



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2005 Wisconsin Act 444
[2005 Senate Bill 226]

**Mental Health Treatment for
Minors**

Mental Health Treatment for Minors – Prior Law

Prior to the enactment of 2005 Wisconsin Act 444, the law relating to mental health treatment of minors was as follows:

- *Admission of Minors for Inpatient Treatment Through County Department or Department of Health and Family Services (DHFS)*

The application for a voluntary admission for inpatient treatment through a county department of human services or DHFS of a **minor age 14 or older** for the primary purpose of **treatment for alcoholism or drug abuse (AODA)** and the application for a voluntary admission of a **minor who is under age 14** for inpatient treatment through a county department of human services or the DHFS for the primary purpose of **treatment of mental illness, developmental disability (DD), or AODA**, must be executed by a parent or guardian. [s. 51.13 (1) (a), 2003-04 Stats.]

The application for a voluntary admission for inpatient treatment through a county department of human services or the DHFS **of a minor age 14 or older** for the primary purpose of **treatment of mental illness or developmental disability**, must be executed by the minor **and** a parent or guardian. [s. 51.13 (1) (b), 2003-04 Stats.]

However, if a minor age 14 or older wishes to be admitted to an inpatient treatment facility, but a parent or guardian refuses to execute the application for admission or cannot be found or there is no parent or guardian, the minor or a person acting on the minor's behalf may petition the juvenile court for approval of the admission. If, after a hearing, the court determines that consent is being unreasonably withheld or the parent or guardian cannot be found, and that the admission is proper under the standards in s. 51.13 (4) (d), the court must approve the minor's admission. This same procedure is available, under s. 51.13 (1) (c) 2., Stats., for a minor under age 14, who wishes to be admitted to a facility but when a parent or guardian cannot be found or there is no parent or guardian.

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at: <http://www.legis.state.wi.us/>.

- *Other Admissions of Minors for Inpatient Treatment*

Admissions not involving the county department of DHFS are subject to similar provisions. [s. 51.13 (2), Stats.]

The application for voluntary admission of a minor who is **14 or older** to an inpatient facility **for AODA treatment**, and the application for voluntary admission of a minor **under age 14** to an inpatient facility for treatment for **mental illness, DD, or AODA**, must be executed by a parent or guardian.

The application for voluntary admission of a minor who is **14 or older** to an inpatient facility for treatment for **mental illness or DD** must be executed by the minor **and** a parent or guardian. **A minor age 14 or older** who has been admitted for treatment of mental illness or disability **has the right to be discharged within 48 hours, upon his or her request.**

A minor must be informed, prior to or as soon after admission as possible, of the review procedure available of the admission. A minor age 14 or older, and his or her parent or guardian, must also be informed of the minor's right to be discharged upon the minor's request, within 48 hours.

- *Review Procedure for Inpatient Treatment*

If an admission is through a county department or the DHFS under s. 51.13 (2), Stats., the treatment director of the facility must, within three days of the admission or within three days after application for admission, whichever is first, file a petition for the review of the admission with the juvenile court. [s. 51.13 (4), Stats.]

Within five days after the petition is filed, the juvenile court must determine whether there is a prima facie showing that the minor is in need of psychiatric services or services for DD or AODA; that the facility offers treatment that is appropriate to the minor's needs; that inpatient care in the facility is the least restrictive treatment consistent with the minor's needs; and, if the minor is 14 or older and is admitted for treatment for mental illness or DD, whether the admission is voluntary on the minor's part.

If the court is unable to make those determinations, the court may dismiss the petition; order additional information to enable the court to make those determinations within 14 days; or hold a hearing within 14 days after admission. The court must hold a hearing within 14 days if a notation of the minor's unwillingness appears on the face of the petition, or if the minor has requested a hearing.

If the court finds that the minor is in need of services; that the facility offers appropriate treatment; that it is the least restrictive treatment consistent with the minor's needs; and that the admission is voluntary for a minor 14 or older, the court may approve the admission. If a minor age 14 or older does not approve the voluntary admission, it may not take place.

If the court does not make the findings above, it must either dismiss the petition, or treat the petition as one for involuntary commitment, and proceed under s. 51.20 or 51.45, Stats.

A minor who is 14 or older and is being treated for mental illness or DD, the minor may request discharge in writing. The minor must be discharged within 48 hours unless a petition for commitment or emergency detention is filed.

A minor who is 14 or older and is being treated for AODA, or a minor under age 14 who is being treated for mental illness, DD, or AODA, may submit a written request to a court for a hearing to determine the continued appropriateness of the admission. The court must order a hearing if no hearing concerning the minor's admission has been held within 120 days after receipt of the request.

- *Outpatient Mental Health Treatment of Minors*

Section 51.14, 2003-04 Stats., provides a process for review when a minor age 14 or older, or the minor's parent or guardian, refuses to provide informed consent for outpatient mental health treatment. "Outpatient mental health treatment" is defined as "treatment and social services for mental illness, except psychotropic medications and 24-hour care and custody, provided by a treatment facility." [s. 51.14 (1), Stats.]

The review process is initiated by either a minor or his or her parent or guardian. The petition is filed with the mental health review officer in the parent's or guardian's county of residence. Within 21 days after the petition is filed, the review officer must hold a hearing. If, following the hearing, the review officer finds all of the following, the review officer shall issue a written order that treatment may proceed, despite the refusal of the minor or his or her parent to provide informed consent:

- The informed consent is unreasonably withheld.
- The minor is in need of treatment.
- The particular treatment sought is appropriate for the minor and is the least restrictive treatment available.
- The proposed treatment is in the minor's best interests.

Such a finding of the review officer is subject to judicial review, upon petition of the minor or the minor's parent or guardian.

Mental Health Treatment for Minors – 2005 Wisconsin Act 444

Act 444 makes the following changes to the law governing mental health treatment of minors:

Admission of Minors for Inpatient Treatment

- Changes current law to provide that if a minor age 14 or older refuses to join with his or her parent on the application for inpatient mental health treatment, a parent or guardian may execute the application on the minor's behalf.
- Eliminates the distinction between admissions of minors for inpatient treatment by a county department or the DHFS, and an admission of a minor that does not involve a county department or DHFS.
- Provides additional rights to a minor upon admission to an inpatient facility:
 - The right to an independent evaluation, if ordered by the court.
 - The minor's right to be informed about how to contact the state protection and advocacy agency.
- Provides that the requirement for a petition for review of the admission applies to the admission of any minor, whether or not the admission is with the involvement of the county department and DHFS.
- Changes the 14-day time limit within which the court must hold a hearing on certain admissions of minors to seven days, exclusion of weekends and holidays, and requires the court to order an independent evaluation of the minor in certain situations.
- Provides that the court shall permit admission after a hearing and a finding by the court that the minor is in need of psychiatric, DD or AODA services in an inpatient facility; the facility

offers treatment appropriate for the minor's needs; and it is the least restrictive treatment consistent with the minor's needs.

- If a minor age 14 or older who is in an inpatient facility for treatment for mental illness or DD, the minor **and** the minor's parent or guardian may request discharge in writing. If the parent or guardian refuses to request discharge, and the facility director state that the minor is in need of psychiatric or DD services, that the facility's treatment is appropriate to the minor's needs, and that inpatient care is the least restrictive treatment consistent with the minor's needs, the minor may not be discharged. However, the minor is entitled to a court hearing in this situation.

Outpatient Mental Health Treatment of Minors

Act 444 modifies and clarifies the review process for outpatient mental health treatment of minors age 14 and older.

Under Act 444, the definition of "outpatient mental health treatment" is modified to include psychotropic medication.

The petition process is modified to allow **a person acting on behalf of the minor** to petition the mental health review officer of a refusal or inability of the minor's parent or guardian to provide informed consent for outpatient mental health treatment. If a minor's parent or guardian consented to the minor's outpatient treatment despite the minor's refusal, the treatment director of the outpatient facility must file a petition for review of the informed consent on behalf of the minor.

The mental health review officer may order outpatient mental health treatment for the minor, if the parent or guardian provides informed consent despite the minor's refusal, if the treatment is determined to be appropriate. Treatment may also be ordered if the parent or guardian unreasonably withholds informed consent, or the minor's refusal to provide informed consent is unreasonable. Such a decision of the mental health review officer is subject to judicial review.

Effective Date: Act 444 takes effect on August 1, 2006.

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