

Chapter HSS 132

NURSING HOMES

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Note: Chapter H 32 as it existed on July 31, 1982 was repealed and a new chapter HSS 132 was created effective August 1, 1982.

Subchapter I — General

HSS 132.11 Statutory authority. This chapter is promulgated under the authority of s. 50.02, Stats., to provide conditions of licensure for nursing homes.

History: Cr. Register, July, 1982, No. 319, eff. 8-1-82.

HSS 132.12 Scope. All nursing homes licensed under s. 50.03, Stats., are subject to all the provisions of this chapter, except for those provisions that apply only to particular licensure categories, and except for those nursing homes regulated by ch. HSS 134. Nursing homes include those owned and operated by the state, counties, municipalities, or other public bodies.

History: Cr. Register, July, 1982, No. 319, eff. 8-1-82.

HSS 132.13 Definitions. In this chapter:

(1) "Abuse" means any single or repeated act of force, violence, harassment, deprivation, neglect or mental pressure which reasonably could cause physical pain or injury, or mental anguish or fear.

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- (2) "Ambulatory" means able to walk without assistance.
- (3) "Department" means the Wisconsin department of health and social services.
- (4) "Developmental disability" means mental retardation or a related condition, such as cerebral palsy, epilepsy or autism, but excluding mental illness and infirmities of aging, which is:
- (a) Manifested before the individual reaches age 22;
 - (b) Likely to continue indefinitely; and
 - (c) Results in substantial functional limitations in 3 or more of the following areas of major life activity:
 1. Self-care;
 2. Understanding and use of language;
 3. Learning;
 4. Mobility;
 5. Self-direction; and
 6. Capacity for independent living.
- (5) "Dietitian" means a person who either:
- (a) Is eligible for registration as a dietitian by the commission on dietetic registration of the American dietetic association under its requirements in effect on January 17, 1982; or
 - (b) Has a baccalaureate degree with major studies in food and nutrition, dietetics, or food service management, and has one year of supervisory experience in the dietetic service of a health care institution.
- (6) "Direct supervision" means supervision of an assistant by a supervisor who is present in the same building as the assistant while the assistant is performing the supervised function.
- (7) "Facility" means a nursing home subject to the requirements of this chapter.
- (8) "Full-time" means at least 37.5 hours each week devoted to facility business.
- (8m) "IMD" or "institution for mental diseases" means a facility that meets the definition of an institution for mental diseases under 42 CFR 435.1009.
- (9) "Intermediate care facility" means a nursing home which is licensed by the department as an intermediate care facility to provide intermediate nursing care.
- (10) "Intermediate nursing care" means basic care consisting of physical, emotional, social and other rehabilitative services under periodic medical supervision. This nursing care requires the skill of a registered nurse for observation and recording of reactions and symptoms, and for supervision of nursing care. Most of the residents have long-term illnesses or disabilities which may have reached a relatively stable plateau. Other residents whose conditions are stabilized may need medical and

(f) *Minors.* 1. No person under the age of 18 years may be admitted, unless approved for admission by the department.

2. Requests for approval to admit a person under the age of 18 years shall be made in writing and shall include:

a. A statement from the referring physician stating the medical, nursing, rehabilitation, and special services required by the minor;

b. A statement from the administrator certifying that the required services can be provided;

c. A statement from the attending physician certifying that the physician will be providing medical care; and

d. A statement from the persons or agencies assuming financial responsibility.

(g) *Admissions 7 days a week.* No facility may refuse to admit new residents solely because of the day of the week.

(3) **DAY CARE SERVICES.** A facility may provide day care services to persons not housed by the facility, provided that:

(a) Day care services do not interfere with the services for residents;

(b) Each day care client is served upon the certification by a physician or physician's assistant that the client is free from tuberculosis infection; and

(c) Provision is made to enable day care clients to rest. Beds need not be provided for this purpose, and beds assigned to residents may not be provided for this purpose.

Note: For administration of medications to day care clients, see s. HSS 132.60 (5) (d) 6.; for required records, see s. HSS 132.45 (4) (c).

History: Cr. Register, July, 1982, No. 319, eff. 8-1-82; emerg. r. and recr. (2) (d) and (3), eff. 9-15-86; r. and recr. (2) (d) am. (1) (b) 1., (2) (e) 1. and 2. intro., (3) (a) and (b), (4) (c), Register, January, 1987, No. 373, eff. 2-1-87; am. (2) (b) 2. and 3. (d) 2., r. (2) (d) 3. and (3), renum. (2) (e), (f) and (4) to be (2) (f), (g) and (3), cr. (2) (e), Register, February, 1989, No. 398, eff. 3-1-89.

HSS 132.52 Procedures for admission. (1) **APPLICABILITY.** The procedures in this section apply to all persons admitted to facilities except persons admitted for short-term care. Section HSS 132.70 (2) applies to persons admitted for short-term care.

(2) **PHYSICIAN'S ORDERS.** No person may be admitted as a resident except upon:

(a) Order of a physician;

(b) Receipt of information from a physician, before or on the day of admission, about the person's current medical condition and diagnosis, and receipt of a physician's initial plan of care and orders from a physician for immediate care of the resident; and

(c) Receipt of certification in writing from a physician that the person is free of communicable tuberculosis and clinically apparent communicable disease, or an order for procedures to treat any disease the person may be found to have.

(3) **MEDICAL EXAMINATION AND EVALUATION.** (a) *Examination.* Each resident shall have a physical examination by a physician or physician extender within 48 hours following admission unless an examination was performed within 15 days before admission.

(b) *Evaluation.* Within 48 hours after admission the physician or physician extender shall complete the resident's medical history and physical examination record.

Note: For admission of residents with communicable disease, see s. HSS 132.51 (2) (b).

(4) **INITIAL CARE PLAN.** Upon admission, a plan of care for nursing services shall be prepared and implemented, pending development of the plan of care required by s. HSS 132.60 (8).

(5) **RESIDENT HISTORY AND ASSESSMENT.** Within 72 hours of a resident's admission, a registered nurse shall supervise the preparation of a written history and assessment summarizing the resident's prior health care, patterns of activities of daily living, needs, capabilities, and disabilities.

(6) **SPECIALTY ASSESSMENTS.** Within 2 weeks following admission, each service discipline appropriate to the resident's care, but in all cases dietetics, activities, and social services, shall prepare a history and assessment of the resident's prior health and care in the respective discipline.

Note: For care planning requirements, see s. HSS 132.60 (8).

History: Cr. Register, July, 1982, No. 319, eff. 8-1-82; renum. (1) to (5) to be (2) to (6) and am. (2) and (3), cr. (1), Register, January, 1987, No. 373, eff. 2-1-87.

HSS 132.53 Transfers and discharges. (1) **SCOPE.** This section shall apply to all resident transfers and discharges, except that in the event of conflict with s. 49.45 (6c) (c) and (d), 49.498 (4) or 50.03 (5m) or (14), Stats., the relevant statutory requirement shall apply.

(2) **CONDITIONS.** (a) *Prohibition and exceptions.* No resident may be discharged or transferred from a facility, except:

1. Upon the request or with the informed consent of the resident or guardian;

2. For nonpayment of charges, following reasonable opportunity to pay any deficiency;

3. If the resident requires care other than that which the facility is licensed to provide;

4. If the resident requires care which the facility does not provide and is not required to provide under this chapter;

5. For medical reasons as ordered by a physician;

6. In case of a medical emergency or disaster;

7. If the health, safety or welfare of the resident or other residents is endangered, as documented in the resident's clinical record;

8. If the resident does not need nursing home care;

9. If the short-term care period for which the resident was admitted has expired; or

10. As otherwise permitted by law.

(b) *Alternate placement.* 1. Except for transfers or discharges under par. (a) 2 and 6, no resident may be involuntarily transferred or discharged unless an alternative placement is arranged for the resident pursuant to s. HSS 132.31 (1) (j).

2. No resident may be involuntarily transferred or discharged under par. (a) 2 for nonpayment of charges if the resident meets both of the following conditions:

a. He or she is in need of ongoing care and treatment and has not been accepted for ongoing care and treatment by another facility or through community support services; and

b. The funding of the resident's care in the nursing home under s. 49.45 (6m), Stats., is reduced or terminated because either the resident requires a level or type of care which is not provided by the nursing home or the nursing home is found to be an institution for mental diseases as defined under 42 CFR 435.1009.

(3) PROCEDURES. (a) *Notice.* The facility shall provide a resident, the resident's physician and, if known, an immediate family member or legal counsel, guardian, relative or other responsible person at least 30 days notice of transfer or discharge under sub. (2) (a) 2 to 10, and the reasons for the transfer or discharge, unless the continued presence of the resident endangers the health, safety or welfare of the resident or other residents. The notice shall also contain the name, address and telephone number of the board on aging and long-term care. For a resident with developmental disability or mental illness, the notice shall contain the mailing address and telephone number of the protection and advocacy agency designated under s. 51.62 (2) (a), Stats.

(b) *Planning conference.* 1. Unless circumstances posing a danger to the health, safety or welfare of a resident require otherwise, at least 7 days before the planning conference required by subd. 2., the resident, guardian, if any, any appropriate county agency, and others designated by the resident, including the resident's physician, shall be given a notice containing the time and place of the conference, a statement informing the resident that any persons of the resident's choice may attend the conference, and the procedure for submitting a complaint to the department.

2. Unless the resident is receiving respite care or unless precluded by circumstances posing a danger to the health, safety, or welfare of a resident, prior to any involuntary transfer or discharge under sub. (2) (a) 2 to 10, a planning conference shall be held at least 14 days before transfer or discharge with the resident, guardian, if any, any appropriate county agency, and others designated by the resident, including the resident's physician, to review the need for relocation, assess the effect of relocation on the resident, discuss alternative placements and develop a relocation plan which includes at least those activities listed in subd. 3.

3. Transfer and discharge activities shall include:

a. Counseling regarding the impending transfer or discharge;

b. The opportunity for the resident to make at least one visit to the potential alternative placement, if any, including a meeting with that

facility's admissions staff, unless medically contraindicated or waived by the resident;

c. Assistance in moving the resident and the resident's belongings and funds to the new facility or quarters; and

d. Provisions for needed medications and treatments during relocation.

4. A resident who is transferred or discharged at the resident's request shall be advised of the assistance required by subd. 3. and shall be provided with that assistance upon request.

(c) *Records.* Upon transfer or discharge of a resident, the documents required by s. HSS 132.45 (5) (1) and (6) (h) shall be prepared and provided to the facility admitting the resident, along with any other information about the resident needed by the admitting facility.

(4) **TRANSFER AGREEMENTS.** (a) *Requirement.* Each facility shall have in effect a transfer agreement with one or more hospitals under which inpatient hospital care or other hospital services are available promptly to the facility's residents when needed. Each intermediate care facility shall also have in effect a transfer agreement with one or more skilled care facilities.

(b) *Transfer of residents.* A hospital and a facility shall be considered to have a transfer agreement in effect if there is a written agreement between them or, when the 2 institutions are under common control, if there is a written statement by the person or body which controls them, which gives reasonable assurance that:

1. Transfer of residents will take place between the hospital and the facility ensuring timely admission, whenever such transfer is medically appropriate as determined by the attending physician; and

2. There shall be interchange of medical and other information necessary for the care and treatment of individuals transferred between the institutions, or for determining whether such individuals can be adequately cared for somewhere other than in either of the institutions.

(c) *Exemption.* A facility which does not have a resident transfer agreement in effect, but which is found by the department to have attempted in good faith to enter into such an agreement with a hospital sufficiently close to the facility to make feasible the transfer between them of residents and the information referred to in par. (b) 2., shall be considered to have such an agreement in effect if and for so long as the department finds that to do so is in the public interest and essential to ensuring skilled nursing facility services in the community.

(d) *Notice requirements.* 1. Before a resident of a facility is transferred to a hospital or for therapeutic leave, the facility shall provide written information to the resident and an immediate family member or legal counsel concerning the provisions of the approved state medicaid plan about the period of time, if any, during which the resident is permitted to return and resume residence in the nursing facility.

2. At the time of a resident's transfer to a hospital or for therapeutic leave, the facility shall provide written notice to the resident and an immediate family member or legal counsel of the duration of the period, if any, specified under subd. 1.

Note: The "approved state medicaid plan" referred to s. 49.498 (4) (d) 1a, Stats., and subd. 1 states that the department shall have a bedhold policy. The bedhold policy is found in s. HSS 107.09 (4) (j).

(5) **BEDHOLD.** (a) *Bedhold.* A resident who is on leave or temporarily discharged, as to a hospital for surgery or treatment, and has expressed an intention to return to the facility under the terms of the admission statement for bedhold, shall not be denied readmission unless, at the time readmission is requested, a condition of sub. (2) (b) has been satisfied.

(b) *Limitation.* The facility shall hold a resident's bed under par. (a) until the resident returns, until the resident waives his or her right to have the bed held, or up to 15 days following the temporary leave or discharge, whichever is earlier.

Note: See s. HSS 107.09 (4) (j) for medical assistance bedhold rules.

(6) **APEALS ON TRANSFERS AND DISCHARGES.** (a) *Right to appeal.* 1. A resident may appeal an involuntary transfer or discharge decision.

2. Every facility shall post in a prominent place a notice that a resident has a right to appeal a transfer or discharge decision. The notice shall explain how to appeal that decision and shall contain the address and telephone number of the nearest bureau of quality compliance regional office. The notice shall also contain the name, address and telephone number of the state board on aging and long-term care or, if the resident is developmentally disabled or has a mental illness, the mailing address and telephone number of the protection and advocacy agency designated under s. 51.62 (2) (a), Stats.

3. A copy of the notice of a resident's right to appeal a transfer or discharge decision shall be placed in each resident's admission folder.

4. Every notice of transfer or discharge under sub. (3) (a) to a resident, relative, guardian or other responsible party shall include a notice of the resident's right to appeal that decision.

(b) *Appeal procedures.* 1. If a resident wishes to appeal a transfer or discharge decision, the resident shall send a letter to the nearest regional office of the department's bureau of quality compliance within 7 days after receiving a notice of transfer or discharge from the facility, with a copy to the facility administrator, asking for a review of the decision.

2. The resident's written appeal shall indicate why the transfer or discharge should not take place.

3. Within 5 days after receiving a copy of the resident's written appeal, the facility shall provide written justification to the department's bureau of quality compliance for the transfer or discharge of the resident from the facility.

4. If the resident files a written appeal within 7 days after receiving notice of transfer or of discharge from the facility, the resident may not be transferred or discharged from the facility until the department's bureau of quality compliance has completed its review of the decision and notified both the resident and the facility of its decision.

5. The department's bureau of quality compliance shall complete its review of the facility's decision and notify both the resident and the facil-

ity in writing of its decision within 14 days after receiving written justification for the transfer or discharge of the resident from the facility.

6. A resident or a facility may appeal the decision of the department's bureau of quality compliance in writing to the department's office of administrative hearings within 5 days after receipt of the decision.

Note: The mailing address of the Department's Office of Administrative Hearings is P.O. Box 7875, Madison, Wisconsin 53707.

7. The appeal procedures in this paragraph do not apply if the continued presence of the resident poses a danger to the health, safety or welfare of the resident or other residents.

History: Cr. Register, July, 1982, No. 319, eff. 8-1-82; cr. (2) (b) 8. and 9., am. (2) (c), (3) (b) 2. and (c), Register, January, 1987, No. 373, eff. 2-1-87; renum. (2) (c) to be (2) (c) 1. and am., cr. (2) (c) 2., Register, February, 1989, No. 398, eff. 3-1-89; am. (2) (c) 2.b., Register, October, 1989, No. 406, eff. 11-1-89; r. and recr. (1) to (3), cr. (4) (d) and (6), Register, June, 1991, No. 426, eff. 7-1-91.

HSS 132.54 Transfer within the facility. Prior to any transfer of a resident between rooms or beds within a facility, the resident or guardian, if

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