orientation.....	24
Transferability of license.....	75
Transportation.....	13
Infant and toddler requirements.....	58
Trauma.....	15
Traumatic incident.....	15
Treatment plan	
Custodial parents and expectant mothers.....	52
Definition.....	6
Development.....	35
Non-ambulatory residents.....	51
Placing agency notification.....	19
Resident 6 years of age or younger.....	56
Responsibility.....	20
Treatment plan responsibilities.....	35
Treatment plan review.....	36
Treatment plan review.....	36
Tuberculosis test.....	27
Tubs and showers.....	66

**U**

Uniform foster care rate setting standards.....	11
Universal precautions.....	7, 66

**V**

Vehicle	
Capacity.....	13
Driver.....	13
Driving record.....	13
Emergency notification.....	10
First aid kit.....	10
Inspection.....	13
Insurance.....	12, 14
Vehicle Accident.....	16
Vehicle Safety Inspection.....	13
Voluntary placement agreement.....	29
Volunteer	
Definition.....	7
Supervision.....	26
Volunteers.....	22

**W**

Water.....	55, 62
Temperature.....	63
Water test.....	19
Water testing.....	62
Well.....	62
Water test	
Nitrate.....	58
Water.....	58
Weapons.....	12, 15
Well.....	62
Windows.....	65
Wisconsin Association of Child & Youth Care Professional	21
Written agreement	
Placing agency.....	29

