



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 02-112

AN ORDER to amend HFS 95 (title), 95.01, 95.03 (11) and (13), 95.06 (1) (b) (intro.) and (3) (d) and 95.08 (3) (b); and to create HFS 95 subchapter I (title), subchapter II (title), subchapter III (title) and 95.10, relating to the custody and control of sexually violent persons placed at facilities under s. 980.065, Stats.

Submitted by **DEPARTMENT OF HEALTH AND FAMILY SERVICES**

07-31-2002 RECEIVED BY LEGISLATIVE COUNCIL.

08-21-2002 REPORT SENT TO AGENCY.

RNS:AS

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO



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Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

- a. In SECTIONS 2, 5, and 8, the newly created subchapter title should be written in all capital letters. Additionally, in SECTION 8, the subchapter title should not be in bold.
- b. In s. HFS 95.01, "~~define~~" should precede "do" in the (intro.) and "Define" should follow "(1)".
- c. Section HFS 95.01 (2) should be created in a separate SECTION of the rule-making order.
- d. It is not clear where the title to subch. II should be placed in the current ch. HFS 95. Will it precede s. HFS 95.04? The Revisor of Statutes should be informed of its placement.
- e. In s. HFS 95.10 (1), "Ch." should not be capitalized.

5. Clarity, Grammar, Punctuation and Use of Plain Language

- a. It does not seem necessary to include the provisions of s. HFS 95.01 (2). What is the purpose of stating that the rules are the policies that must be promulgated as rules or that the department chooses to promulgate as rules?
- b. In s. HFS 95.10 (1) (a), what is meant by "privately"? Could it be deleted? In addition, the analysis of the rule-making order states that "relative" is defined under s. 48.02 (15), Stats. However, the rule-making order does not define "relative" at all. The order should

contain a definition, if that is the intent. It may not be necessary to limit the definition of "relative," though, since the visits are entirely at the discretion of the director.

**PROPOSED ORDER OF THE
DEPARTMENT OF HEALTH AND FAMILY SERVICES
CREATING RULES**

To amend s. HFS 95 (title), 95.01, 95.03 (11) and (13), 95.06 (1) (b) (intro) and (3) (d) and 95.08 (3) (b), to create s. HFS 95 Subchapter I (title), Subchapter II (title), Subchapter III (title) and 95.10, relating to the custody and control of sexually violent persons placed at facilities under s. 980.065, Stats.

Analysis Prepared by the Department of Health and Family Services

The Department of Health and Family Services proposes to amend the title and several provisions in ch. HFS 95, "Use of Force: Ch. 980, Stats., Patients," and create a new section of the chapter, entitled "Escorted Temporary Patient Leave." The proposed amendments to ch. HFS 95 are based on the Department's experience to date administering the chapter (the chapter became effective on February 1 2002). The proposed creation of a section of the chapter is in response to the creation of a new section 980.067 of the Wisconsin statutes through 2001 Wisconsin Act 16 (the biennial budget bill). Section 980.065 of the statutes requires the Department to place persons determined to be sexually violent at selected facilities administered by the Department. Section 980.067 authorizes the superintendent of a facility at which a sexually violent person resides to allow that person to leave the grounds of the facility under escort. Section 980.067 also directs the Department to promulgate rules that express the policies and procedures for its administration of this process.

The new section of rules being proposed by the Department, s. HFS 95.10, addresses circumstances under which a person committed to either the Wisconsin Resource Center or the Sand Ridge Secure Treatment Center could be allowed to temporarily leave the facility for selected reasons. The Department has proposed that these reasons be limited to the following:

- To privately visit a dying or deceased relative as defined in s. 48.02 (15), Stats.;
- To receive medical services that are not provided at the facility;
- To engage in pre-placement activities when the patient has a proposed or approved supervised release plan under s. 980.08 (5), Stats.; and
- For other purposes consistent with the therapeutic interests of the patient and the security interests of the facility and the community.

The proposed rules also identify considerations a facility director must take into account in his or her decision to allow a patient detained or committed under chapter 980 of the statutes to leave the facility.

The Department's original Statement of Scope for this rulemaking order, published on December 15, 2001, identified ch. HFS 94 as the order proposed to be affected by the rules addressing escorted temporary patient leaves. However, the Department subsequently decided that ch. HFS 95 would be a better location for the proposed rules. Consequently, the Department submitted a revised Statement of Scope for these rules to the Revisor of Statutes on June 28, 2002.

The Department's authority to create these rules is found in ss. 227.11 (2) and 980.067, Stats. The rules interpret s. 980.067, Stats.

SECTION 1. HFS 95 (title) is amended to read:

HFS 95 (title) ~~USE OF FORCE: CUSTODY AND CONTROL OF~~ CH. 980, STATS., PATIENTS

SECTION 2. HFS 95 ~~Subchapter I~~ (title) is created to read:

HFS 95 Subchapter I General provisions

SECTION 3. HFS 95.01 is amended to read:

HFS 95.01 Authority and purpose. Pursuant to the authority vested in the department by ss. 46.055, 46.058 (2m), 51.61 (9), 227.11 (2), 980.04 (1), 980.06, ~~and 980.065 (2)~~, and 980.067, Stats., the department adopts this chapter to do all of the following:

(1) Define the use of "necessary and appropriate force" in relation to preventing escapes and pursuing and capturing persons detained at or committed to a facility, center or unit under ch. 980, Stats., who have escaped and to establish security standards at facilities housing such persons. Primary security objectives of the department are to protect the public, staff and patients and to afford patients the opportunity to participate in treatment and activities in a safe setting. Every employee of a facility is responsible for the safe custody of patients.

(2) Specify certain department policies relating to the custody and control of persons committed to institutional care under s. 980.06, Stats., where the policies are required by statute to be adopted by rule or the department otherwise determines it is appropriate to adopt the policies by rule.

SECTION 4. HFS 95.03 (11) and (13) are amended to read:

HFS 95.03 (11) "Incapacitating device" means any commercially manufactured chemical agent, organic agent, or mechanical device approved by the department for the purpose of incapacitating someone.

(13) "~~Non-Less than~~ lethal force" means force which the user reasonably believes will not create a substantial risk of causing death or great bodily injury to another.

SECTION 5. HFS 95 Subchapter II (title) is created to read:

HFS 95 Subchapter II Use of force

SECTION 6. HFS 95.06 (1) (b) (intro) and (3) (d) are amended to read:

HFS 95.06 (1) (b) ~~Non-Less than~~ lethal force. Staff may use ~~non-less than~~ lethal force against patients only if the user reasonably believes that the use of ~~non-less than~~ lethal force is immediately necessary to achieve any of the following:

(3) (d) As soon as possible after an incapacitating device has been used, staff shall consult with medical staff who shall provide appropriate medical care and provide the exposed person an opportunity to clean off any incapacitating ~~chemical-agent~~ that was used and to change clothing.

SECTION 7. HFS 95.08 (3) (b) is amended to read:

HFS 95.08 (3) (b) Legal use of incapacitating devices and the use of ~~non-~~less than lethal force.

placement?
SECTION 8. HFS 95 Subchapter III (title) and 95.10 are created to read:

HFS 95 Subchapter III (title) Other custody and control issues

95.10 Escorted leaves for chapter 980 patients. (1) Pursuant to s. 980.067, Stats., the director of the secure mental health facility established under s. 46.055, Stats., the Wisconsin resource center established under s. 46.056, Stats., or any secure mental health unit or facility provided by the department of corrections under s. 980.065 (2), Stats., may, at his or her discretion, allow a patient detained or committed under ~~Ch.~~ 980, Stats., to leave the grounds of a facility under staff escort for any of the following reasons:

- (a) To privately visit a dying or deceased relative.
- (b) To receive medically necessary health services that are not available at the facility.
- (c) To engage in pre-placement activities when the patient has a proposed or approved supervised release plan under s. 980.08 (5), Stats.
- (d) For other purposes consistent with the therapeutic interests of the patient and the security interests of the facility and the community.

(2) If the patient requests a visit under sub. (1) (a), the director shall base his or her decision upon consideration of all issues deemed pertinent by the director, including any of the following:

- (a) The degree of kinship between the patient and the person the patient is visiting.
- (b) The meaningfulness of the relationship between the patient and the person the patient is visiting.
- (c) The therapeutic interests of the patient.
- (d) The distance the patient would need to be transported.
- (e) The risks the patient poses to the community.
- (f) The recommendations of the patient's treatment team and the security director.

(3) The director shall determine the maximum duration of escorted leave and may impose other conditions appropriate to the safety of the community, security of the facility, or therapeutic interests of the patient.

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

Wisconsin Department of Health
and Family Services

Date:

By: _____

Seal:

Phyllis J. Dubé
Secretary