CHAPTER 51

STATE MENTAL HEALTH ACT

51.001 Legislative policy. (1) It is the policy of the state to assure the provision of a full range of treatment and rehabilitation services in the state for all mental disorders and developmental disabilities and for mental illness, alcoholism and other drug abuse. There shall be a unified system of prevention of such conditions and provision of services which will assure all people in need of care access to the least restrictive treatment alternative appropriate to their needs, and movement through all treatment components to assure continuity of care.

(2) To protect personal liberties, no person who can be treated adequately outside of a hospital, institution or other inpatient facility may be involuntarily treated in such a facility.

History: 1975 c. 430

51.01 Definitions. As used in this chapter, except where otherwise expressly provided:

(1) "Alcoholic" means a person who habitually lacks self-control as to the use of alcohol beverages and uses alcohol beverages to the extent that his or her health is substantially impaired or by reason of such use is deprived of his or her ability to support or care for himself or herself, or such person's family. This definition does not apply to s. 51.45.

(2) "Approved treatment facility" means any publicly or privately operated treatment facility or unit thereof approved by the department for treatment of alcoholic, drug dependent, mentally ill or developmentally disabled persons.

(3) "Center for the developmentally disabled" means any facility which is operated by the department and which provides services including, but not limited to, 24-hour treatment, consultation, training and education for developmentally disabled persons.

(3g) "Chronic mental illness" means a mental illness which is severe in degree and persistent in duration, which causes a substantially diminished level of functioning in the primary aspects of daily living and an inability to cope with the ordinary demands of life, which may lead to an inability to maintain stable adjustment and independent functioning without long-term treatment and support and which may be of lifelong duration. "Chronic mental illness" includes schizophrenia as well as a wide spectrum of psychotic and other severely disabling psychiatric diagnostic categories, but does not include infirmities of aging or a primary diagnosis of mental retardation or of alcohol or drug dependence.

(3s) "Community support program" means a coordinated care and treatment system which provides a network of services through an identified treatment program and staff to ensure ongoing therapeutic involvement and individualized treatment in the community for persons with chronic mental illness.

(4) "Conditional transfer" means a transfer of a patient or resident to a less restrictive environment for treatment which is made subject to conditions imposed for the benefit of the patient or resident.

(5) (a) "Developmental disability" means a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or another neurological condition closely related to mental retardation or requiring treatment similar to that required for mental retardation, which has continued or can be expected to continue indefinitely and constitutes a substantial handicap to the afflicted individual. "Developmental disability" does not include senility which is primarily caused by the process of aging or the infirmities of aging.

(b) "Developmental disability", for purposes of involuntary commitment, does not include cerebral palsy or epilepsy.

(6) "Director" means the person in charge of a state treatment facility, state or local treatment center, or approved private facility.

(7) "Discharge" of a patient who is under involuntary commitment orders means a termination of custody and treatment obligations of the patient to the authority to which the patient was committed by court action. The "discharge" of a patient who is voluntarily admitted to a treatment program or facility means a termination of treatment obligations between the patient and the treatment program or facility.

(8) "Drug dependent" means a person who uses one or more drugs to the extent that the person's health is substantially impaired or his or her social or economic functioning is substantially disrupted.

(9) "Hospital" has the meaning given under s. 50.33.

(10) "Inpatient facility" means a public or private hospital or unit of a hospital which has as its primary purpose the diagnosis, treatment and rehabilitation of mental illness, developmental disability, alcoholism or drug abuse and which provides 24-hour care.

(11) "Law enforcement officer" means any person who by virtue of the person's office or public employment is vested by law with the duty to maintain public order or to make arrests for crimes while acting within the scope of the person's authority.

(12) "Mental health institute" means any institution operated by the department for specialized psychiatric services, research, education, and which is responsible for consultation with community programs for education and quality of care.

(13) (a) "Mental illness" means mental disease to such extent that a person so afflicted requires care and treatment for his or her own welfare, or the welfare of others, or of the community.

(b) "Mental illness", for purposes of involuntary commitment, means a substantial disorder of thought, mood, perception, orientation, or memory which grossly impairs judgment, behavior, capacity to recognize reality, or ability to meet the ordinary demands of life, but does not include alcoholism.

(14) "Residence", "legal residency" or "county of residence" has the meaning given under s. 49.10 (12) (d).

(15) "State treatment facility" means any of the institutions operated by the department for the purpose of providing diagnosis, care or treatment for mental or emotional disturbance, developmental disability, alcoholism or drug dependency and includes but is not limited to mental health institutes.

(16) "Transfer" means the movement of a patient or resident between approved treatment facilities or to or from an approved treatment facility and the community.

(17) "Treatment" means 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.

(18) "Treatment director" means the person who has primary responsibility for the treatment provided by a treatment facility. The term includes the medical director of a facility.

(19) "Treatment facility" means any publicly or privately operated facility or unit thereof providing treatment of alcoholic, drug dependent, mentally ill or developmentally disabled persons, including but not limited to inpatient and outpatient treatment programs, community support programs and rehabilitation programs.

History: 1975 c. 430 ss. 11, 81; 1977 c. 26; 1977 c. 203 s. 106; 1977 c. 428; 1981 c. 79 s. 17; 1983 a. 189 s. 329 (19); 1983 a. 441.

"Treatment" does not include habilitation. In Matter of Athans, 107 W (2d) 331, 320 NW (2d) 30 (Ct App. 1982)

51.02 Council on mental health. (1) The council on mental health shall have the following duties:

(a) Advise the department, the legislature and the governor on the use of state and federal resources and on the provision and administration of programs for persons who are mentally ill or who have other mental health problems, for groups who are not adequately served by the mental health system, for the prevention of mental health problems and for other mental health related purposes.

(b) Provide recommendations to the department on the expenditure of federal funds received under the mental health block grant under 42 USC 300x to 300x-9 and participate in the development of and monitor and evaluate the implementation of, the mental health block grant plan.

(c) Review all departmental plans for services affecting persons with mental illness and monitor the implementation of the plans.

(d) Serve as an advocate for persons with mental illness.

(e) Report annually to the department, the legislature and the governor on recommended policy changes in the area of mental health.

(2) The secretary shall submit all departmental plans affecting persons with mental illness to the council for its review. The council shall provide its recommendations to the secretary within such time as the secretary may require.

History: 1983 a. 439.

51.03 Authority of department. The department through its authorized agents may visit or investigate any treatment facility to which persons are admitted or committed under this chapter.

History: 1975 c. 430.

51.04 Outpatient treatment facility determination. Any facility may apply to the department for determination of whether such facility is an outpatient treatment facility, as defined in s. 632.89 (1) (a). The department shall charge a fee for each such determination.

History: 1975 c. 224; 1975 c. 430 s. 53m; 1983 a. 27.

51.05 Mental health institutes. (1) The mental health institute located at Mendota is known as the "Mendota Mental Health Institute" and the mental health institute located at Winnebago is known as the "Winnebago Mental Health Institute". Goodland Hall West, a facility located at Mendota mental health institute, is designated as the "Maximum Security Facility at Mendota Mental Health Institute". The department shall divide the state by counties into 2 districts, and may change the boundaries of these districts, arranging them with reference to the number of patients residing in them at a given time, the capacity of the institutes and the convenience of access to them.

(2) The department may not accept for admission to a mental health institute any resident person, except in an emergency, unless the board established under s. 51.42 in the county where the person has legal residency authorizes the care, as provided in s. 51.42 (9). Patients who are committed to the department under s. 971.14, 971.17, 975.01, 1977 stats., s. 975.02, 1977 stats., or s. 975.06, admitted by the department under s. 975.17, 1977 stats., or are transferred from a juvenile correctional facility to a state treatment facility under s. 51.35 (3) or from a jail or prison to a state treatment facility under s. 51.37 (5) are not subject to this section.

(3) Any person who is without a county responsible for his or her care and any person entering this state through the compact established under s. 51.75 may be accepted by the department and temporarily admitted to an institute. Such person shall be transferred to the community board established under s. 51.42 for the community where the best interests of the person can best be served, as soon as practicable.

(4) The transfer or discharge of any person who is placed in a mental health institute shall be made subject to s. 51.35.

History: 1975 c. 430; 1977 c. 428; 1979 c. 117; 1983 a. 293.

51.06 Centers for the developmentally disabled. (1) PURPOSE. The purpose of the northern center for developmentally disabled, central center for developmentally disabled and southern center for developmentally disabled is to provide services needed by developmentally disabled citizens of this state which are otherwise unavailable to them, and to return such persons to the community when their needs can be met at the local level. Services to be provided by the department at such centers shall include:

(a) Education, training, habilitative and rehabilitative services to those persons placed in its custody.

(b) Development-evaluation services to citizens through community boards established under ss. 51.42 and 51.437.

(c) Assistance to such community boards in meeting the needs of developmentally disabled citizens.

(2) SCHOOL ACTIVITIES. Each center shall maintain a school department and shall have enrolled all those children 3 years of age or older who are eligible for schooling under state law. The school program shall be under the supervision of the department of public instruction and shall meet standards prescribed by that agency. If the welfare of the residents so requires, the department shall endeavor to make outside school facilities which are approved by the department of public instruction available for instructional purposes.

(3) TRANSFER OR DISCHARGE. The transfer or discharge of any person who is placed in a center for the developmentally disabled shall be made subject to s. 51.35.

History: 1975 c. 430; 1981 c. 20.

51.07 Outpatient services. (1) The department may establish a system of outpatient clinic services in any institution operated by the department.

(2) It is the purpose of this section to:

(a) Provide outpatient diagnostic and treatment services for patients and their families.

(b) Offer precommitment and preadmission evaluations and studies.

(3) The department may provide outpatient services only to patients contracted for with s. 51.42 and s. 51.437 boards in accordance with s. 46.03 (18), except for those patients whom the department finds to be nonresidents of this state. The full and actual cost less applicable collections of such services contracted for shall be charged to the respective s. 51.42 or s. 51.437 board. The state shall provide the services required for patient care only if no such services are funded by the department in the county or combination of counties served by the respective board.

History: 1973 c. 90, 333; 1975 c. 430 s. 19.

51.08 Milwaukee county mental health center. Any county having a population of 500,000 or more may, pursuant to s. 46.17, establish and maintain a county mental health center. The county mental health center, north division (hereafter in this section referred to as "north division"), shall be a hospital devoted to the detention and care of drug addicts, alcoholics and mentally ill persons whose mental illness is acute. Such hospital shall be governed pursuant to s. 46.21. Treatment of alcoholics at the north division is subject to approval by the department under s. 51.45 (8). The county mental health center, south division, shall be a hospital for the treatment of chronic patients and shall be governed pursuant to s. 46.21. The county mental health center established pursuant to this section is subject to rules adopted by the department concerning hospital standards.

History: 1971 c. 108 ss. 5, 6; 1971 c. 125 ss. 350 to 352, 523; 1971 c. 211; 1973 c. 90, 198; 1975 c. 41; 1975 c. 430 s. 15.

51.09 County hospitals. Any county having a population of less than 500,000 may establish a hospital or facilities for the detention and care of mentally ill persons, alcoholics and drug addicts; and in connection therewith a hospital or facility for the care of cases afflicted with pulmonary tuberculosis. County hospitals established pursuant to this section are subject to rules adopted by the department concerning hospital standards, including standards for alcoholic treatment facilities under s. 51.45 (8).

History: 1971 c. 211; 1973 c. 198; 1975 c. 430 s. 16.

51.10 Voluntary admission of adults. (1) With the approval of the treatment director of the treatment facility or the director's designee, or in the case of a center for the developmentally disabled, the director of the center or the director's designee, and the approval of the director of the appropriate community board established under ss. 51.42 and 51.437, an adult desiring admission to an approved inpatient treatment facility may be admitted upon application. This subsection applies only to admissions made through a board established under s. 51.42 or 51.437 or through the department.

(2) With the approval of the director of the treatment facility or the director's designee and the director of the appropriate community board established under s. 51.42 or 51.437, an adult may be voluntarily admitted to a state inpatient treatment facility.

(3) Voluntary admission of adult alcoholics shall be in accordance with s. 51.45 (10).

(4) The criteria for voluntary admission to an inpatient treatment facility shall be based on an evaluation that the applicant is mentally ill or developmentally disabled, or is an alcoholic or drug dependent and that the person has the potential to benefit from inpatient care, treatment or therapy. An applicant is not required to meet standards of dangerousness as established in s. 51.20 (1) (a) to be eligible for the benefits of voluntary treatment programs. An applicant may be admitted for the purpose of making a diagnostic evaluation.

(4m) (a) An adult who meets the criteria for voluntary admission under sub. (4) and whose admission is approved under sub. (1) or (2) may also be admitted to an inpatient treatment facility if:

1. A physician of the facility submits a signed request and certifies in writing, before not less than 2 witnesses, that the physician has advised the patient in the presence of the witnesses both orally and in writing of the person's rights under sub. (5) and of the benefits and risks of treatment, the patient's right to the least restrictive form of treatment appropriate to the patient's needs and the responsibility of the facility to provide the patient with this treatment; or

2. The person applies for admission in writing.

(b) Any person admitted under par. (a) 1 who fails to indicate a desire to leave the facility but who refuses or is unable to sign an application for admission is presumed to consent to admission and may be held for up to 7 days as a voluntary patient.

(c) On the first court day following admission under par. (a) 1, the facility shall notify the court assigned to exercise probate jurisdiction

for the county in which the facility is located of the admission. Within 24 hours after receiving this notice, excluding Saturdays, Sundays and holidays, the court shall appoint a guardian ad litem to visit the facility and to determine if there has been compliance with this subsection. The guardian ad litem shall visit the patient within 48 hours, excluding Saturdays, Sundays and holidays, to ascertain whether the patient wishes a less restrictive form of treatment and, if so, shall assist the patient in obtaining the proper assistance from the facility. The guardian ad litem shall inform the patient of all rights to which the patient is entitled under this chapter.

(d) If a patient admitted under par. (a) 1 has not signed a voluntary admission application within 7 days after admission, the patient, the guardian ad litem and the physician who signed the admission request shall appear before the judge or court commissioner of the court assigned to exercise probate jurisdiction for the county in which the facility is located to determine whether the patient shall remain in the facility as a voluntary patient. If the judge or court commissioner determines that the patient desires to leave the facility, the facility shall discharge the patient. If the facility has reason to believe the patient is eligible for commitment under s. 51.20, the facility may initiate procedures for involuntary commitment.

(5) (a) At the time of admission to an inpatient facility the individual being admitted shall be informed orally and in writing of his or her right to leave upon submission of a written request to the staff of the facility except when the director or such person's designee files a statement of emergency detention under s. 51.15 with the court by the end of the next day in which the court transacts business.

(b) Writing materials for use in requesting discharge shall be available at all times to any voluntarily admitted individual, and shall be given to the individual upon request. A copy of the patient's and resident's rights shall be given to the individual at the time of admission.

(c) Any patient or resident voluntarily admitted to an inpatient treatment facility shall be discharged on request, unless the treatment director or the treatment director's designee has reason to believe that the patient or resident is dangerous in accordance with the standards provided under s. 51.20 (1) (a) 2. or (am) and files a statement of emergency detention under s. 51.15 with the court by the end of the next day in which the court transacts business. The patient or resident shall be notified immediately when such a statement is to be filed. Prior to the filing of a statement, the patient or resident may be detained only long enough for the staff of the facility to evaluate the individual's condition and to file the statement of emergency detention. This time period may not exceed the end of the next day in which the court transacts business. Once a statement is filed, a patient or resident may be detained as provided in s. 51.15 (1). The probable cause hearing required under s. 51.20 (7) shall be held within 72 hours after the request for discharge, excluding Saturdays, Sundays and legal holidays.

(6) A person against whom a petition for involuntary commitment has been filed under s. 51.15 or 51.20 may agree to be admitted under this section. The court may permit the person to become a voluntary patient or resident pursuant to this section upon signing an application for voluntary admission, if the director of the appropriate board established under s. 51.42 or 51.437 and the director of the facility to which the person will be admitted approve of the voluntary admission within 14 days of such admission, and the judge shall then dismiss the proceedings under s. 51.20 within 14 days of such admission.

(7) The treatment director of a facility may temporarily admit an individual to an inpatient facility when there is reason to question the competency of such individual. The treatment director shall then apply to the court for appointment of a guardian within 48 hours of the time of admission, exclusive of Saturdays, Sundays and legal holidays. The individual may remain at the facility pending appointment of a guardian.

(8) An adult for whom a guardian of the person has been appointed under ch. 880 because of the subject's incompetency may be voluntarily admitted to an inpatient treatment facility under this section only if the guardian and the ward consent to such admission.

(9) Upon admission to an inpatient facility, the facility shall offer the patient orally and in writing the opportunity to execute an informed consent form under s. 51.30 (2), requiring the facility to notify the patient's parent, child or spouse or any other adult of the patient's release. If the patient signs the consent form, the facility shall notify the person specified in the form as soon as possible after the patient requests release.

History: 1975 c. 430; 1977 c. 354, 428, 447; 1979 c. 336

51.13 Admission of minors. (1) ADMISSION THROUGH BOARD OR DEPARTMENT. (a) Except as provided in s. 51.45 (2m), the application for voluntary admission of a minor who is under 14 years of age to an approved inpatient treatment facility shall be executed by a parent who has legal custody of the minor or the minor's guardian. Any statement or conduct by a minor

under the age of 14 indicating that the minor does not agree to admission to the facility shall be noted on the face of the application and shall be noted in the petition required by sub. (4).

(b) The application for voluntary admission of a minor who is 14 years of age or over shall be executed by the minor and a parent who has legal custody of the minor or the minor's guardian, except as provided in par. (c).

(c) If a minor 14 years of age or older wishes to be admitted to an approved inpatient treatment facility but a parent with legal custody or the guardian refuses to execute the application for admission or cannot be found, or if there is no parent with legal custody, the minor or a person acting on the minor's behalf may petition the court assigned to exercise jurisdiction under ch. 48 in the county of residence of the parent or guardian for approval of the admission. A copy of the petition and a notice of hearing shall be served upon the parent or guardian at his or her last-known address. If, after hearing, the court determines that the parent or guardian's consent is unreasonably withheld or that the parent or guardian cannot be found or that there is no parent with legal custody, and that the admission is proper under the standards prescribed in sub. (4) (d), it shall approve the minor's admission without the parent or guardian's consent. The court may, at the minor's request, temporarily approve the admission pending hearing on the petition. If a hearing is held under this subsection, no review or hearing under sub. (4) is required.

(d) A minor against whom a petition or statement has been filed under s. 51.15, 51.20 or 51.45 (12) or (13) may be admitted under this section. The court may permit the minor to become a voluntary patient pursuant to this section upon approval by the court of an application executed pursuant to par. (a), (b) or (c), and the judge shall then dismiss the proceedings under s. 51.15, 51.20 or 51.45. If a hearing is held under this subsection, no hearing under sub. (4) is required.

(e) A minor may be admitted immediately upon the approval of the application executed pursuant to par. (a) or (b) by the treatment director of the facility or his or her designee or, in the case of a center for the developmentally disabled, the director of the center or his or her designee, and the director of the appropriate board established under s. 51.42 or 51.437 if such board is to be responsible for the cost of the minor's therapy and treatment. Approval shall be based upon an informed professional opinion that the minor is in need of psychiatric services or services for developmental disability, alcoholism or drug abuse, that the treatment facility offers inpatient therapy or treatment which is appropriate for the minor's needs and that inpatient care in the facility is the least restrictive therapy or treatment consistent with the minor's needs.

(f) Admission under par. (c) or (d) shall also be approved by the treatment director of the facility or his or her designee, or in the case of a center for the developmentally disabled, the director of the center or his or her designee, and the director of the appropriate board established under s. 51.42 or 51.437 if the board is to be responsible for the cost of the minor's therapy and treatment, within 14 days of the minor's admission.

(2) OTHER ADMISSIONS. (a) A minor may be admitted to an inpatient treatment facility without complying with the requirements of this section if the admission does not involve the department or a board established under s. 51.42 or 51.437, or a contract between a treatment facility and the department or such a board. The application for voluntary admission of a minor who is 14 years of age or over shall be executed by the minor and a parent who has legal custody of the minor or the minor's guardian.

(b) Notwithstanding par. (a), any minor who is 14 years of age or older who is admitted to an inpatient treatment facility for the primary purpose of treatment of mental illness, developmental disability, alcoholism or drug abuse has the right to be discharged within 48 hours of his or her request, as provided in sub. (7) (b). At the time of admission, any minor who is 14 years of age or older shall be informed of this right orally and in writing by the director of the hospital or such person's designee. This paragraph does not apply to individuals who receive services in hospital emergency rooms.

(c) A copy of the patient's rights established under s. 51.61 shall be given and explained to the minor and the minor's parent or guardian at the time of admission by the director of the facility or such person's designee.

(d) Writing materials for use in requesting a discharge shall be made available at all times to all minors who are 14 years of age or older admitted under this subsection. The staff of the facility shall assist such minors in preparing or submitting requests for discharge.

(3) NOTICE OF RIGHTS. (a) Prior to admission if possible, or as soon thereafter as possible, the minor and the parent or guardian shall be informed by the director of the facility or his or her designee, both orally and in writing, in easily understandable language, of the review procedure in sub. (4), including the standards to be applied by the court and the possible dispositions, the right to a hearing upon request under sub. (4), and the minor's right to appointed

counsel as provided in sub. (4) (d) if a hearing is held.

(b) A minor 14 years of age or older and his or her parent or guardian shall also be informed by the director or his or her designee, both orally and in writing, in easily understandable language, of the minor's right to request discharge and to be discharged within 48 hours of the request if no petition or statement is filed for emergency detention, emergency commitment, involuntary commitment or protective placement, and the minor's right to consent to or refuse treatment as provided in s. 51.61 (6).

(c) A minor under 14 years of age and his or her parent or guardian shall also be informed by the director or his or her designee, both orally and in writing, in easily understandable language, of the minor's right to a hearing to determine continued appropriateness of the admission as provided in sub. (7).

(d) A copy of the patient's rights established in s. 51.61 shall be given and explained to the minor and the minor's parent or guardian at the time of admission by the director of the facility or such person's designee.

(e) Writing materials for use in requesting a hearing or discharge under this section shall be made available to minors at all times by every inpatient treatment facility. The staff of each such facility shall assist minors in preparing and submitting requests for discharge or hearing.

(4) REVIEW PROCEDURE. (a) Within 3 days of the admission of a minor under sub. (1), or within 3 days of application for such admission, whichever occurs first, the treatment director of the facility to which the minor is admitted or, in the case of a center for the developmentally disabled, the director of the center, shall file a verified petition for review of the admission in the court assigned to exercise jurisdiction under ch. 48 in the county in which the facility is located. The petition shall contain: 1) the name, address and date of birth of the minor; 2) the names and addresses of the parents or guardian; 3) the facts substantiating the petitioner's belief in the minor's need for psychiatric services, or services for developmental disability, alcoholism or drug abuse; 4) the facts substantiating the appropriateness of inpatient treatment in the inpatient treatment facility; 5) the basis for petitioner's opinion that inpatient care in the facility is the least restrictive treatment consistent with the needs of the minor; and 6) notation of any statement made or conduct demonstrated by the minor in the presence of the director or staff of the facility indicating that inpatient treatment is against the wishes of the minor. A copy of the application for admission and of any relevant professional evaluations shall be attached to the petition.

(b) If hardship would otherwise occur and if the best interests of the minor would be served thereby, the court may, on its own motion or on the motion of any interested party, remove the petition to the court assigned to exercise jurisdiction under ch. 48 of the county of residence of the parent or guardian.

(c) A copy of the petition shall be provided by the petitioner to the minor and his or her parents or guardian within 5 days of admission.

(d) Within 5 days of the filing of the petition, the court assigned to exercise jurisdiction under ch. 48 shall determine, based on the allegations of the petition and accompanying documents, whether the admission is voluntary on the part of the minor if the minor is 14 years of age or older and whether there is a prima facie showing that the minor is in need of psychiatric services, or services for developmental disability, alcoholism or drug abuse, that the treatment facility offers inpatient therapy or treatment which is appropriate to the minor's needs, and that inpatient care in the treatment facility is the least restrictive therapy or treatment consistent with the needs of the minor. If such a showing is made, the court shall permit voluntary admission. If the court is unable to make such determinations based on the petition and accompanying documents, it shall dismiss the petition as provided in par. (h); or order additional information to be produced as it deems necessary to make such review, and make such determinations within 14 days of admission or application for admission, whichever is sooner; or it may hold a hearing within 14 days of admission or application for admission, whichever is sooner. If a notation of the minor's unwillingness appears on the face of the petition, or if a hearing has been requested by the minor, the minor's counsel, parent or guardian, the court shall hold a hearing to review the admission within 14 days of admission or application for admission, whichever is sooner, and shall appoint counsel to represent the minor if the minor is unrepresented. If the court deems it necessary, it shall also appoint a guardian ad litem to represent the minor.

(e) Notice of the hearing under this subsection shall be provided by the court by certified mail to the minor, the minor's parents or guardian, the minor's counsel and guardian ad litem if any, the petitioner and any other interested party at least 96 hours prior to the time of hearing.

(f) The rules of evidence in civil actions shall apply to any hearing under this section. A record shall be maintained of the entire proceedings. The record shall include findings of fact and conclusions of law. Findings shall be

based on a clear and convincing standard of proof.

(g) If the court finds that the minor is in need of psychiatric services, or services for developmental disability, alcoholism or drug abuse in an inpatient facility, that the inpatient facility to which the minor is admitted offers therapy or treatment which is appropriate for the minor's needs and which is the least restrictive therapy or treatment consistent with the minor's needs and, in the case of a minor aged 14 or older, the application is voluntary on the part of the minor, it shall permit voluntary admission. If the court finds that the therapy or treatment in the inpatient facility to which the minor is admitted is not appropriate or is not the least restrictive therapy or treatment consistent with the minor's needs, the court may order placement in or transfer to another more appropriate or less restrictive inpatient facility subject to approval of the minor if he or she is aged 14 or older, the treatment director of the facility or his or her designee, and the director of the appropriate board established under s. 51.42 or 51.437 if the board is to be responsible for the cost of the minor's therapy or treatment.

(h) If the court does not permit voluntary admission under par. (g), it shall do one of the following:

1. Dismiss the petition and order the application for admission denied and the minor released.

2. Order the petition to be treated as a petition for involuntary commitment and refer it to the court where the review under this section was held, or if it was not held in the county of legal residence of the subject individual's parent or guardian and hardship would otherwise occur and if the best interests of the subject individual would be served thereby, to the court assigned to exercise jurisdiction under ch. 48 in such county for a hearing under s. 51.20 or 51.45 (13).

3. If the minor is 14 years of age or older and appears to be developmentally disabled, proceed in the manner provided in s. 51.67 to determine whether the minor should receive protective placement, except that a minor shall not have a temporary guardian appointed if he or she has a parent or guardian.

4. If there is a reason to believe the minor is in need of protection or services under s. 48.13, dismiss the petition and authorize the filing of a petition under s. 48.25 (3). The court may release the minor or may order that the minor be taken and held in custody under s. 48.19 (1) (c).

(i) Approval of an admission under this subsection does not constitute a finding of mental illness, developmental disability, alcoholism or drug dependency.

(5) APPEAL. Any person who is aggrieved by a determination or order under this section and who is directly affected thereby may appeal to the court of appeals under s. 809.40.

(6) SHORT-TERM ADMISSIONS. (a) A minor may be admitted to an inpatient treatment facility without review of the application under sub. (4) for diagnosis and evaluation or for dental, medical or psychiatric services for a period not to exceed 12 days. The application for short-term admission of a minor shall be executed by the minor's parent or guardian, and by the minor if he or she is 14 years of age or older. A minor may not be readmitted to an inpatient treatment facility for psychiatric services under this paragraph within 120 days of a previous admission under this paragraph.

(b) The application shall be reviewed by the treatment director of the facility or, in the case of a center for the developmentally disabled, by the director, and shall be accepted only if the director determines that the admission constitutes the least restrictive means of obtaining adequate diagnosis and evaluation of the minor or adequate provision of medical, dental or psychiatric services.

(c) At the end of the 12-day period, the minor shall be released unless an application has been filed for voluntary admission under sub. (1) or a petition or statement has been filed for emergency detention, emergency commitment, involuntary commitment or protective placement.

(7) DISCHARGE. (a) If a minor is admitted to an inpatient treatment facility while under 14 years of age, and if upon reaching age 14 is in need of further inpatient care and treatment, the director of the facility shall request the minor and the minor's parent or guardian to execute an application for voluntary admission. Such an application may be executed within 30 days prior to a minor's 14th birthday. If the application is executed, a petition for review shall be filed in the manner prescribed in sub. (4), unless such a review has been held within the last 120 days. If the application is not executed by the time of the minor's 14th birthday, the minor shall be discharged unless a petition or statement is filed for emergency detention, emergency commitment, involuntary commitment or protective placement by the end of the next day in which the court transacts business.

(b) Any minor 14 years of age or over voluntarily admitted under this section may request discharge in writing. Upon receipt of any form of written request for discharge, the director of

the facility in which the minor is admitted shall immediately notify the minor's parent or guardian. The minor shall be discharged within 48 hours after submission of the request, exclusive of Saturdays, Sundays and legal holidays, unless a petition or statement is filed for emergency detention, emergency commitment, involuntary commitment or protective placement.

(c) Any minor under 14 years of age who is voluntarily admitted under this section may submit a written request to the court for a hearing to determine the continued appropriateness of the admission. If the director or staff of the inpatient treatment facility to which a minor under the age of 14 is admitted observes conduct by the minor which demonstrates an unwillingness to remain at the facility, including but not limited to a written expression of opinion or unauthorized absence, the director shall file a written request with the court to determine the continued appropriateness of the admission. A request which is made personally by a minor under this paragraph shall be signed by the minor but need not be written or composed by him or her. A request for a hearing under this paragraph which is received by staff or the director of the facility in which the child is admitted shall be filed with the court by the director. The court shall order a hearing upon request if no hearing concerning the minor's admission has been held within 120 days of receipt of the request. The court shall appoint counsel and, if the court deems it necessary, a guardian ad litem to represent the minor and if a hearing is held shall hold the hearing within 14 days of the request, unless the parties agree to a longer period. After the hearing, the court shall make disposition of the matter in the manner provided in sub. (4).

History: 1977 c. 428; 1979 c. 32 s. 91; 1979 c. 300, 331; 1981 c. 74.

Due process rights of minor child whose parents or guardians seek admission of child discussed. Parham v. J. R., 442 US 584 (1979). See also Secy. of Publ. Welf. v. Institutionalized Juveniles, 442 US 640 (1979).

51.15 Emergency detention. (1) BASIS FOR DETENTION. (a) A law enforcement officer or other person authorized to take a child into custody under ch. 48 may take an individual into custody if the officer or person has cause to believe that such individual is mentally ill, drug dependent or developmentally disabled, and that the individual evidences:

1. A substantial probability of physical harm to himself or herself as manifested by evidence of recent threats of or attempts at suicide or serious bodily harm;

2. A substantial probability of physical harm to other persons as manifested by evidence of recent homicidal or other violent behavior on his or her part, or by evidence that others are placed in reasonable fear of violent behavior and serious physical harm to them, as evidenced by a recent overt act, attempt or threat to do serious physical harm on his or her part;

3. A substantial probability of physical impairment or injury to himself or herself due to impaired judgment, as manifested by evidence of a recent act or omission. The probability of physical impairment or injury is not substantial under this subdivision if reasonable provision for the individual's protection is available in the community or, in the case of a minor, if the individual is appropriate for services or placement under s. 48.13 (4) or (11);

4. Behavior manifested by a recent act or omission that, due to mental illness or drug dependency, he or she is unable to satisfy basic needs for nourishment, medical care, shelter or safety without prompt and adequate treatment so that a substantial probability exists that death, serious physical injury, serious physical debilitation or serious physical disease will imminently ensue unless the individual receives prompt and adequate treatment for this mental illness or drug dependency. No substantial probability of harm under this subdivision exists if reasonable provision for the individual's treatment and protection is available in the community, if the individual can receive protective placement under s. 55.06 or, in the case of a minor, if the individual is appropriate for services or placement under s. 48.13 (4) or (11). The individual's status as a minor does not automatically establish a substantial probability of death, serious physical injury, serious physical debilitation or serious disease under this subdivision.

(b) The officer's or person's belief shall be based on a specific recent overt act, attempt or threat to act or omission made by the individual and observed by or reliably reported to the officer or person.

(2) FACILITIES FOR DETENTION. The law enforcement officer shall transport the individual, or cause him or her to be transported for detention and for treatment if permitted under sub. (6) to any of the following facilities:

(a) A hospital which is approved by the department as a detention facility or under contract with a board established under s. 51.42 or 51.437, or an approved public treatment facility;

(b) A center for the developmentally disabled;

(c) A state treatment facility; or

(d) An approved private treatment facility, if the facility agrees to detain the individual.

(3) CUSTODY. Upon arrival at the facility, the individual is deemed to be in the custody of the facility.

(4) DETENTION PROCEDURE; MILWAUKEE COUNTY. (a) In counties having a population of 500,000 or more, the law enforcement officer shall sign a statement of emergency detention which shall provide detailed specific information concerning the recent overt act, attempt or threat to act or omission on which the belief under sub. (1) is based and the names of the persons observing or reporting the recent overt act, attempt or threat to act or omission. The law enforcement officer is not required to designate in the statement whether the subject individual is mentally ill, developmentally disabled or drug dependent, but shall allege that he or she has cause to believe that the individual evidences one or more of these conditions. The law enforcement officer shall deliver, or cause to be delivered, the statement to the detention facility upon the delivery of the individual to it.

(b) Upon delivery of the individual, the treatment director of the facility, or his or her designee, shall determine within 24 hours whether the individual shall be detained, or shall be detained and treated, if treatment is permitted under sub. (8), and shall either release the individual or detain him or her for a period not to exceed 72 hours after delivery of the individual, exclusive of Saturdays, Sundays and legal holidays. If the treatment director, or his or her designee, determines that the individual is not eligible for commitment under s. 51.20 (1) (a), the treatment director shall release the individual immediately, unless otherwise authorized by law. If the individual is detained, the treatment director or his or her designee may supplement in writing the statement filed by the law enforcement officer, and shall designate whether the subject individual is believed to be mentally ill, developmentally disabled or drug dependent, if no designation was made by the law enforcement officer. The director or designee may also include other specific information concerning his or her belief that the individual meets the standard for commitment. The treatment director or designee shall then promptly file the original statement together with any supplemental statement and notification of detention with the court having probate jurisdiction in the county in which the individual was taken into custody. The filing of the statement and notification has the same effect as a petition for commitment under s. 51.20.

(5) DETENTION PROCEDURE; OTHER COUNTIES. In counties having a population of less than 500,000, the law enforcement officer shall sign a statement of emergency detention which shall provide detailed specific information concerning the recent act or omission on which the belief under sub. (1) is based and the names of persons observing or reporting the recent overt act, attempt or threat to act or omission. The law enforcement officer is not required to designate in the statement whether the subject individual is mentally ill, developmentally disabled or drug dependent, but shall allege that he or she has cause to believe that the individual evidences one or more of these conditions. The statement of emergency detention shall be filed by the officer with the detention facility at the time of admission, and with the court immediately thereafter. The filing of the statement has the same effect as a petition for commitment under s. 51.20. When upon the advice of the treatment staff, the director of a facility specified in sub. (2) determines that the grounds for detention no longer exist, he or she shall discharge the individual detained under this section. Unless a hearing is held under s. 51.20 (7) or 55.06 (11) (b), the subject individual may not be detained by the law enforcement officer and the facility for more than a total of 72 hours, exclusive of Saturdays, Sundays and holidays.

(6) RELEASE. If the individual is released, the treatment director or his or her designee, upon the individual's request, shall arrange for the individual's transportation to the locality where he or she was taken into custody.

(7) INTERCOUNTY AGREEMENTS. Counties may enter into contracts whereby one county agrees to conduct commitment hearings for individuals who are detained in that county but who are taken into custody under this section in another county. Such contracts shall include provisions for reimbursement to the county of detention for all reasonable direct and auxiliary costs of commitment proceedings conducted under this section and s. 51.20 by the county of detention concerning individuals taken into custody in the other county and shall include provisions to cover the cost of any voluntary or involuntary services provided under this chapter to the subject individual as a result of proceedings or conditional suspension of proceedings resulting from the notification of detention. Where there is such a contract binding the county where the individual is taken into custody and the county where the individual is detained, the statements of detention specified in subs. (4) and (5) and the notification specified in sub. (4) shall be filed with the court having probate jurisdiction in the county of detention, unless the subject individual requests that the proceedings be held in the county in which the individual is taken into custody.

(8) TREATMENT. When an individual is detained under this section, the director and staff of the treatment facility may treat the individual during detention, if the individual consents. The individual has a right to refuse medication and treatment as provided in s. 51.61 (1) (g) and (h). The individual shall be advised of that right by the director of the facility or his or her designee, and a report of all treatment provided shall be filed by that person with the court.

(9) NOTICE OF RIGHTS. At the time of detention the individual shall be informed by the director of the facility or such person's designee, both orally and in writing, of his or her right to contact an attorney and a member of his or her immediate family, the right to have an attorney provided at public expense, as provided under s. 967.06 and ch. 977, if the individual is indigent, the right to remain silent and that the individual's statements may be used as a basis for commitment. The individual shall also be provided with a copy of the statement of emergency detention.

(10) VOLUNTARY PATIENTS. If an individual has been admitted to an approved treatment facility under s. 51.10 or 51.13, or has been otherwise admitted to such facility, the treatment director or his or her designee, if conditions exist for taking the individual into custody under sub. (1), may sign a statement of emergency detention and may detain, or detain and treat, such individual as provided in this section. In such case, the treatment director shall undertake all responsibilities which are required of a law enforcement officer under this section. The treatment director shall promptly file the statement with the court having probate jurisdiction in the county of detention as provided in this section.

(11) LIABILITY. Any individual acting in accordance with this section is not liable for any actions taken in good faith.

(12) PENALTY. Whoever signs a statement under sub. (4), (5) or (10) knowing the information contained therein to be false may be fined not more than $5,000 or imprisoned not more than 5 years, or both.

History: 1975 c. 430; 1977 c. 29, 428; 1979 c. 175, 300, 336, 355.

51.20 Involuntary commitment for treatment. (1) PETITION FOR EXAMINATION. (a) Except as provided in pars. (ab), (am) and (ar), every written petition for examination shall allege that the subject individual to be examined:

1. Is mentally ill, drug dependent, or developmentally disabled and is a proper subject for treatment; and

2. Is dangerous because the individual:

a. Evidences a substantial probability of physical harm to himself or herself as manifested by evidence of recent threats of or attempts at suicide or serious bodily harm;

b. Evidences a substantial probability of physical harm to other individuals as manifested by evidence of recent homicidal or other violent behavior, or by evidence that others are placed in reasonable fear of violent behavior and serious physical harm to them, as evidenced by a recent overt act, attempt or threat to do serious physical harm;

c. Evidences such impaired judgment, manifested by evidence of a pattern of recent acts or omissions, that there is a substantial probability of physical impairment or injury to himself or herself. The probability of physical impairment or injury is not substantial under this subparagraph if reasonable provision for the subject individual's protection is available in the community, if the individual is appropriate for placement under s. 55.06 or, in the case of a minor, if the individual is appropriate for services or placement under s. 48.13 (4) or (11). The subject individual's status as a minor does not automatically establish a substantial probability of physical impairment or injury under this subparagraph; or

d. Evidences behavior manifested by recent acts or omissions that, due to mental illness, he or she is unable to satisfy basic needs for nourishment, medical care, shelter or safety without prompt and adequate treatment so that a substantial probability exists that death, serious physical injury, serious physical debilitation or serious physical disease will imminently ensue unless the individual receives prompt and adequate treatment for this mental illness. No substantial probability of harm under this subparagraph exists if reasonable provision for the individual's treatment and protection is available in the community, if the individual can receive protective placement under s. 55.06 or, in the case of a minor, if the individual is appropriate for services or placement under s. 48.13 (4) or (11). The individual's status as a minor does not automatically establish a substantial probability of death, serious physical injury, serious physical debilitation or serious disease under this subparagraph.

(ab) If the individual is an inmate of a prison, jail or other criminal detention facility, the fact that the individual receives food, shelter and other care in that facility may not limit the applicability of par. (a) to the individual. The food, shelter and other care does not constitute reasonable provision for the individual's protection available in the community.

(am) If the individual has been the subject of inpatient treatment for mental illness, develop-

mental disability or drug dependency as a result of a voluntary admission or a commitment or placement ordered by a court under this section or s. 55.06 or 971.17 or ch. 975 immediately prior to commencement of the proceedings, the requirements of a recent overt act, attempt or threat to act under par. (a) 2. a or b, a pattern of recent acts or omissions under par. (a) 2. c or recent behavior under par. (a) 2. d may be satisfied by a showing that there is a substantial likelihood, based on the subject individual's treatment record, that the individual would be a proper subject for commitment if treatment were withdrawn. If the individual has been admitted voluntarily to an inpatient treatment facility for not more than 30 days prior to the commencement of the proceedings and remains under voluntary admission at the time of commencement, the requirements of a specific recent overt act, attempt or threat to act or pattern of recent acts or omissions may be satisfied by a showing of an act, attempt or threat to act or a pattern of acts or omissions which took place immediately previous to the voluntary admission. If the individual is committed under s. 971.14 (2) or (5) at the time proceedings are commenced, or has been discharged from the commitment immediately prior to the commencement of proceedings, acts, attempts, threats, omissions or behavior of the subject individual during or subsequent to the time of the offense shall be deemed recent for purposes of par. (a) 2.

(ar) 1. If the individual is an inmate of a state prison, the petition may allege that the inmate is mentally ill, is a proper subject for treatment and is in need of treatment. The petition shall allege that appropriate less restrictive forms of treatment have been attempted with the individual and have been unsuccessful and it shall include a description of the less restrictive forms of treatment that were attempted. The petition shall also allege that the individual has been fully informed about his or her treatment needs, the mental health services available to him or her and his or her rights under this chapter and that the individual has had an opportunity to discuss his or her needs, the services available to him or her and his or her rights with a licensed physician or a licensed psychologist. The petition shall include the inmate's sentence and his or her expected date of release as determined under s. 53.11 (7) (a). The petition shall have attached to it a signed statement by a licensed physician or a licensed psychologist of a state prison and a signed statement by a licensed physician or a licensed psychologist of a state treatment facility attesting either of the following:

a. That the inmate needs inpatient treatment at a state treatment facility because appropriate treatment is not available in the prison.

b. That the inmate's treatment needs can be met on an outpatient basis in the prison.

2. This paragraph does not apply to petitions filed under this section on or after July 1, 1987, or the effective date of the 1987-89 biennial budget act, whichever is later.

(b) Each petition for examination shall be signed by 3 adult persons, at least one of whom has personal knowledge of the conduct of the subject individual.

(c) The petition shall contain the names and mailing addresses of the petitioners and their relation to the subject individual, and shall also contain the names and mailing addresses of the individual's spouse, adult children, parents or guardian, custodian, brothers, sisters, person in the place of a parent and person with whom the individual resides or lives. If this information is unknown to the petitioners or inapplicable, the petition shall so state. The petition may be filed in the court assigned to exercise probate jurisdiction for the county where the subject individual is present or the county of the individual's legal residence. If the judge of the court or a court commissioner who handles probate matters is not available, the petition may be filed and the hearing under sub. (7) may be held before a judge or court commissioner of any circuit court for the county. For the purposes of this chapter, duties to be performed by a court shall be carried out by the judge of the court or a court commissioner of the court who is an attorney and is designated by the judge to so act, in all matters prior to a final hearing under this section. The petition shall contain a clear and concise statement of the facts which constitute probable cause to believe the allegations of the petition. The petition shall be sworn to be true. If a petitioner is not a petitioner having personal knowledge as provided in par. (b), the petition shall contain a statement providing the basis for his or her belief.

(1m) ALTERNATE GROUNDS FOR COMMITMENT. For purposes of subs. (2) to (9), the requirement of finding probable cause to believe the allegations in sub. (1) (a) or (am) may be satisfied by finding probable cause to believe that the individual satisfies sub. (1) (a) 1 and evidences such impaired judgment, manifested by evidence of a recent act or omission, that there is a substantial probability of physical impairment or injury to himself or herself. The probability of physical impairment or injury may not be deemed substantial under this subsection if reasonable provision for the individual's protection is available in the community or if the individual is appropriate for placement under s. 55.06. The

individual's status as a minor does not automatically establish a substantial probability of physical impairment or injury under this subsection.

(2) NOTICE OF HEARING AND DETENTION. Upon filing of a petition for examination, the court shall review the petition to determine whether an order of detention should be issued. The subject individual shall be detained only if there is cause to believe that the individual is mentally ill, drug dependent or developmentally disabled and the individual is eligible for commitment under sub. (1) (a) or (am) based upon specific recent overt acts, attempts or threats to act or on a pattern of recent acts or omissions made by the individual. If the subject individual is to be detained, a law enforcement officer shall present the subject individual with a notice of hearing, a copy of the petition and detention order and a written statement of the individual's right to an attorney, a jury trial if requested more than 48 hours prior to the final hearing, the standard upon which he or she may be committed under this section and the right to a hearing to determine probable cause for commitment within 72 hours after the individual arrives at the facility, excluding Saturdays, Sundays and legal holidays. The officer shall orally inform the individual that he or she is being taken into custody as the result of a petition and detention order issued under this chapter. If the individual is not to be detained, the law enforcement officer shall serve these documents on the subject individual and shall also orally inform the individual of these rights. The individual who is the subject of the petition, his or her counsel and if the individual is a minor, his or her parent or guardian, if known, shall receive notice of all proceedings under this section. The court may also designate other persons to receive notices of hearings and rights under this chapter. The notice of time and place of a hearing shall be served personally on the subject of the petition, and his or her attorney, within a reasonable time prior to the hearing to determine probable cause for commitment. If the law enforcement officer has a detention order issued by a court, or if the law enforcement officer has cause to believe that the subject individual is mentally ill, drug dependent or developmentally disabled and is eligible for commitment under sub. (1) (a) or (am), based upon specific recent overt acts, attempts or threats to act or on a pattern of omissions made by the individual, the law enforcement officer shall take the subject individual into custody. If the individual is detained by a law enforcement officer, the individual shall be orally informed of his or her rights under this section on arrival at the detention facility by the facility staff, who shall also serve all documents required by this section on the individual. Placement shall be made in a hospital which is approved by the department as a detention facility or under contract with a board established under s. 51.42 or 51.437, approved public treatment facility, mental health institute, center for the developmentally disabled, state treatment facility, or in an approved private treatment facility if the facility agrees to detain the subject individual. Upon arrival at the facility, the individual is deemed to be in the custody of the facility.

(3) LEGAL COUNSEL. At the time of the filing of the petition the court shall assure that the subject individual is represented by adversary counsel. If the individual claims or appears to be indigent, the court shall refer the person to the authority for indigency determinations specified under s. 977.07 (1).

(4) PUBLIC REPRESENTATION. Except as provided in ss. 51.42 (5) (h) 7 and 51.437 (9) (c), the district attorney or, if designated by the county board of supervisors, the corporation counsel or other counsel shall represent the interests of the public in the conduct of all proceedings under this chapter, including the drafting of all necessary papers related to the action.

(5) HEARING REQUIREMENTS. The hearings which are required to be held under this chapter shall conform to the essentials of due process and fair treatment including the right to an open hearing, the right to request a closed hearing, the right to counsel, the right to present and cross-examine witnesses, the right to remain silent and the right to a jury trial if requested under sub. (11). The parent or guardian of a minor who is the subject of a hearing shall have the right to participate in the hearing and to be represented by counsel. All proceedings under this chapter shall be reported as provided in SCR 71.01. The court may determine to hold a hearing under this section at the institution at which the individual is detained, whether or not located in the same county as the court with which the petition was filed, unless the individual or his or her attorney objects.

(6) JUVENILES. For minors, the hearings held under this section shall be before the court assigned to exercise jurisdiction under ch. 48.

(7) PROBABLE-CAUSE HEARING. (a) After the filing of the petition under sub. (1), if the subject individual is detained under s. 51.15 or this section the court shall hold a hearing to determine whether there is probable cause to believe the allegations made under sub. (1) (a) within 72 hours after the individual arrives at the facility, excluding Saturdays, Sundays and legal holidays. At the request of the subject individual or his or her counsel the hearing may be post-

poned, but in no case may the postponement exceed 7 days from the date of detention.

(b) If the subject individual is not detained or is an inmate of a state prison, the court shall hold a hearing within a reasonable time of the filing of the petition, to determine whether there is probable cause to believe the allegations made under sub. (1).

(c) If the court determines that there is probable cause to believe such allegations, it shall schedule the matter for a hearing within 14 days from the time of detention of the subject individual, except as provided in sub. (11) (a). If a postponement has been granted under par. (a), the matter shall be scheduled for hearing within 21 days from the time of detention of the subject individual. If the subject individual is not detained under s. 51.15 or this section or is an inmate of a state prison, the hearing shall be scheduled within 30 days of the hearing to determine probable cause for commitment. In the event that the subject individual fails to appear for the hearing to determine probable cause for commitment, the court may issue an order for the subject individual's detention and shall hold the hearing to determine probable cause for commitment within 48 hours, exclusive of Saturdays, Sundays and legal holidays, from the time that the individual is detained.

(d) If the court determines after hearing that there is probable cause to believe that the subject individual is a fit subject for guardianship and protective placement or services, the court may appoint a temporary guardian and order emergency protective placement or services under ch. 55, and shall proceed as if petition had been made for guardianship and protective placement or services.

(e) If the court determines that probable cause does not exist to believe the allegations, or to proceed under par. (d), the court shall dismiss the proceeding.

(8) DISPOSITION PENDING HEARING. (a) If it is shown that there is probable cause to believe the allegations under sub. (1), the court may release the subject individual pending the full hearing and the individual has the right to receive treatment services, on a voluntary basis, from the community board established under s. 51.42 or 51.437, or from the department. The court may issue an order stating the conditions under which the subject individual may be released from detention pending the final hearing. If acceptance of treatment is made a condition of such release, the subject individual may elect to accept the conditions or choose detention pending the hearing. The court order may state the action to be taken upon information of breach of such conditions. A final hearing must be held within 30 days of such order, if the subject individual is released. Any detention under this paragraph invokes time limitations specified in sub. (7) (c), beginning with the time of such detention.

(b) If the court finds the services provided under par. (a) are not available, suitable, or desirable based on the condition of the individual, it may issue a detention order and the subject individual may be detained pending the hearing as provided in sub. (7) (c). Detention may be in a hospital which is approved by the department as a detention facility or under contract with a board established under s. 51.42 or 51.437, approved public treatment facility, mental health institute, center for the developmentally disabled, state treatment facility, or in an approved private treatment facility if the facility agrees to detain the subject individual.

(c) During detention a physician may order the administration of such medications and therapies as are permitted under s. 51.61 (1) (g) and (h). The subject individual may consent to treatment but only after he or she has been informed of his or her right to refuse treatment and has signed a written consent to such treatment. A report of all treatment which is provided, along with any written consent, shall be filed with the court by the director of the treatment facility in which the subject individual is detained, or his or her designee.

(9) EXAMINATION. (a) If the court finds after the hearing that there is probable cause to believe the allegations under sub. (1), it shall appoint 2 licensed physicians specializing in psychiatry, or one licensed physician and one licensed psychologist, or 2 licensed physicians one of whom shall have specialized training in psychiatry, if available, or 2 physicians, to personally examine the subject individual. Such examiners shall have the specialized knowledge determined by the court to be appropriate to the needs of the subject individual. One of the examiners may be selected by the subject individual if such person makes his or her selection known to the court within 24 hours after completion of the hearing to determine probable cause for commitment. The court may deny the subject individual's selection if the examiner does not meet the requirements of this paragraph or such person is not available. If requested by the subject individual, the individual's attorney or any other interested party with court permission, the individual has a right at his or her own expense or if indigent with approval of the court hearing the petition, at the reasonable expense of the individual's county of legal residence, to secure an additional medical or psychological examination, and to offer the evaluator's personal testimony, as evidence at the hearing. The examiners may not be related

to the subject individual by blood or marriage, and may have no interest in his or her property. Prior to the examination the subject individual shall be informed that his or her statements can be used as a basis for commitment and that he or she has the right to remain silent, and that the examiner is required to make a report to the court even if the subject individual remains silent. A written report shall be made of all such examinations and filed with the court. The issuance of such a warning to the subject individual prior to each examination establishes a presumption that the individual understands that he or she need not speak to the examiner. The examiners shall personally observe and examine the subject individual at any suitable place and satisfy themselves, if reasonably possible, as to the individual's mental condition, and shall make independent reports to the court. The subject individual's treatment records shall be available to the examiners. If the subject individual is not detained pending the hearing, the court shall designate the time and place where the examination is to be held and shall require the individual's appearance. The report and testimony, if any, by the examiners shall be based on beliefs to a reasonable degree of medical certainty, or professional certainty if an examiner is a psychologist, in regard to the existence of the conditions described in sub. (1), and the appropriateness of various treatment modalities or facilities. If the examiners are unable to make conclusions to a reasonable degree of medical or professional certainty, the examiners shall so state in their report and testimony, if any.

(b) If the examiner determines that the subject individual is a proper subject for treatment, the examiner shall make a recommendation concerning the appropriate level of treatment. Such recommendation shall include the level of inpatient facility which provides the least restrictive environment consistent with the needs of the individual, if any, and the name of the facility where the subject individual should be received into the mental health system. The court may, prior to disposition, order additional information concerning such recommended level of treatment to be provided by the staff of the appropriate community board under s. 51.42 or 51.437, or by the staff of a public treatment facility if the subject individual is detained there pending the final hearing.

(c) On motion of either party, all parties shall produce at a reasonable time and place designated by the court all physical evidence which each party intends to introduce in evidence. Thereupon, any party shall be permitted to inspect, copy, or transcribe such physical evidence in the presence of a person designated by the court. The order shall specify the time, place and manner of making the inspection, copies, photographs, or transcriptions, and may prescribe such terms and conditions as are just. The court may, if the motion is made by the subject individual, delay the hearing for such period as may be necessary for completion of discovery.

(10) HEARING. (a) Within a reasonable time prior to the final hearing, the petitioner's counsel shall notify the subject individual and his or her attorney of persons who may testify in favor of his or her commitment, and of the time and place of final hearing. The court may designate additional persons to receive notice of the time and place of the final hearing.

(b) Counsel for the person to be committed shall have access to all psychiatric and other reports 48 hours in advance of the final hearing.

(c) The court shall hold a final hearing to determine if the allegations specified in sub. (1) are true. Except as otherwise provided in this chapter, the rules of evidence in civil actions and s. 801.01 (2) apply to any judicial proceeding or hearing under this chapter. The court shall, in every stage of an action, disregard any error or defect in the pleadings or proceedings that does not affect the substantial rights of either party.

(d) In the event that the subject individual is not detained and fails to appear for the final hearing the court may issue an order for the subject individual's detention and shall hold the final commitment hearing within 7 days from the time of detention.

(11) JURY TRIAL. (a) If before involuntary commitment a jury is demanded by the individual against whom a petition has been filed under sub. (1) or by the individual's counsel if the individual does not object, the court shall direct that a jury of 6 people be drawn to determine if the allegations specified in sub. (1) (a) are true. A jury trial is deemed waived unless demanded at least 48 hours in advance of the time set for final hearing, if notice of that time has been previously provided to the subject individual or his or her counsel. If a jury trial demand is filed within 5 days of detention, the final hearing shall be held within 14 days of detention. If a jury trial demand is filed later than 5 days after detention, the final hearing shall be held within 14 days of the date of demand. If an inmate of a state prison demands a jury trial within 5 days after the probable cause hearing, the final hearing shall be held within 28 days of the probable cause hearing. If an inmate of a state prison demands a jury trial later than 5 days after the probable cause hearing, the final hearing shall be held within 28 days of the date of demand.

(b) No verdict shall be valid or received unless agreed to by at least 5 of the jurors.

(c) Motions after verdict may be made without further notice upon receipt of the verdict.

(12) OPEN HEARINGS; EXCEPTION. Every hearing which is held under this section shall be open, unless the subject individual or the individual's attorney, acting with the individual's consent, moves that it be closed. If the hearing is closed, only persons in interest, including representatives of providers of service and their attorneys and witnesses may be present. If the subject individual is a minor, every hearing shall be closed unless an open hearing is demanded by the minor through his or her counsel.

(13) DISPOSITION. (a) At the conclusion of the proceedings the court shall:

1. Dismiss the petition; or

2. If the subject individual is an adult, or is a minor aged 14 years or more who is developmentally disabled, proceed under s. 51.67 to determine whether the subject individual should receive protective placement; or

3. If the allegations specified in sub. (1) (a) are proven, order commitment to the care and custody of the appropriate board under s. 51.42 or 51.437, or if inpatient care is not required order commitment to outpatient treatment under care of such board; or

4. If the individual is an inmate of a state prison and the allegations under sub. (1) (a) or (ar) are proven, order commitment to the department and either authorize the transfer of the inmate to a state treatment facility or if inpatient care is not needed authorize treatment on an outpatient basis in the prison; or

5. If the allegations specified in sub. (1) (a) are proven and the subject individual is a nonresident, order commitment to the department.

(b) If the petition has been dismissed under par. (a), the subject individual may agree to remain in any facility in which he or she was detained pending the hearing for the period of time necessary for alternative plans to be made for his or her care.

(c) If disposition is made under par. (a) 3:

1. The court shall designate the facility or service which is to receive the subject individual into the mental health system;

2. The community board under s. 51.42 or 51.437 shall arrange for treatment in the least restrictive manner consistent with the requirements of the subject individual in accordance with a court order designating the maximum level of inpatient facility, if any, which may be used for treatment; and

3. The community board under s. 51.42 or 51.437 shall report to the court as to the initial plan of treatment for the subject individual.

(cm) If disposition is made under par. (a) 4 and the department transfers the inmate to a state treatment facility, the department may, after evaluating the inmate and developing an appropriate treatment plan, transfer the inmate back to the prison on a conditional basis. The inmate shall be informed of the terms and conditions of the transfer as provided in s. 51.35 (1) (a). If the inmate does not cooperate with the treatment or if the inmate is in need of additional inpatient treatment, the department may return the inmate to a state treatment facility.

(d) A disposition under par. (a) 3, 4 or 5 may be modified as provided in s. 51.35.

(dm) If the court finds that the dangerousness of the subject individual is likely to be controlled with appropriate medication administered on an outpatient basis, the court may direct in its order of commitment that the board established under s. 51.42 or 51.437 or the department may, after a facility evaluates the subject individual and develops an appropriate treatment plan, release the individual on a conditional transfer in accordance with s. 51.35 (1), with one of the conditions being that the individual shall take medication as prescribed by a physician and that the individual shall report to a particular treatment facility on an outpatient basis for evaluation as often as required by the director of the facility or the director's designee. The court order may direct that, if the director or his or her designee determines that the individual has failed to take the medication as prescribed or has failed to report for evaluation as directed, the director or designee may request that the individual be taken into custody by a law enforcement agency in accordance with s. 51.39, and that medication, as prescribed by the physician, may be administered voluntarily or against the will of the individual under s. 51.61 (1) (g) and (h). A court order under this paragraph is effective only as long as the commitment is in effect in accordance with par. (h) and s. 51.35 (4).

(e) The petitioner has the burden of proving all required facts by clear and convincing evidence.

(f) The board established pursuant to s. 51.42 or 51.437 which receives an individual who is committed by a court under this section is authorized to place such individual in an approved treatment facility subject to any limitations which are specified by the court under par. (c) 2. The board shall place the subject individual in the treatment program and treatment facility which is least restrictive of the individual's personal liberty, consistent with the treatment requirements of the individual. The board shall have ongoing responsibility to review the individual's needs, in accordance with sub. (17), and transfer the person to the least restrictive program consistent with the individual's needs.

(g) 1. Except as provided in subd. 2, the first order of commitment of a subject individual under this section may be for a period not to exceed 6 months, and all subsequent consecutive orders of commitment of the individual may be for a period not to exceed one year.

2. Any commitment ordered under par. (a) 3 to 5, following proof of the allegations under sub. (1) (a) 2. d, may not continue longer than 45 days in any 365-day period.

2g. The total period a person may be committed pursuant to commitments ordered under par. (a) 4, following proof of the allegations under sub. (1) (ar), may not exceed 180 days in any 365-day period.

2m. In addition to the provisions under subds. 1, 2 and 2g, no commitment ordered under par. (a) 4 may continue beyond the inmate's date of release as determined under s. 53.11 (7) (a).

3. The board under s. 51.42 or 51.437 to whom the individual is committed may discharge the individual at any time, and shall place a committed individual in accordance with par. (f). Upon application for extension of a commitment by the department or the board having custody of the subject, the court shall proceed under subs. (10) to (13). If the court determines that the individual is a proper subject for commitment as prescribed in sub. (1) (a) 1 and evidences the conditions under sub. (1) (a) 2 or (am) or is a proper subject for commitment as prescribed in sub. (1) (ar), it shall order judgment to that effect and continue the commitment. The burden of proof is upon the board or other person seeking commitment to establish evidence that the subject individual is in need of continued commitment.

(h) Any disposition of a minor under this subsection may extend beyond the age of majority of the individual, if the disposition is otherwise made in accordance with this section.

(14) TRANSPORTATION; EXPENSES. The sheriff or any law enforcement officer shall transport an individual who is the subject of a petition and execute the commitment, or any competent relative, friend or member of the staff of a treatment facility may assume responsibility for the individual and transport him or her to the inpatient facility. The director of the board established under s. 51.42 or 51.437 may request the sheriff to provide transportation for a subject individual or may arrange any other method of transportation which is feasible. The board may provide reimbursement for the transportation costs from its budgeted operating funds.

(15) APPEAL. An appeal may be taken to the court of appeals within the time period specified in s. 808.04 (3) in accordance with s. 809.40 by the subject of the petition or the individual's guardian, by any petitioner or by the representative of the public.

(16) REEXAMINATION OF PATIENTS. (a) Except in the case of alcoholic commitments under s. 51.45 (13), any patient who is involuntarily committed for treatment under this chapter, may on the patient's own verified petition, except in the case of a minor who is under 14 years of age, or on the verified petition of the patient's guardian, relative, friend, or any person providing treatment under the order of commitment, request a reexamination or request the court to modify or cancel an order of commitment.

(b) A petition under this subsection may be filed with the court assigned to exercise jurisdiction over probate matters, either for the county from which the patient is committed or for the county in which the patient is detained.

(c) If a hearing has been held with respect to the subject individual's commitment within 30 days of the filing of a petition under this subsection, no hearing shall be held. If such a hearing has not been held within 30 days of the filing of a petition, but has been held within 120 days of the filing, the court shall within 24 hours of the filing order an examination to be completed within 7 days by the appropriate board under s. 51.42 or 51.437. A hearing may then be held in the court's discretion. If such a hearing has not been held within 120 days of the filing, a hearing shall be held on the petition within 30 days of receipt.

(d) Reexaminations under this subsection are subject to the standards prescribed in sub. (13) (g).

(e) If the court determines or is required to hold a hearing, it shall thereupon proceed in accordance with sub. (9) (a). For the purposes of the examination and observation, the court may order the patient confined in any place designated in s. 51.15 (2).

(f) If a patient is involuntarily committed and placed in a hospital, a notice of the appointment of the examining physicians and copies of their reports shall be furnished to such hospital by the court.

(g) Upon the filing of the examiners' reports the court shall fix a time and place of hearing and cause reasonable notice to be given to the petitioner, the treatment facility, the patient's legal counsel and the guardian of the patient, if any, and may notify any known relative of the patient. Subsections (10) to (13) shall govern the procedure to be used in the conduct of the hearing, insofar as applicable. The privileges provided in ss. 905.03 and 905.04 shall apply to reexamination hearings.

(h) All persons who render services in such proceedings shall receive compensation as provided in sub. (18) and all expenses of such proceedings shall be paid and adjusted as provided in sub. (18).

(i) Subsequent reexaminations may be had at any time in the discretion of the court but may be compelled after 120 days of the preceding examination in accordance with this subsection. All petitions for reexamination must be heard within 30 days of their receipt by the court.

(j) This subsection applies to petitions for reexamination which are filed under chs. 971 and 975, except that the petitions shall be filed with the committing court.

(k) Any order of a board established under s. 51.42 or 51.437 is subject to review by the court assigned to exercise probate jurisdiction upon petition under this subsection.

(l) The pendency of an appeal in either the court of appeals or the supreme court does not deprive the circuit court of jurisdiction to conduct reexamination proceedings under this section with respect to the individual who is the subject of the appeal.

(17) RIGHT TO REEVALUATION. With the exception of alcoholic commitments under s. 51.45 (13), every patient committed involuntarily to a board under this chapter shall be reevaluated by the treatment staff or visiting physician within 30 days after the commitment, and within 3 months after the initial reevaluation, and again thereafter at least once each 6 months for the purpose of determining whether such patient has made sufficient progress to be entitled to transfer to a less restrictive facility or discharge. The findings of such reevaluation shall be written and placed with the patient's treatment record, and a copy shall be sent to the board which has responsibility for the patient and to the committing court.

(18) FEES OF EXAMINERS, WITNESSES; EXPENSES OF PROCEEDINGS. (a) Unless previously fixed by the county board of supervisors in the county in which the examination is held, the examiners shall receive a fee as fixed by the court for participation in commitment proceedings, and reasonable reimbursement for travel expenses.

(b) Witnesses subpoenaed before the court shall be entitled to the same fees as witnesses subpoenaed before the court in other cases.

(c) Expenses of the proceedings from the presentation of the statement of emergency detention or petition for commitment to the conclusion of the proceeding shall be allowed by the court and paid by the county from which the subject individual is detained, committed or released, in the manner that the expenses of a criminal prosecution are paid, as provided in s. 59.77. Payment of attorney fees for appointed attorneys in the case of indigents shall be in accordance with ch. 977.

(d) If the subject individual has a legal residence in a county other than the county from which he or she is detained, committed or discharged, that county shall reimburse the county from which the individual was detained, committed or discharged for all expenses under pars. (a) to (c). The county clerk on each July 1 shall submit evidences of payments of all such proceedings on nonresident payments to the department, which shall certify such expenses for reimbursement in the form of giving credits to the detaining, committing or discharging county and assessing such costs against the county of legal residence or against the state at the time of the next apportionment of charges and credits under s. 70.60.

(19) DEPARTMENTAL DUTIES. (a) Prior to filing a petition for commitment of an inmate under sub. (1) (ar) the department shall:

1. Attempt to use less restrictive forms of treatment with the individual. Less restrictive forms of treatment shall include, but are not limited to, voluntary treatment within the prison or voluntary transfer to a state treatment facility, including an admission which meets the requirements of s. 51.10 (4m).

2. Ensure that the individual has been fully informed about his or her treatment needs, the mental health services available to him or her and his or her rights under this chapter and that the individual has had an opportunity to discuss his or her needs, the services available to him or her and his or her rights with a licensed physician or a licensed psychologist.

(b) The department shall promulgate rules:

1. Establishing standards for the use of psychotropic drugs on prisoners in a state prison and inmates committed under sub. (1) (ar).

2. Providing for the periodic review and evaluation of the appropriateness of and the need for the use of psychotropic drugs on, and the need for the continuation of treatment for, each inmate committed under sub. (1) (ar).

3. Needed to carry out its duties under par. (a).

History: 1975 c. 430; 1977 c. 26, 29; 1977 c. 187 ss. 42, 43, 134, 135; 1977 c. 428 ss. 29 to 65, 115; 1977 c. 447, 449; Sup. Ct. Order, 83 W (2d) xiii; 1979 c. 32, 89; Sup. Ct. Order, eff. 1-1-80; 1979 c. 110 s. 60 (1); 1979 c. 175 s. 53; 1979 c. 300, 336, 356; 1981 c. 20, 367; 1981 c. 390 s. 252; 1983 a. 27, 219; 1983 a. 474 ss. 2 to 9m, 14.

Judicial Council Committee's Note, 1981: The final sentence of sub. (1) (am) allows the court to consider the subject individual's conduct during or subsequent to the crime as "recent" for purposes of involuntary civil commitment under this section, if the individual is proceeded against during, or immediately upon discharge from, a commitment for examination or treatment for incompetency to proceed as a criminal defendant. The relevancy of evidence of the individual's conduct prior to the crime is to be determined by the court. The revised statute requires the subject individual's danger-

ousness to be evidenced by acts, attempts, threats, omissions or behavior referred to in sub. (1) (a) 2. Prior law allowed commitment of such an individual upon a showing that there was a substantial likelihood, based on the treatment record, that he or she would be a proper subject for commitment if treatment were withdrawn. [Bill 765-A]

Role of attorney appointed under (4) [(3)] discussed. State ex rel. Memmel v. Mundy, 75 W (2d) 276, 249 NW (2d) 573.

Due process standard for hearings under this section is more flexible than standard for criminal proceedings. In Matter of Parham, 95 W (2d) 21, 289 NW (2d) 326 (Ct. App. 1979)

See note to 971.17, citing State v. Smith, 106 W (2d) 151, 316 NW (2d) 124 (Ct. App. 1982).

Fourteen day time limit in (7) (c) is mandatory and refers to calendar days, not business days. State ex rel. Lockman v. Gerhardstein, 107 W (2d) 325, 320 NW (2d) 27 (Ct. App. 1982).

Criminal and civil commitments are not substantially the same. State v. Smith, 113 W (2d) 497, 335 NW (2d) 376 (1983)

Under (2), court can entertain proceedings for involuntary commitment of person admitted as voluntary inpatient. 68 Atty. Gen. 97.

Sub. (14) requires sheriff to transport subject of petition under 51.20 at all stages of proceedings, regardless of reimbursement. 68 Atty. Gen. 225.

Individual in custody of sheriff for transport to, from and during involuntary commitment hearing has rights to least restrictive restraint appropriate. 71 Atty. Gen. 183.

State cannot confine, without more, nondangerous persons capable of surviving safely in freedom alone or with help of family or friends. O'Connor v. Donaldson, 422 US 563.

Due process does not require states to use "beyond a reasonable doubt" standard in civil commitment proceedings. Addington v. Texas, 441 US 418 (1979)

In signing commitment application, county employe was in essence acting as witness in judicial proceeding and as such was entitled to immunity. Martens v. Tremble, 481 F Supp. 831 (1979)

See note to Art. I, sec. 6, citing Flakes v. Percy, 511 F Supp. 1325 (1981).

The privilege against self-incrimination in civil commitment proceedings. 1980 WLR 697.

51.22 Care and custody of persons. (1) Except as provided in s. 51.20 (13) (a) 4 or 5, any person committed under this chapter shall be committed to the board established under s. 51.42 or 51.437 serving the person's county of residence, and such board shall authorize placement of the person in an appropriate facility for care, custody and treatment according to s. 51.42 (9) (a) or 51.437 (12) (a).

(2) Voluntary admissions under ss. 51.10, 51.13 and 51.45 (10) shall be through the board established under s. 51.42 or 51.437 serving the person's county of residence, or through the department if the person to be admitted is a nonresident of this state. Admissions through a community board shall be made in accordance with s. 51.42 (9) (a) or 51.437 (12) (a). Admissions through the department shall be made in accordance with sub. (3).

(3) Whenever an admission is made through the department, the department shall determine the need for inpatient care of the individual to be admitted. Unless a state-operated facility is used, the department may only authorize care in an inpatient facility which is operated by or under a purchase of service contract with a board established under s. 51.42 or 51.437 or an inpatient facility which is under a contractual agreement with the department. Except in the case of state treatment facilities, the department shall reimburse the facility for the actual cost of all authorized care and services from the appropriation under s. 20.435 (4) (da). For collections made under the authority of s. 46.10 (16), moneys shall be credited or remitted to the department no later than 60 days after the month in which collections are made. Such collections are also subject to s. 46.036 or special agreement. Collections made by the department under ss. 46.03 (18) and 46.10 shall be deposited in the general fund.

(4) If a patient is placed in a facility authorized by a community board and such placement is outside the jurisdiction of such board, the placement does not transfer the patient's legal residence to the county of the facility's location while such patient is under commitment.

(5) The board to which a patient is committed shall provide the least restrictive treatment alternative appropriate to the patient's needs, and movement through all appropriate and necessary treatment components to assure continuity of care.

History: 1975 c. 430; 1977 c. 428; 1983 a. 27 s. 2202 (20); 1983 a. 474.

Standard for determining whether state has adequately protected patient's rights is whether professional judgment was in fact exercised. Youngberg v. Romeo, 457 US 307 (1982).

51.23 Uniforms for psychiatric officers. The department shall furnish and, from time to time replace, a standard uniform to be prescribed by the department including items of clothing, shoulder patches, collar insignia, caps and name plates to each psychiatric officer in the department who is required to wear such standard uniform.

History: 1975 c. 430 s. 12.

51.30 Records. (1) DEFINITIONS. In this section:

(a) "Registration records" include all the records of the department, boards established under s. 51.42 or 51.437, treatment facilities, and other persons providing services to the department, boards or facilities which identify individuals who are receiving or who at any time have received services for mental illness, developmental disabilities, alcoholism or drug dependence.

(b) "Treatment records" include the registration and all other 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 established under s. 51.42 or 51.437

and their staffs, and by treatment facilities. Such records do not include notes or records maintained for personal use by an individual providing treatment services for the department, a community board established under s. 51.42 or 51.437, or a treatment facility if such notes or records are not available to others.

(2) INFORMED CONSENT. An informed consent for disclosure of information from court or treatment records to an individual, agency, or organization must be in writing and must contain the following: the name of the individual, agency, or organization to which the disclosure is to be made; the name of the subject individual whose treatment record is being disclosed; the purpose or need for the disclosure; the specific type of information to be disclosed; the time period during which the consent is effective; the date on which the consent is signed; and the signature of the individual or person legally authorized to give consent for the individual.

(3) ACCESS TO COURT RECORDS. The files and records of the court proceedings under this chapter shall be closed but shall be accessible to any individual who is the subject of a petition filed under this chapter. An individual's attorney or guardian ad litem shall have access to such records without the individual's consent and without modification of the records in order to prepare for involuntary commitment or recommitment proceedings, reexaminations, appeals, or other actions relating to detention, admission or commitment under this chapter or ch. 971 or 975. In other situations, such records may be released to other persons only pursuant to the informed written consent of the individual or pursuant to lawful order of the court which maintains the records.

(4) ACCESS TO REGISTRATION AND TREATMENT RECORDS. (a) *Confidentiality of records.* Except as otherwise provided in this chapter and ss. 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 s. 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 established under s. 51.42 or 51.437.

(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 program director of a board established under s. 51.42 or 51.437, or a qualified staff member designated by the program director as is necessary for, and only to be used for, billing or collection purposes. Such information shall remain confidential. The department and community boards 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 program director of the board established under s. 51.42 or 51.437 which is responsible for serving a subject individual or to qualified staff members designated by the program director as is necessary to determine progress and adequacy of treatment and to determine whether the person should be transferred to a less restrictive or more appropriate treatment modality or facility. Such information shall remain confidential. The department and boards established 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.

9. To a facility which is to receive an individual who is involuntarily committed under this chapter, ch. 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 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 board established under s. 51.42 or 51.437, or in a treatment facility, as a condition of the probation 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 or parolee who receives evaluation or treatment under this chapter shall be notified of the provisions of this subdivision by the individual's probation 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 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 and parole supervision plan.

c. When an individual is transferred from a treatment facility back to a correctional facility, the information provided under subd. 9.

d. Such other information as may be necessary to implement changes in the individual's treatment plan or in the level and kind of supervision on probation or parole, as determined by the director of the facility or the treatment director. Disclosure under subd. 10. d shall be made to a probation and parole agent only. The department shall promulgate rules governing the release of records under this subdivision.

11. To the subject individual's counsel or guardian ad litem, 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. 971 or 975.

12. To a correctional officer of the department 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 or 971.17 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.

14. To the counsel for the interests of the public in order to prepare for involuntary commitment or recommitment proceedings, reexaminations, appeals or other actions relating to detention, admission or commitment under this chapter or ch. 971 or 975. Records released under this subdivision are limited to information concerning the admission, detention or commitment of an individual who is presently admitted, detained or committed.

15. To personnel employed by the county department of social services or public welfare and the board or boards established under ss. 51.42 and 51.437 in any county where such agencies have 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 agency 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 board established 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).

(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 adopted 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.

(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 program director of the board established 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.

(5) MINORS AND INCOMPETENTS. (a) *Consent for release of information.* The parent, guardian, or person in the place of a parent of a minor or the guardian of an adult adjudged incompetent under ch. 880 may consent to the release of confidential information in court or treatment records. A minor who is aged 14 or more may consent to the release of confidential information in court or treatment records without the consent of the minor's parent, guardian or person in the place of a parent. Consent under this paragraph must conform to the requirements of sub. (2).

(b) *Access to information.* 1. The guardian of an individual who is adjudged incompetent under ch. 880 shall have access to the individual's court and treatment records at all times. The parent, guardian or person in the place of a parent of a developmentally disabled minor shall have access to the minor's court and treatment records at all times except in the case of a minor aged 14 or older who files a written objection to such access with the custodian of the records. The parent, guardian or person in the place of a parent of other minors shall have the same rights of access as provided to subject individuals under this section.

2. A minor upon reaching the age of 14 shall have access to his or her own court and treatment records, as provided in this section. A minor under the age of 14 shall have access to court records but only in the presence of parent, guardian, counsel, guardian ad litem or judge and shall have access to treatment records as provided in this section but only in the presence of parent, guardian, counsel, guardian ad litem or staff member of the treatment facility.

(c) *Juvenile court records.* The court records of juveniles admitted or committed under this chapter shall be kept separately from all other juvenile court records.

(d) *Other juvenile records.* Section 48.78 does not apply to records covered by this section.

(e) *Temporary guardian for adult incompetent.* If an adult is believed to be incompetent to consent to the release of records under this section, but no guardian has been appointed for such individual, consent for the release of records may be given by a temporary guardian who is appointed for the purpose of deciding upon the release of records.

(6) PRIVILEGES. Sections 905.03 and 905.04 supersede this section with respect to communications between physicians and patients and between attorneys and clients.

(7) CRIMINAL COMMITMENTS. Except as otherwise specifically provided, this section applies to the treatment records of persons who are committed under chs. 971 and 975.

(8) GRIEVANCES. Failure to comply with any provisions of this section may be processed as a grievance under s. 51.61 (5). However, use of the grievance procedure is not required before bringing any civil action or filing a criminal complaint under this section.

(9) ACTIONS FOR VIOLATIONS; DAMAGES; INJUNCTION. (a) Any person, including the state or any political subdivision of the state, violating this section shall be liable to any person damaged as a result of the violation for such 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 by the person damaged. A custodian of records incurs no liability under this paragraph for the release of records in accordance with this section while acting in good faith.

(b) In any action brought under par. (a) in which the court determines that the violator acted in a manner that was knowing and wilful, the violator shall be liable for 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 as may be incurred. It is not a prerequisite to an action under this subsection that the plaintiff suffer or be threatened with actual damages.

(c) An individual may bring an action to enjoin any violation of this section or to compel compliance with this section, and may in the same action seek damages as provided in this subsection. The individual may recover costs and reasonable actual attorney fees as may be incurred in the action, if he or she prevails.

(10) PENALTY. Any person who requests or obtains confidential information under this section under false pretenses may be fined not more than $500 or imprisoned not more than one year in the county jail or both.

(11) DISCIPLINE OF EMPLOYES. Any employe of the department, a board established under s. 51.42 or 51.437, or public treatment facility who

violates this section or any rule adopted pursuant to this section may be subject to discharge or suspension without pay.

(12) RULE-MAKING. The department shall promulgate rules to implement this section.

History: 1975 c. 430; 1977 c. 26 s. 75; 1977 c. 61, 428; 1979 c. 110 s. 60 (1); 1983 a. 27, 292, 398, 538

See note to 48.981, citing 68 Atty. Gen. 342

51.35 Transfers and discharges. (1) TRANSFER OF PATIENTS AND RESIDENTS. (a) The department or the board established under s. 51.42 or 51.437 may transfer any patient or resident who is committed to it, or who is admitted to a facility under its supervision or operating under an agreement with it, between treatment facilities or from a facility into the community if such transfer is consistent with reasonable medical and clinical judgment and consistent with s. 51.22 (5). The transfer shall be made in accordance with par. (e). Terms and conditions which will benefit the patient or resident may be imposed as part of a transfer to a less restrictive treatment alternative. A patient or resident who is committed to the department or a board established under s. 51.42 or 51.437 may be required to take medications and receive treatment through a community support program as a term or condition of a transfer. The patient or resident shall be informed at the time of transfer of the consequences of violating such terms and conditions, including possible transfer back to a facility which imposes a greater restriction on personal freedom of the patient or resident.

(b) In addition to the requirements in par. (a), a transfer of a patient in a mental health institute or center for the developmentally disabled by the department is subject to the approval of the appropriate board established under s. 51.42 and 51.437 to which the patient was committed or through which the patient was admitted to the facility, if any.

(c) The department may, without approval of the board established under s. 51.42 or 51.437 and notwithstanding par. (d) 3, transfer any patient from a treatment facility to another treatment facility when the condition of the patient requires such transfer without delay. The department shall notify the appropriate board established under s. 51.42 or 51.437 that the transfer has been made. Any patient so transferred may be returned to the treatment facility from which the transfer was made, upon orders from the department or the board established under s. 51.42 or 51.437, when such return would be in the best interests of the patient.

(d) 1. The department may, without approval of the appropriate board under s. 51.42 or 51.437, transfer any patient from a state treatment facility or other inpatient facility to an approved treatment facility which is less restrictive of the patient's personal freedom.

2. Transfer under this subsection may be made only if the transfer is consistent with the requirements of par. (a), and the department finds that the appropriate board established under s. 51.42 or 51.437 is unable to locate an approved treatment facility in the community, or that such board has acted in an arbitrary or capricious manner to prevent the transfer of the patient out of the state treatment facility or other inpatient facility contrary to medical and clinical judgment.

3. A transfer of a patient, made under authority of this subsection, may be made only after the department has notified the board established under s. 51.42 or 51.437 of its intent to transfer a patient in accordance with this subsection. The patient's guardian, if any, or if a minor his or her parent or person in the place of a parent shall be notified.

(e) Whenever any transfer between different treatment facilities results in a greater restriction of personal freedom for the patient and whenever the patient is transferred from outpatient to inpatient status, such patient shall be informed both orally and in writing of his or her right to contact an attorney and a member of his or her immediate family, the right to have an attorney provided at public expense, as provided under s. 967.06 and ch. 977, if the patient is indigent, and the right to petition a court where the patient is located or the committing court for a review of the transfer. This paragraph does not apply to a return to a more restrictive facility if such return occurs within 7 days of a temporary transfer from such facility and the return was part of a previously established plan of which the patient was notified at the time of the temporary transfer. This paragraph does not apply to a return of an inmate to a state treatment facility under s. 51.20 (13) (cm).

(f) The transfer of a patient or resident to a medical facility for nonpsychiatric medical services does not constitute a transfer within the meaning of this chapter and does not require the procedural protections for return to the original facility which are required by this section for other transfers.

(2) TRANSFER OF CERTAIN DEVELOPMENTALLY DISABLED PATIENTS. The department may authorize a transfer of a patient from a center for the developmentally disabled to a state treatment facility if such patient is mentally ill and exhibits conduct which constitutes a danger as defined in s. 51.20 (1) (a) 2. to himself or herself or to others in the treatment facility where he or she is present. The department shall file a

statement of emergency detention with the committing court within 24 hours after receiving such person for emergency detention. The statement shall conform to the requirements specified in s. 51.15 (4).

(3) TRANSFER OF CERTAIN CHILDREN FROM JUVENILE CORRECTIONAL FACILITIES. (a) A licensed physician or licensed psychologist of a juvenile correctional facility under s. 48.52 or a licensed physician or licensed psychologist of the department, who has reason to believe that any individual confined in the facility is, in his or her opinion, in need of services for developmental disability, alcoholism or drug dependency or in need of psychiatric services, and who has obtained voluntary consent to make a transfer for treatment, shall make a report, in writing, to the superintendent of the facility, stating the nature and basis of the belief and verifying the consent. In the case of a minor age 14 and over, the minor and the minor's parent or guardian shall consent unless the minor is admitted under s. 51.13 (1) (c); and in the case of a minor under the age of 14, only the minor's parent or guardian need consent. The superintendent shall inform, orally and in writing, the minor and the minor's parent or guardian, that transfer is being considered and shall inform them of the basis for the request and their rights as provided in s. 51.13 (3). If the department, upon review of a request for transfer, determines that transfer is appropriate, the department may immediately transfer the individual and shall file a petition under s. 51.13 (4) (a) in the court assigned to exercise jurisdiction under ch. 48 of the county where the treatment facility is located.

(b) The court assigned to exercise jurisdiction under ch. 48 shall determine, based on the allegations of the petition and accompanying documents, whether the transfer is voluntary on the part of the minor if he or she is aged 14 or over, and whether the transfer of the minor to an inpatient facility is appropriate and consistent with the needs of the minor. In the event that the court is unable to make such determinations based on the petition and accompanying documents, it shall order additional information to be produced as it deems necessary to make such review, and make such determinations within 14 days of admission, or it may hold a hearing within 14 days of admission. If a notation of the minor's unwillingness appears on the face of the petition, or that a hearing has been requested by the minor, the minor's counsel, guardian ad litem, parent or guardian, the court shall hold a hearing and appoint counsel or a guardian ad litem for the minor as provided in s. 51.13 (4) (d). At the conclusion of the hearing, the court shall approve or disapprove the request for transfer. If the minor is under the continuing jurisdiction of the court of another county, the court may order the case transferred together with all appropriate records to that court.

(c) A licensed physician or licensed psychologist of a juvenile correctional facility or of the department, who has reason to believe that any individual confined in the facility is, in his or her opinion, mentally ill, drug dependent or developmentally disabled, and is dangerous as defined in s. 51.20 (1) (a) 2, or is an alcoholic and is dangerous as defined in s. 51.45 (13) (a), shall file a written report with the superintendent of the facility, stating the nature and basis of the belief. If the superintendent, upon review of the allegations in the report, determines that transfer is appropriate, he or she shall file a petition according to s. 51.20 or 51.45 in the court assigned to exercise jurisdiction under ch. 48 of the county where the correctional facility is located. The court shall hold a hearing according to procedures provided in s. 51.20 or 51.45 (13).

(d) Within a reasonable time before the expiration of the confinement of an individual who is transferred under par. (a), if he or she is still in the treatment facility, the director shall make an application under s. 51.20 or 51.45 (13) to the court of the county in which the hospital is located for an inquiry into the individual's mental and physical condition, and thereafter the proceedings shall be as in other applications under such provisions. Notwithstanding ss. 51.20 (1) (b) and 51.45 (13) (a), the application of the director of the treatment facility alone is sufficient.

(e) The department may authorize emergency transfer of an individual from a juvenile correctional facility to a state treatment facility if there is cause to believe that such individual is mentally ill, drug dependent or developmentally disabled and exhibits conduct which constitutes a danger as defined in s. 51.20 (1) (a) 2 to the individual or to others, or is an alcoholic and is dangerous as provided in s. 51.45 (13) (a) 1 and 2. The correctional custodian of the sending institution shall execute a statement of emergency detention or petition for emergency commitment for such individual and deliver it to the receiving state treatment facility. The department shall file the statement or petition with the court within 24 hours after the subject individual is received for detention or commitment. Such statement or petition shall conform to s. 51.15 (4) or (5) or 51.45 (12) (b). After an emergency transfer is made, the director of the receiving facility may file a petition for continued commitment under s. 51.20 (1) or 51.45 (13) or may return the individual to the institution

from which the transfer was made. As an alternative to this procedure, the procedure provided in s. 51.15 or 51.45 (12) may be used, except that no prisoner may be released without the approval of the court which directed confinement in the correctional facility.

(f) A copy of the patient's rights established in s. 51.61 shall be given and explained to the minor and his or her parent or guardian at the time of admission by the director of the facility or such person's designee.

(g) A minor 14 years of age or older who is transferred to a treatment facility under par. (a) may request in writing a return to the juvenile correctional facility. In the case of a minor under 14 years of age, the parent or guardian may make the request. Upon receipt of a request for return from a minor 14 years of age or over, the director shall immediately notify the minor's parent or guardian. The minor shall be returned to the juvenile correctional facility within 48 hours after submission of the request unless a petition or statement is filed for emergency detention, emergency commitment, involuntary commitment or protective placement.

(4) DISCHARGE. (a) The board established under s. 51.42 or 51.437 shall grant a discharge from an order of commitment when it determines that the patient no longer meets the standard for recommitment under s. 51.20 (13) (g). The board shall grant a discharge to a patient who is voluntarily admitted to an inpatient facility if the treatment director determines that treatment is no longer necessary or if the individual requests such discharge. Discharge or retention of a patient who is voluntarily admitted is subject to the procedures prescribed in ss. 51.10 (5) and 51.13 (7).

(b) The department shall grant a discharge from commitment or from voluntary admission for patients committed or voluntarily admitted to a facility under control of the department. The standards applied by the department in granting a discharge shall be the same as those provided in par. (a). The department may not discharge from a commitment an individual who has been committed to a board established under s. 51.42 or 51.437 without first obtaining approval of that board. The department may discharge a voluntarily admitted patient if the appropriate board is notified. Transfers of patients may be made by the department in accordance with sub. (1).

(c) The director of an inpatient facility may grant a discharge or may terminate services to any patient who is voluntarily admitted under s. 51.10 or 51.13 when, on the advice of the treatment staff, such discharge or termination is in the best interests of the patient.

(d) The director of an inpatient facility may grant a discharge or may terminate services to any patient voluntarily admitted under s. 51.10 or 51.13 when such patient requests a discharge. Such discharge shall conform to the requirements of s. 51.10 (5) (c) or 51.13 (7).

(e) A discharge may be issued to a patient who participates in outpatient, aftercare, or follow-up treatment programs. The discharge may permit the patient to receive necessary medication, outpatient treatment, consultation and guidance from the issuing facility at the request of the patient. Such discharge is not subject to withdrawal by the issuing agency.

(f) Notice of discharge shall be filed with the committing court, if any, by the department or the board which granted the discharge. After such discharge, if it becomes necessary for the individual who is discharged to have further care and treatment, and such individual cannot be voluntarily admitted, a new commitment must be obtained, following the procedure for the original commitment.

(4m) TRANSFER OR DISCHARGE OF PERSONS WITH CHRONIC MENTAL ILLNESS. The department or board established under s. 51.42 or any person authorized to discharge or transfer patients pursuant to this section shall, prior to the discharge of a patient with chronic mental illness from an inpatient facility, or prior to the transfer of a patient with chronic mental illness from inpatient to outpatient status, with the patient's permission if the patient is a voluntary patient, refer the patient to the board established under s. 51.42 which is responsible for the patient's care for referral to a community support program in the county to which the patient will be discharged or transferred for evaluation of the need for and feasibility of the provision of community-based services and of the need for and feasibility of the provision of aftercare services.

(5) RESIDENTIAL LIVING ARRANGEMENTS; TRANSITIONARY SERVICES. The department and any person, director or board authorized to discharge or transfer patients pursuant to this section shall ensure that a proper residential living arrangement and the necessary transitionary services are available and provided for the patient being discharged or transferred.

(6) VETERANS. (a) When the department has notice that any person other than a prisoner is entitled to receive care and treatment in a veterans' administration facility, the person may petition the department for a transfer to such facility, and the department may procure his or her admission to such facility in accordance with s. 45.30.

(b) If an individual who is committed under s. 51.37 is entitled to receive care and treatment in a veterans' administration facility, the person may petition the department for a transfer to such facility. If the department declines to grant the request, it shall give the person a written reply, stating the reasons for its position. The decision of the department is subject to review by the court which passed sentence or ordered commitment of the person.

(7) GUARDIANSHIP AND PROTECTIVE SERVICES. Prior to discharge from any state treatment facility, the department shall review the possible need of a developmentally disabled, aged infirm or person with other like incapacities for protective services or placement under ch. 55 after discharge, including the necessity for appointment of a guardian or limited guardian. The department shall petition for limited or full guardianship, or for protective services or placement for the person if needed. When the department makes a petition for guardianship under this subsection, it shall not be appointed as guardian.

(8) HOME VISITS AND LEAVES AUTHORIZED. (a) The department or the board established under s. 51.42 or 51.437 may grant to a patient or resident who is committed to it under this chapter, or who is admitted or transferred under this chapter to a facility under its supervision or operating under a contractual agreement with it, a home visit for up to 15 days, or a leave for employment or education purposes in which the patient or resident is not absent from the facility for more than 15 days.

(b) If a patient or resident who is detained under s. 51.15, committed under s. 51.20 or transferred under sub. (3) does not return to the treatment facility by the time designated in the granting of the home visit or leave, the director of the treatment facility may request the sheriff of the county in which the individual is found to return the individual to the facility. The sheriff shall act in accordance with s. 51.39.

(c) This subsection does not apply to persons transferred from a prison or jail under s. 51.37 (5).

(d) A home visit or leave does not constitute a transfer under this chapter, and does not require a hearing under this section or s. 51.61.

History: 1975 c. 430 ss. 18, 81; 1977 c. 26, 29, 428; 1979 c. 110 s. 60 (1); 1981 c. 74 s. 2; 1981 c. 314 s. 144; 1983 a. 27, 441, 474.

51.37 Criminal commitments; central state hospital or mental health institutes. (1) All commitments under ss. 971.14 (5), 971.17, 975.01, 1977 stats., 975.02, 1977 stats., and 975.06 shall be to the department.

(2) The state hospital at Waupun is known as the "central state hospital", and except as provided in s. 53.05 may be used for the custody, care and treatment of adult male persons committed or transferred thereto under this section and chs. 971 and 975. If the director is not a psychiatrist, all psychiatric reports, testimony or recommendations regarding the mental condition of a patient or prisoner shall be made by a staff psychiatrist of the hospital or the department.

(3) The Mendota and Winnebago mental health institutes may be used for the custody, care and treatment of persons committed or transferred thereto pursuant to this section and chs. 971 and 975.

(4) The department may, with the approval of the committing court and the community board established under s. 51.42 or 51.437, and subject to s. 51.35, transfer to the care and custody of a community board established under s. 51.42 or 51.437 any person in an institution of the department committed under s. 971.14 or 971.17, if in its opinion, the mental condition of the person is such that further care is required and can be properly provided under the direction of the community board established under s. 51.42 or 51.437.

(5) (a) When a licensed physician or licensed psychologist of a state prison, of a county jail or of the department reports in writing to the officer in charge of a jail or institution that any prisoner is, in his or her opinion, mentally ill, drug dependent, or developmentally disabled and is appropriate for treatment as provided in s. 51.20 (1), or is an alcoholic and is dangerous as provided in s. 51.45 (13) (a) 1 and 2; or that the prisoner is mentally ill, drug dependent, developmentally disabled or is an alcoholic and is in need of psychiatric or psychological treatment, and that the prisoner voluntarily consents to a transfer for treatment, the officer shall make a written report to the department which may transfer the prisoner if a voluntary application is made, and if not file a petition for involuntary commitment under s. 51.20 (1) or 51.45 (13). Any time spent by a prisoner in an institution designated under sub. (2) or (3) shall be included as part of the individual's sentence.

(b) The department may authorize an emergency transfer of an individual from a prison, jail or other criminal detention facility to a state treatment facility if there is cause to believe that such individual is mentally ill, drug dependent or developmentally disabled and exhibits conduct which constitutes a danger as defined in s. 51.20 (1) (a) 2 of physical harm to himself or herself or to others, or is an alcoholic and is dangerous as provided in s. 51.45 (13) (a) 1 and

2. The correctional custodian of the sending institution shall execute a statement of emergency detention or petition for emergency commitment for such individual and deliver it to the receiving state treatment facility. The department shall file the statement or petition with the court within 24 hours after receiving the subject individual for detention. Such statement or petition shall conform to s. 51.15 (4) or (5) or 51.45 (12) (b). After an emergency transfer is made, the director of the receiving facility may file a petition for continued commitment under s. 51.20 (1) or 51.45 (13) or may return the individual to the institution from which the transfer was made. As an alternative to this procedure, the emergency detention procedure in s. 51.15 or 51.45 (12) may be used, except that no prisoner may be released without the approval of the court which directed confinement in the institution.

(c) No state treatment facility may accept for admission an individual who is being transferred from a county jail under par. (a) or (b) without the approval of the community board established under s. 51.42 or 51.437 of the county in which the jail is located. No state treatment facility may retain such an individual beyond 72 hours without the approval of the community board established under s. 51.42 or 51.437 of the county where the transferred individual has legal residence.

(6) After an emergency transfer is made, the director of the receiving facility may file a petition for continued commitment under s. 51.20 (1).

(7) Section 51.20 (18) applies to witness fees, attorney fees and other court fees incurred under this section.

(8) (a) Rights to reexamination under s. 51.20 (16) apply to a prisoner who is found to be mentally ill or drug dependent except that the petition shall be made to the court which made the finding or, if the prisoner is detained by transfer, to the circuit court of the county in which he or she is detained. If upon rehearing it is found that the standards for recommitment under s. 51.20 (13) (g) no longer apply to the prisoner or that he or she is not in need of psychiatric or psychological treatment, the prisoner shall be returned to the prison unless it is past his or her release date as determined under s. 53.11 (7) (a), in which case he or she shall be discharged.

(b) If the condition of any prisoner committed or transferred under this section requires psychiatric or psychological treatment after his or her date of release as determined under s. 53.11 (7) (a), the director of the state treatment facility shall, within a reasonable time before the prisoner's release date, make a written application to the court which committed the prisoner under sub. (5) (a). Thereupon, the proceeding shall be upon application made under s. 51.20, but no physician or psychologist who is connected with a state prison, Winnebago or Mendota mental health institute, central state hospital or any county jail may be appointed as an examiner. If the court does not commit the prisoner, it may dismiss the application and order the prisoner returned to the institution from which he or she was transferred until the prisoner's release date. If the court commits the prisoner for the period commencing upon his or her release date, such commitment shall be to the care and custody of the board established under s. 51.42 or 51.437. Any retransfer by the board to central state hospital is subject to s. 51.35 (1) (a).

(9) If in the judgment of the director of Mendota mental health institute, Winnebago mental health institute or the Milwaukee county mental health center, any person who is committed under s. 971.14 or 971.17 is not in such condition as warrants his or her return to the court but is in a condition to receive a conditional transfer or discharge under supervision, the director shall report to the department, the committing court and the district attorney of the county in which the court is located his or her reasons for such judgment. If the court does not file objection to the conditional transfer or discharge within 60 days of the date of the report, the director may, with the approval of the department, conditionally transfer any person to a legal guardian or other person, subject to the rules of the department. Before a person is conditionally transferred or discharged under supervision under this subsection, the department shall so notify the municipal police department and county sheriff for the area where the person will be residing. The notification requirement does not apply if a municipal department or county sheriff submits to the department a written statement waiving the right to be notified.

(10) (a) The director of a state treatment facility may grant to any patient admitted to the facility as a result of a commitment under ch. 971 or 975, a home visit for up to 15 days, or a leave for employment or education purposes in which the patient is not absent from the facility for more than 15 days.

(b) Such a home visit or leave may be granted by the department at its discretion when it is believed to be in the best therapeutic interests of the patient and it is reasonably believed not to present a substantial risk of harm to the community.

(c) Any patient who is granted a home visit or leave under this subsection shall be restricted to the confines of this state unless otherwise specifically permitted. The patient may, in addition, be restricted to a particular geographic area. Other conditions appropriate to the person's treatment may also be imposed upon the home visit or leave.

(d) If such a patient does not return to the treatment facility by the time designated in the granting of the home visit or leave, or if the patient is believed to have violated other conditions of the home visit or leave, the director of the treatment facility may request the sheriff of the county in which the patient is found to return the patient to the facility. The sheriff shall act in accordance with s. 51.39.

(e) The director of the facility in which the patient under par. (a) is detained or committed shall notify the committing court and the appropriate correctional officers of the department of the intention to grant a home visit or leave under this subsection at least 20 days prior to the departure of the patient from the facility.

(f) This section does not apply to persons transferred from a prison or jail under sub. (5).

(g) A home visit or leave does not constitute a transfer under this chapter and return to the facility does not necessitate a hearing under s. 51.35 or 51.61.

(11) When an individual who is in the custody of or under the supervision of a correctional officer of the department is transferred, discharged or is on unauthorized absence from a treatment facility, the probation or parole agent or other individual within the department who is responsible for that individual's supervision shall be notified as soon as possible by the director of the treatment facility.

History: 1975 c. 430; 1977 c. 418 ss. 360 to 362, 929 (55); 1977 c. 428 ss. 80, 81, 115; 1977 c. 447; 1977 c. 449 s. 497; 1979 c. 32, 117, 175, 221; 1983 a. 27, 359, 474.

See note to art. I, sec. 6, citing Flakes v. Percy, 511 F Supp. 1325 (1981).

51.38 Nonresident patients on unauthorized absence. The circuit court may order the detention of any nonresident individual who is on unauthorized absence from any institution of another state for the treatment of mental illness, developmental disabilities, alcoholism or drug abuse. Detention shall be for the period necessary to complete the deportation of that individual.

History: 1975 c. 430; 1977 c. 428; 1977 c. 449 s. 497.

51.39 Resident patients on unauthorized absence. If any patient who is admitted under s. 51.13, 51.15, 51.20, 51.45 (11) (b), (12) or (13) or 55.06 or ch. 971 or 975 or transferred under s. 51.35 (3) or 51.37 is on unauthorized absence from a treatment facility, the sheriff or any other law enforcement agency in the county in which the patient is found or in which it is believed the patient may be present, upon the request of the director, shall take charge of and return the patient to the facility. The costs incident to the return shall be paid out of the facility's operating funds and be charged back to the patient's county of residence.

History: 1975 c. 430; 1977 c. 428; 1979 c. 336.

51.42 Community mental health, mental retardation, alcoholism and drug abuse services. (1) PROGRAM. (a) *Purpose.* The purpose and intent of this section is to enable and encourage counties to develop a comprehensive range of services offering continuity of care; to utilize and expand existing governmental, voluntary and private community resources for provision of services to prevent or ameliorate mental disabilities, including but not limited to mental illness, mental retardation, alcoholism and drug abuse; to provide for the integration of administration of those services and facilities organized under this section through the establishment of a unified governing and policy-making board of directors; and to authorize state consultative services, reviews and establishment of standards and grants-in-aid for such program of services and facilities.

(b) *Responsibility of county government.* The county boards of supervisors have the primary responsibility for the well-being, treatment and care of the mentally ill, developmentally disabled, alcoholic and other drug dependent citizens residing within their respective counties and for ensuring that those individuals in need of such emergency services found within their respective counties receive immediate emergency services. County liability for care and services purchased through or provided by a board established under this section shall be based upon the client's county of residence except for emergency services for which liability shall be placed with the county in which the individual is found. For the purpose of establishing county liability, "emergency" services includes those services provided under the authority of s. 51.15, 51.45 (11) (b) and (12), 55.05 (4), 55.06 (11) (a) or 51.45 (11) (a) for not more than 72 hours. Nothing in this paragraph prevents recovery of liability under s. 46.10 or any other statute creating liability upon the individual receiving a service or any other designated responsible party, or prevents reimbursement by the department for the actual cost of all care and services from the appropriation under s. 20.435 (4) (da), as provided in s. 51.22 (3).

(2) DEFINITIONS. As used in this section:

(a) "Board" means the community board of directors established under this section.

(b) "Director" means the director appointed by the community board.

(c) "Program" means community services and facilities for the prevention or amelioration of mental disabilities, including but not limited to mental illness, mental retardation, alcoholism and drug abuse.

(d) "Secretary" means the secretary of health and social services.

(3) ESTABLISHMENT. (a) The county board of supervisors of every county, or the county boards of supervisors of any combination of counties, shall establish a community mental health, mental retardation, alcoholism and drug abuse program, make appropriations to operate the program and authorize the board of directors of the program to apply for grants-in-aid pursuant to this section.

(b) The county board or boards of supervisors shall review and approve the plan and budget as provided in s. 46.031 (2).

(c) No grant-in-aid may be made to any combination of counties until the counties have drawn up a detailed contractual agreement, approved by the secretary, setting forth the plans for joint sponsorship.

(d) The county board of supervisors of any county may designate the board established under this section as the governing board of any other county health care program or institution, but the operation of such program or institution shall not be reimbursable under sub. (8).

(4) CREATION OF BOARDS; APPOINTMENT, COMPOSITION AND TERMS OF MEMBERS. (a) The county board or boards of supervisors of every county or every combination of counties administering a program shall, before it qualifies under this section, appoint a governing and policy-making board of directors to be known as the community board.

(b) In any county which does not combine with another county the board shall be composed of not less than 9 nor more than 15 persons of recognized ability and demonstrated interest in the problems of the mentally ill, developmentally disabled, alcoholic or drug dependent persons. The board shall have representation from each of the aforementioned mental disability interest groups. No more than 5 members may be appointed from the county board of supervisors.

(c) In any combination of counties, the board shall be composed of 11 members with 3 additional members for each combining county in excess of 2. Appointments shall be made by the county boards of supervisors of the combining counties in a manner acceptable to the combining counties, from the interested groups mentioned in par. (b), but each of the combining counties may appoint to the board not more than 3 members from its county board of supervisors.

(d) The term of office of any member of the board shall be 3 years, but of the members first appointed, at least one-third shall be appointed for one year; at least one-third for 2 years; and the remainder for 3 years. Vacancies shall be filled for the residue of the unexpired term in the manner that original appointments are made. Any board member may be removed from office for cause by a two-thirds vote of the appointing authority, on due notice in writing and hearing of the charges against him.

(5) DUTIES OF BOARDS. Within the limits of available state and federal funds and of county funds appropriated to match state funds, boards shall provide for the program needs of persons suffering from mental disabilities, including mental illness, mental retardation, alcoholism or drug abuse, by offering the following services:

(a) Collaborative and cooperative services with public health and other groups for programs of prevention.

(b) Comprehensive diagnostic and evaluation services, including assessment as specified under ss. 343.30 (1q) and 343.305 (9).

(c) Inpatient and outpatient care and treatment, residential facilities, partial hospitalization, emergency care and supportive transitional services.

(f) Related research and staff in-service training.

(h) Continuous planning, development and evaluation of programs and services for all population groups; and shall:

1. Establish long-range goals and intermediate-range plans, detail priorities and estimate costs;

2. Develop coordination of local services and continuity of care where indicated;

3. Utilize available community resources and develop new resources necessary to carry out the purposes of this section;

4. Appoint a director of the program, subject to the approval of the county board or boards of supervisors, on the basis of recognized and demonstrated interest in and knowledge of the problems of mental health, mental retardation, alcoholism and drug addiction, with due regard to training, experience, executive and administrative ability, and general qualification and fitness for the performance of the duties of the director. The county board or boards of supervisors may delegate this authority to the board established under this section. In any county with a population of 500,000 or more that does not combine with another county to establish a

board, the county executive shall appoint either the director of the department that administers the health and human services programs or a department head under s. 46.21 as the director of the program, subject to confirmation by the county board. In a county with a population of 500,000 or more, the director of the program serves at the pleasure of the county executive;

5. Fix the salaries of personnel employed to administer the program, subject to the approval of the county board or boards of supervisors. The county board or boards of supervisors may delegate this authority to the board established under this section;

7. Enter into contracts to render services to or secure services from other agencies or resources including out-of-state agencies or resources. Notwithstanding ss. 59.07 (44), 59.456 and 59.47, a multicounty board organized under sub. (3) (a) or s. 51.437 (7) (b) may contract for professional legal services that are necessary to carry out the duties of the board if the corporation counsel of each county of the multicounty board has notified the board that he or she is unable to provide such services in a timely manner; and

8. Enter into contracts for the use of any facility as an approved public treatment facility under s. 51.45 for the treatment of alcoholics if the board deems it to be an effective and economical course to follow.

(i) The submission of a coordinated plan and budget as provided in s. 46.031 (2).

(5e) SCHOOL BOARD REFERRALS. The board shall acknowledge receipt of the notification received under s. 115.85 (4).

(5g) SERVICE ALLOCATION. The board may allocate services among service recipients to reflect the availability of limited resources.

(5m) POWERS OF BOARDS. Within the limits of state and county appropriations and maximum available funding from other sources, boards may provide for the program needs of persons suffering from mental disabilities, including but not limited to mental illness, mental retardation, alcoholism or drug abuse, by offering the following services:

(a) Precare, aftercare and rehabilitation and habilitation services.

(b) Professional consultation.

(c) Public informational and educational services.

(5s) EDUCATIONAL SERVICES. The community board shall not furnish services and programs provided by the department of public instruction and local educational agencies.

(6) DIRECTOR; POWERS AND DUTIES. (a) All of the administrative and executive powers and duties of managing, operating, maintaining and improving the program shall be vested in the director, subject to such delegation of authority as is not inconsistent with this section and the rules promulgated thereunder.

(b) In consultation and agreement with the board, the director shall prepare:

1. An annual comprehensive plan and budget of all funds necessary for the program and services authorized by this section in which priorities and objectives for the year are established as well as any modifications of long-range objectives;

2. Intermediate-range plans;

3. An annual report of the operation of the program; and

4. Such other reports as are required by the secretary and the county board or boards of supervisors.

(c) The director shall make recommendations to the board for:

1. Personnel and the salaries of employes; and

2. Changes in program services.

(7) OTHER PROGRAM REQUIREMENTS. (a) The first step in the establishment of a program shall be the preparation of a local plan which includes an inventory of all existing resources, identifies needed new resources and services and contains a plan for meeting the needs of the mentally ill, developmentally disabled, alcoholic, drug abusers and other psychiatric disabilities for citizens residing within the jurisdiction of the board and for persons in need of emergency services found within the jurisdiction of the board. The plan shall also include the establishment of long-range goals and intermediate-range plans, detailing priorities and estimated costs and providing for coordination of local services and continuity of care.

(c) Under the supervision of a director, qualified personnel with training or experience, or both, in mental health, developmental disabilities, or in alcoholism and drug abuse shall be responsible for the planning and implementation of programs relating to mental health, developmental disabilities, alcoholism or drug abuse. A single coordinator may be responsible for alcoholism, drug abuse, mental health and developmental disabilities programs.

(8) GRANTS-IN-AID. (a) The department shall fund, within the limits of the department's allocation for mental health services under s. 20.435 (4) (b) and (o) and subject to this subsection, services for mental illness, developmental disability and alcoholism and drug abuse to meet standards of service quality and accessibility. The department's primary responsibility is to guarantee that boards established under either this section or s. 51.437 receive a reasonably uniform minimum level of funding and its

secondary responsibility is to fund programs which meet exceptional community needs or provide specialized or innovative services. Moneys appropriated under s. 20.435 (4) (b) and earmarked by the department for mental health services under s. 20.435 (4) (o) shall be allocated by the department to boards established under this section or s. 51.437 in the manner set forth in this subsection.

(b) From the appropriations under s. 20.435 (4) (b) and (o), the department shall allocate the funding for services provided or purchased by boards created under this section or s. 46.23 or 51.437, to boards created under this section or s. 46.23 or 51.437 as provided under 1983 Wisconsin Act 27, section 2020 (6) (a) and (c). For the period from January 1, 1984, to June 30, 1985, the ratio of state and federal funds to county matching funds shall equal 91 to 9. Matching funds may be from county tax levies, federal and state revenue sharing funds or private donations to the county that meet the requirements specified in par. (bd). Private donations may not exceed 25% of the total county match. If the county match is less than the amount required to generate the full amount of state and federal funds allocated for this period, the decrease in the amount of state and federal funds equals the difference between the required and the actual amount of county matching funds.

(ba) 1. From the funds allocated under par. (b), the department shall do all of the following:

a. In calendar years 1984 and 1985, allocate for community support programs an amount equal to the amount that funds allocated for community support programs in calendar year 1982 were increased above those allocated in calendar year 1981 for community support programs.

b. In calendar years 1984, 1985 and 1986, allocate for community support programs an amount equal to the amount that funds allocated for community support programs in calendar year 1983 were increased above those allocated in calendar year 1982 for community support programs.

c. Beginning in calendar year 1984, allocate for community support programs, in the current calendar year and in each of the 3 consecutive calendar years immediately following, an amount equal to the amount that funds allocated for community support programs in the current calendar year are increased above those allocated in the preceding calendar year for community support programs.

2. This paragraph does not apply to funds allocated for community support programs on a one-time basis.

3. In this paragraph, "community support programs" means community support programs for the developmentally disabled and the chronically mentally ill, including programs associated with federal housing and urban development projects.

(bc) The department shall prorate the amount allocated to any board under par. (b) to reflect actual federal funds available.

(bd) 1. Private donations to a county may be used to match the state grant-in-aid under s. 49.52 (1) (d) or under par. (b) only if the funds are:

a. Donated to a board established under this section or under s. 51.437 or to a county department of public welfare or social services and under its administrative control; and

b. Donated without restrictions as to use, unless the restrictions specify that the funds be used for a particular service and the donor neither sponsors nor operates the service.

2. Voluntary federated fund raising organizations are not sponsors or operators of services within the meaning of subd. 1. b. Any member agency of such an organization that sponsors or operates services is deemed an autonomous entity separate from the organization unless the board membership of the organization and the agency interlock.

(bf) The county allocation to match aid increases shall be included in the coordinated plan and budget and approved by January 1 of the year for which the funds are allocated, in order to generate state aid matching funds. All funds allocated under par. (b) shall be included in the coordinated plan and budget and approved.

(c) Each board established under either s. 51.42 or 51.437, but not both, shall be treated, for the purpose of this subsection only, as unified with any other board established in its jurisdiction under either s. 51.42 or 51.437. The boards so unified shall receive an amount determined under par. (b).

(e) If any state matching funds allocated under par. (b) 2. e or 3. d to match county funds are not claimed, such funds shall be redistributed for the purposes the department designates. Funds allocated to boards under par. (b) and not spent by the end of each calendar year may not be allocated to other boards, except for boards implementing the pilot regional centers for the care of the chronically mentally ill or for boards experiencing overall program deficits due to unanticipated high cost variable services, as defined by the department. Grant-in-aid funds allocated to boards but not claimed, due to the ratio requirement under par. (b) 2 and 3, lapse in accordance with s. 20.435 (4) (b).

(f) If the funds appropriated under s. 20.435 (4) (b) for any fiscal year are insufficient to provide boards with the sums calculated under pars. (a) to (c), the appropriation shall be allocated among boards in proportion to the sums they would receive thereunder.

(g) Each board which is eligible under the state plan for medical assistance shall obtain a medical assistance provider number and shall bill for all eligible clients. A board operating an inpatient facility shall apply for a special hospital license under s. 50.33 (2) (c). Under powers delegated under s. 46.10 (16), each board shall retain 100% of all collections it makes and its providers make for care other than that provided or purchased by the state.

(h) Each board established under either this section or s. 51.437, or both, shall apply all funds it receives under pars. (a) to (c) to provide the services enumerated in ss. 51.42 (5) and (5m), 51.437 (5) and 51.45 (2) (g) to meet the needs for service quality and accessibility of the persons in its jurisdiction, except that the board may pay for inpatient treatment only with funds designated by the department for this purpose. The board may expand programs and services with county funds not used to match state funds under this subsection subject to the approval of the county board or boards of supervisors and with other local or private funds subject to the approval of the department and the county board or boards of supervisors. The county board or boards of supervisors may delegate this authority to the board established under this section. The board shall report to the department all county funds allocated to the board and the use of such funds. Moneys collected under s. 46.10 shall be applied to cover the costs of primary services, exceptional and specialized services or to reimburse supplemental appropriations funded by counties. Boards shall include collections made on and after October 1, 1978, by the department that are subject to s. 46.10 (8m) (b) and (c) and are distributed to boards under s. 20.435 (4) (gg), as revenues on their grant-in-aid expenditure reports to the department.

(i) By September 30, each board shall submit for inclusion as part of the proposed county budget to the county executive or county administrator or, in those counties without an executive or administrator, directly to the county board of supervisors a program budget based on requirements of s. 46.031 (1) for the succeeding calendar year covering services, including active treatment community mental health center services, as prescribed by the department based on the plan required under sub. (7) (a). After approval by the county board or boards of supervisors the program budget shall be submitted to the department. If a combination of counties is administering a program, the program budget may not be submitted unless each county board of supervisors approves it. The county board or boards of supervisors may delegate this responsibility to the board established under this section. The cost of all services purchased by the board shall be developed based on the standards and requirements of s. 46.036.

(j) The department shall review each program budget to ensure uniform costing of services. The department shall approve such budget unless it determines, after reasonable notice, that the budget includes proposed expenditures inconsistent with the purposes of this subsection. The joint committee on finance may require the department to submit contracts between boards established under this section or s. 51.437 and providers of service to the committee for review and approval.

(k) After a board's budget has been approved, the department, after reasonable notice, may withhold a portion of the appropriation allocable to the board under this subsection if the department determines that such portion of the allocable appropriation:

1. Is for services which duplicate or are inconsistent with services being provided or purchased by the department or other county agencies receiving grants-in-aid or reimbursement from the department;

2. Is inconsistent with statutes, rules or regulations, whether state or federal;

3. Is for the treatment of alcoholics in treatment facilities which have not been approved by the department in accordance with s. 51.45 (8); or

4. Is for inpatient treatment in excess of an average of 21 days, excluding care for patients at the centers for the developmentally disabled.

(L) If the department withholds a portion of the allocable appropriation, under par. (k), the board may submit an amendment to its program budget to rectify the deficiency found by the department. The department shall not provide state aid to any board for excessive inpatient treatment. For each board in each calendar year, sums expended for the 22nd and all subsequent average days of care shall be deemed excessive inpatient treatment. No inpatient treatment provided to children, adolescents, chronically mentally ill patients, patients requiring specialized care at a mental health institute, or patients at the centers for the developmentally disabled shall be deemed excessive. If a patient is discharged or released and then readmitted within 60 days after such discharge or release from an inpatient facility, the number of days of care following readmission shall be

added to the number of days of care before discharge or release for the purpose of calculating the total length of such patient's stay in the inpatient facility.

(8m) AUDIT EXPENSES. Funds recovered from audit adjustments from a prior fiscal year may be included in subsequent certifications only to pay counties owed funds as a result of any audit adjustment. By June 30 of each year the department shall report to the presiding officer of each house of the legislature on funds recovered and paid out during the previous calendar year as a result of audit adjustments.

(9) CARE IN OTHER FACILITIES. (a) Authorization for all care of any patient in a state, local or private facility shall be provided under a contractual agreement between the board and the facility, unless the board governs the facility. The need for inpatient care shall be determined by the program director or designee in consultation with and upon the recommendation of a licensed physician trained in psychiatry and employed by the board or its contract agency. In cases of emergency, a facility under contract with any board shall charge the board having jurisdiction in the county where the patient is found. The board shall reimburse the facility for the actual cost of all authorized care and services less applicable collections according to s. 46.036, unless the department determines that a charge is administratively infeasible, or unless the department, after individual review, determines that the charge is not attributable to the cost of basic care and services. Boards shall not reimburse any state institution nor receive credit for collections for care received therein by nonresidents of this state, interstate compact clients, transfers under s. 51.35 (3), and transfers from Wisconsin state prisons under s. 51.37 (5) (a), commitments under s. 971.14, 971.17, 975.01, 1977 stats., 975.02, 1977 stats., 975.06 or admissions under s. 975.17, 1977 stats., or children placed in the guardianship or legal custody of the department under s. 48.355, 48.427 or 48.43. The exclusionary provisions of s. 46.03 (18) do not apply to direct and indirect costs which are attributable to care and treatment of the client.

(b) If a state hospital has provided a board established under this section with service, the department shall regularly bill the board. If collections for care exceed current billings, the difference shall be remitted to the board through the appropriation under s. 20.435 (2) (gk). For care provided on and after February 1, 1979, the department shall adjust collections from medical assistance to compensate for differences between specific rate scales for care charged to the board and the average daily medical assistance reimbursement rate. Payment shall be due from the board within 60 days of the billing date subject to provisions of the contract. If any payment has not been received within 60 days, the department shall deduct all or part of the amount from any payment due from the department to the board.

(c) Care, services and supplies provided after December 31, 1973, to any person who, on December 31, 1973, was in or under the supervision of a mental health institute, or was receiving mental health services in a facility authorized by s. 51.08 or 51.09, but was not admitted to a mental health institute by the department, shall be charged to the board established under this section which was responsible for such care and services at the place where the patient resided when admitted to the institution. The department shall bill boards established under this section for care provided at the mental health institutes which reflects the estimated per diem cost of specific levels of care, to be adjusted annually by the department.

(9m) REPORTS ON INTERSTATE CONTRACTS. Each board that enters into a contract under s. 51.87 for the purchase or provision of services shall annually report to the department regarding the use of the contract.

(10) DEPARTMENTAL DUTIES. The department shall:

(a) Review requests and certify boards created under sub. (4) to assure that the boards are in compliance with the respective subsections.

(b) Review and approve required program plans and budgets but shall not approve budgets for amounts in excess of available revenues.

(c) Periodically review and evaluate boards and programs to assure compliance with this section. Such review shall include a periodic assessment of need which shall separately identify elements of service required under this section.

(d) Provide consultative staff services to communities to assist in ascertaining local needs and in planning, establishing and operating programs.

(e) Develop and implement a uniform cost reporting system according to s. 46.18 (8), (9) and (10).

(g) Ensure that boards that elect to provide special education programs to children aged 3 years and under comply with requirements established by the department of public instruction.

(12) RULES GOVERNING ADMINISTRATIVE STRUCTURE. The secretary shall adopt rules governing the administrative structure deemed necessary to administer community mental health, developmental disabilities, alcoholism and drug abuse services; establishing uniform cost

record-keeping requirements; governing eligibility of counties and combinations of counties for state grants-in-aid to operate programs; prescribing standards for qualifications and salaries of personnel; prescribing standards for quality of professional services; prescribing requirements for in-service and educational leave programs for personnel; prescribing standards for establishing patient fee schedules; governing eligibility of patients to the end that no person is denied service on the basis of age, race, color, creed, location or inability to pay; and prescribing such other standards and requirements as may be necessary to carry out the purposes of this section.

History: 1971 c. 125; 1973 c. 90, 198, 333, 336; 1975 c. 39, 198, 199, 224, 422; 1975 c. 428 s. 16; 1975 c. 430 ss. 24 to 31, 80; 1977 c. 26 ss. 37, 38, 75; 1977 c. 29 ss. 612 to 623p, 1656 (18); 1977 c. 193; 1977 c. 203 s. 106; 1977 c. 272; 1977 c. 354 s. 101; 1977 c. 418, 428, 447; 1979 c. 34, 117, 177, 221, 330, 355; 1981 c. 20 ss. 923 to 942, 2202 (20) (d), (n), (q); 1981 c. 93 ss. 105 to 122, 186; 1981 c. 329; 1983 a. 27 ss. 1106 to 1112, 2202 (20); 1983 a. 189 ss. 44, 329 (5); 1983 a. 192, 239, 365, 375, 524.

Members of a county board appointed to a unified board, created under (4) (b) serve for the full term for which appointed, without reference to the termination of their office as county board members. 63 Atty. Gen. 203.

See note to 59.07, citing 63 Atty. Gen. 468.

Liability, reimbursement and collection for services provided under 51.42 and 51.437 programs discussed. 63 Atty. Gen. 560, 65 Atty. Gen. 49.

See note to 51.437, citing 69 Atty. Gen. 128.

Menominee Tribe members are eligible to participate in voluntary programs but state cannot accept tribe members into involuntary programs on basis of tribal court orders alone. 70 Atty. Gen. 219.

See note to 51.437, citing OAG 3-84.

County health facility may not charge for non-medical assistance services given to medical assistance patients in excess of medical assistance rates without violating 49.49. OAG 19-84.

51.421 Community support programs. (1) PURPOSE. In order to provide the least restrictive and most appropriate care and treatment for persons with chronic mental illness, community support programs should be available in all parts of the state. In order to integrate community support programs with other long-term care programs, community support programs shall be coordinated, to the greatest extent possible, with the community options program under s. 46.27, with the protective services system in a county, with the medical assistance program under ss. 49.43 to 49.47 and with other care and treatment programs for persons with chronic mental illness.

(2) SERVICES. If funds are provided, and within the limits of the availability of funds provided under s. 51.42 (8) (b), each board established under s. 51.42 shall establish a community support program. Each community support program shall use a coordinated case management system and shall provide or assure access to services for persons with chronic mental illness who reside within the community. Services provided or coordinated through a community support program shall include assessment, diagnosis, identification of persons in need of services, case management, crisis intervention, psychiatric treatment including medication supervision, counseling and psychotherapy, activities of daily living, psychosocial rehabilitation which may include services provided by day treatment programs, client advocacy, residential services and recreational activities. Services shall be provided to an individual based upon his or her treatment needs.

(3) DEPARTMENTAL DUTIES. The department shall:

(a) Promulgate rules establishing standards for the provision of community support programs by boards established under s. 51.42. The department shall develop the standards in consultation with representatives of boards established under s. 51.42, elected county officials and consumer advocates.

(b) Ensure the development of a community support program in each county through the provision of technical assistance, consultation and funding.

(c) Monitor the establishment and the continuing operation of community support programs and ensure that community support programs comply with the standards promulgated by rule. The department shall ensure that the persons monitoring community support programs to determine compliance with the standards are persons who are knowledgeable about treatment programs for persons with chronic mental illness.

(d) Pursuant to s. 46.031, review and approve the annual coordinated plan and budget of each board established under s. 51.42 based on the adequacy of the board's provision of community support programs and other community-based services for persons with chronic mental illness. The department may withhold approval of the part of the coordinated plan and budget that relates to these services until the county submits a modified plan and budget for provision of these services that is approved by the department.

History: 1983 a. 441.

51.437 Developmental disabilities services. (1) DEFINITION. In this section, "services" mean specialized services or special adaptations of generic services directed toward the prevention and alleviation of a developmental disability or toward the social, personal, physical or economic habilitation or rehabilitation of an individual with such a disability, and includes diagnosis, evaluation, treatment, personal care, day care, domiciliary care, special living arrangements, training, sheltered employment, protective and other social and socio-legal services,

follow-along services and transportation services necessary to assure delivery of services to individuals with developmental disabilities. Education, recreation, counseling of the individual with a developmental disability and his or her family and information and referral services are optional services that are not required under this section.

(2) DUTIES OF THE COUNCIL ON DEVELOPMENTAL DISABILITIES. (a) The council on developmental disabilities shall:

1. Designate appropriate state or local agencies for the administration of programs and fiscal resources made available to the council on developmental disabilities under federal legislation affecting the delivery of services to the developmentally disabled.

2. Perform the following responsibilities related to the state plan for the delivery of services, including the construction of facilities:

a. Develop, approve, and continue modification of the statewide plan.

b. Monitor and evaluate the implementation of the statewide plan.

3. Review and advise the department on community budgets and give preliminary approval on community plans for programs affecting persons with developmental disabilities. Preliminary approval means that the plan meets minimum criteria established by the council for services to persons with developmental disabilities. After the council completes its review the plan shall go to the department for review and approval by the department.

4. Participate in the development of, review, comment on, and monitor all state plans in the state which relate to programs affecting persons with developmental disabilities.

5. Serve as an advocate for persons with developmental disabilities.

6. Provide continuing counsel to the governor and the legislature.

(b) The council may establish such reasonable procedures as are essential to the conduct of the affairs of the council.

(3) DUTIES OF THE SECRETARY. The secretary of health and social services shall:

(a) Maintain a listing of present or potential resources for serving the needs of the developmentally disabled, including private and public persons, associations and agencies.

(b) Collect factual information concerning the problems.

(c) Provide information, advice and assistance to communities and try to coordinate their activities on behalf of the developmentally disabled.

(d) Assist counties in obtaining professional services on a shared-time basis.

(e) Establish and maintain liaison with all state and local agencies to establish a continuum of services, consultative and informational.

(4) RESPONSIBILITY OF COUNTY GOVERNMENT. The county boards of supervisors have the primary governmental responsibility for the well-being of those developmentally disabled citizens residing within their respective counties and the families of the mentally retarded insofar as the usual resultant family stresses bear on the well-being of the developmentally disabled citizen. County liability for care and services purchased through or provided by a board established under this section shall be based upon the client's county of residence except for emergency services for which liability shall be placed with the county in which the individual is found. For the purpose of establishing county liability, "emergency" services means those services provided under the authority of s. 51.15, 55.05 (4) or 55.06 (11) (a). Nothing in this paragraph prevents recovery of liability under s. 46.10 or any other statute creating liability upon the individual receiving a service or any other designated responsible party. Adjacent counties, lacking the financial resources and professional personnel needed to provide or secure such services on a single-county basis, may and shall be encouraged to combine their energies and financial resources to provide these joint services and facilities with the approval of the department. This responsibility includes:

(a) The development, approval and continuing modification of a county or multicounty plan for the delivery of services, including the construction of facilities, to those citizens affected by developmental disabilities.

1. The purpose of such planning shall be to insure the delivery of needed services and the prevention of unnecessary duplication, fragmentation of services and waste of resources. Plans shall include, to the fullest extent possible, participation by existing and planned agencies of the state, counties, municipalities, school districts and all other public and private agencies as are required to, or may agree to, participate in the delivery of services.

2. Plans shall, to the fullest extent possible, be coordinated with and integrated into plans developed by regional comprehensive health planning agencies.

(b) Providing continuing counsel to public and private agencies as well as other appointed and elected bodies within the county.

(c) Establishing a program of citizen information and education concerning the problems associated with developmental disabilities.

(d) Establishing a fixed point of referral within the community for developmentally disabled persons and their families.

(5) FURNISHING OF SERVICES. The county board of supervisors shall establish community developmental disabilities services boards to furnish services within the counties. Such services shall be provided either directly or by contract.

(6) EDUCATIONAL SERVICES. The community developmental disabilities board shall not furnish services and programs provided by the department of public instruction and local educational agencies.

(7) COMPOSITION; COMBINATION OF BOARDS. (a) The community developmental disabilities services board shall be composed of not less than 9 nor more than 15 persons of recognized ability and demonstrated interest in the problems of the developmentally disabled but not more than 3 members shall be appointed from the county board of supervisors. Except that when counties combine to furnish services, the community developmental disabilities services board shall be composed of 11 members and with 2 additional members for each combining county in excess of 2. Appointments shall be made by the county boards of the combining counties in a manner acceptable to the combining counties, but each of the combining counties may appoint only 2 members from its county board. At least one-third of the members serving at any one time shall be appointed from the developmentally disabled citizens or their parents residing in the county or combining counties. Appointments shall be for staggered 3-year terms. Vacancies shall be filled for the residue of the unexpired term in the manner that original appointments are made. Any member may be removed from office for cause by a two-thirds vote of the appointing authority, on due notice in writing and hearing of the charges against him.

(b) A county board of supervisors may designate the community board established under s. 51.42 as the community developmental disabilities board. The combined board shall plan for and establish a community developmental disabilities program as provided in sub. (9). The county board of supervisors may designate the combined board as the administrative agency of the long-term support community options program under s. 46.27.

(9) DUTIES OF THE BOARD. Within the limits of available state and federal funds and of county funds appropriated to match state funds, the community developmental disabilities services board shall:

(a) Establish a community developmental disabilities services program, appoint the director of the program subject to the approval of the county board or boards of supervisors, establish salaries and personnel policies for the program subject to the approval of the county board or boards of supervisors and arrange and promote local financial support for the program. The county board or boards of supervisors may delegate this authority to the board established under this section. The first step in the establishment of a program shall be the preparation of a local plan which includes an inventory of all existing resources, identifies needed new resources and services and contains a plan for meeting the needs of developmentally disabled individuals based upon the services designated under sub. (1). The plan shall also include the establishment of long-range goals and intermediate-range plans, detailing priorities and estimated costs and providing for coordination of local services and continuity of care.

(b) Assist in arranging cooperative working agreements with other health, educational, vocational and welfare services, public or private, and with other related agencies.

(c) Enter into contracts to provide or secure services from other agencies or resources including out-of-state agencies or resources. Notwithstanding ss. 59.07 (44), 59.456 and 59.47, a multicounty board organized under sub. (4) or (7) (b) may contract for professional legal services that are necessary to carry out the duties of the board if the corporation counsel of each county of the multicounty board has notified the board that he or she is unable to provide such services in a timely manner.

(d) Comply with the state requirements for the program.

(9e) SCHOOL BOARD REFERRALS. The community developmental disabilities services board shall acknowledge receipt of the notification received under s. 115.85 (4).

(9m) SERVICE ALLOCATION. The community developmental disabilities board may allocate services among service recipients to reflect the availability of limited resources.

(10) DUTIES OF THE DIRECTOR. The director shall operate, maintain and improve the community developmental disabilities services program.

(a) The director and the board shall prepare:

1. An annual comprehensive plan and budget of all funds necessary for the program and services authorized by this section.

2. An annual report of the operation of the program.

3. Such other reports as are required by the department and the county board of supervisors.

(b) The director shall make recommendations to the community developmental disabilities services board for:

1. Personnel and salaries.

2. Changes in the program and services.

(11) PROGRAM BUDGETING. Boards established under this section shall be funded pursuant to s. 51.42 (8). Plans and budgets shall be submitted and approved under s. 46.031.

(12) COST OF SERVICES. (a) Authorization for all care of any patient in a state, local or private facility shall be provided under a contractual agreement between the board and the facility, unless the board governs the facility. The need for inpatient care shall be determined by the program director or designee in consultation with and upon the recommendation of a licensed physician trained in psychiatry and employed by the board or its contract agency prior to the admission of a patient to the facility except in the case of emergency services. In cases of emergency, a facility under contract with any board shall charge the board having jurisdiction in the county where the individual receiving care is found. The board shall reimburse the facility for the actual cost of all authorized care and services less applicable collections according to s. 46.036, unless the department determines that a charge is administratively infeasible, or unless the department, after individual review, determines that the charge is not attributable to the cost of basic care and services. The exclusionary provisions of s. 46.03 (18) do not apply to direct and indirect costs which are attributable to care and treatment of the client. Boards shall not reimburse any state institution nor receive credit for collections for care received therein by nonresidents of this state, interstate compact clients, transfers under s. 51.35 (3) (a), commitments under s. 971.14, 971.17, 975.01, 1977 stats., 975.02, 1977 stats., 975.06, admissions under s. 975.17, 1977 stats., or children placed in the guardianship or legal custody of the department under s. 48.355, 48.427 or 48.43.

(b) Where any of the community developmental disabilities services authorized are provided by any of the institutions specified in s. 46.10, the costs of such services shall be segregated from the costs of residential care provided at such institutions. The uniform cost recordkeeping system established under s. 46.18 (8), (9) and (10) shall provide for such segregation of costs.

(c) If a center for the developmentally disabled has provided a board established under this section with service, the department shall:

1. Regularly bill the board for services provided prior to January 1, 1982. If collections for care received by the department prior to January 1, 1982, exceed current billings, the difference shall be remitted to the board through the appropriation under s. 20.435 (2) (gk). If billings for the quarter ending December 31, 1981, exceed collections for care received by the department during the quarter ending December 31, 1981, collections for care provided prior to January 1, 1982, shall be remitted to the board through the appropriation under s. 20.435 (2) (gk), up to the level of the net amount billed the board for the quarter ending December 31, 1981. Under this section, collections on or after January 1, 1976, from medical assistance shall be the approved amounts listed by the patient on remittance advices from the medical assistance carrier, not including adjustments due to retroactive rate approval and less any refunds to the medical assistance program. For care provided on and after January 1, 1978, the department shall adjust collections from medical assistance to compensate for differences between specific rate scales for care charged to the board and the average daily medical assistance reimbursement rate. Payment shall be due from the board within 60 days of the billing date subject to provisions of the contract. If any payment has not been received within 60 days, the department shall deduct all or part of the amount due from any payment due from the department to the board.

2. a. Bill the board for services provided on or after January 1, 1982, to persons ineligible for medical assistance benefits and who lack other means of full payment, using the procedure established under subd. 1.

b. Bill the board for services provided on or after January 1, 1982, at 10% of the rate paid by medical assistance, excluding any retroactive rate adjustment, if an independent professional review established under 42 USC 1396a (a) (31) designates the person appropriate for community care. The department shall use money it receives from the board to offset the state's share of medical assistance. Payment is due from the board within 60 days of the billing date, subject to provisions of the contract. If the department does not receive any payment within 60 days, it shall deduct all or part of the amount due from any payment the department is required to make to the board. The department shall first use collections received under s. 46.10 as a result of care at a center for the developmentally disabled to reduce the costs paid by medical assistance, and shall remit the remainder to the board up to the portion billed. The department shall use the appropriation under s. 20.435 (2) (gk) to remit collection

credits and other appropriate refunds to boards.

c. Regularly provide the board with a list of persons who are eligible for medical assistance benefits and who are receiving care in a center for the developmentally disabled.

3. Establish by rule a process for appealing determinations of the independent professional review that result in billings under subd. 2. b.

(13) DAY CARE SERVICES: MILWAUKEE. In counties having a population of 500,000 or more, the board of supervisors shall integrate day care programs for mentally retarded persons and those programs for persons with other developmental disabilities into the community developmental disabilities program and shall appoint a director to administer the overall services program.

(13m) REPORTS ON INTERSTATE CONTRACTS. Each board that enters into a contract under s. 51.87 for the purchase or provision of services shall annually report to the department regarding the use of the contract.

(14) DEPARTMENTAL DUTIES. The department shall:

(a) Review requests and certify boards created under sub. (4) to assure that the boards are in compliance with the respective subsections.

(b) Review and approve required program plans and budgets but shall not approve budgets for amounts in excess of available revenues.

(c) Periodically review and evaluate each board's program.

(d) Provide consultative staff services to communities to assist in ascertaining local needs and in planning, establishing and operating programs.

(e) Develop and implement a uniform cost reporting system according to s. 46.18 (8), (9) and (10).

(g) Ensure that boards that elect to provide special educational programs to children aged 3 years and under comply with requirements established by the department of public instruction.

(15) SOURCE OF SERVICES. Nothing in this section shall be construed to mean that developmentally disabled persons are not eligible for services available from all sources.

(16) ADMINISTRATIVE STRUCTURE. Rules adopted by the secretary under s. 51.42 (12) shall apply to services provided through boards which are created under this section.

History: 1971 c. 307, 322; 1973 c. 90, 333; 1975 c. 39, 199, 430; 1977 c. 26 ss. 39, 75; 1977 c. 29; 1977 c. 354 s. 101; 1977 c. 418; 1977 c. 428 s. 85, 86, 115; 1979 c. 32, 117, 221, 330, 355; 1981 c. 20, 93, 329; 1983 a. 27, 365, 375, 524.

See note to 59.07, citing 63 Atty. Gen. 468.

See note to 51.42, citing 63 Atty. Gen. 560.

Liability, reimbursement and collection for services provided under 51.42 and 51.437 programs discussed. 65 Atty. Gen. 49.

County board of supervisors may require its approval of contracts for purchase of services by community services board if so specified in its coordinated plan and budget. Otherwise it may not. 69 Atty. Gen. 128.

See note to 51.42, citing 70 Atty. Gen. 219.

Multicounty 51.42/51.437 board may retain private legal counsel only where corporation counsel of each county, or district attorney of each county not having a corporation counsel, notifies board that he or she is unable to provide specific services in a timely manner. OAG 3-84.

51.45 Prevention and control of alcoholism.

(1) DECLARATION OF POLICY. It is the policy of this state that alcoholics and intoxicated persons may not be subjected to criminal prosecution because of their consumption of alcohol beverages but rather should be afforded a continuum of treatment in order that they may lead normal lives as productive members of society.

(2) DEFINITIONS. As used in this section, unless the context otherwise requires:

(a) "Alcoholic" means a person who habitually lacks self-control as to the use of alcohol beverages, or uses such beverages to the extent that health is substantially impaired or endangered or social or economic functioning is substantially disrupted.

(b) "Approved private treatment facility" means a private agency meeting the standards prescribed in sub. (8) (a) and approved under sub. (8) (c).

(c) "Approved public treatment facility" means a treatment agency operating under the direction and control of the department or providing treatment under this section through a contract with the department under sub. (7) (g) or with the county mental health, mental retardation, alcoholism and drug abuse board under s. 51.42 (5) (h) 8, and meeting the standards prescribed in sub. (8) (a) and approved under sub. (8) (c).

(cm) "Community board" means any community mental health, alcoholism and drug abuse policy-making board under s. 51.42.

(cr) "Designated person" means a person who performs, in part, the protective custody functions of a law enforcement officer under sub. (11), operates under an agreement between a community board and an appropriate law enforcement agency under sub. (11), and whose qualifications are established by such board.

(d) "Incapacitated by alcohol" means that a person, as a result of the use of or withdrawal from alcohol, is unconscious or has his or her judgment otherwise so impaired that he or she is incapable of making a rational decision, as evidenced objectively by such indicators as extreme physical debilitation, physical harm or threats of harm to himself or herself or to any other person, or to property.

(e) "Incompetent person" means a person who has been adjudged incompetent by the circuit court.

(f) "Intoxicated person" means a person whose mental or physical functioning is substantially impaired as a result of the use of alcohol.

(g) "Treatment" means the broad range of emergency, outpatient, intermediate, and inpatient services and care, including diagnostic evaluation, medical, surgical, psychiatric, psychological, and social service care, vocational rehabilitation and career counseling, which may be extended to alcoholics and intoxicated persons, and psychiatric, psychological and social service care which may be extended to their families. Treatment may also include, but shall not be replaced by, physical detention of persons, in an approved treatment facility, who are involuntarily committed or detained under sub. (12) or (13).

(2m) APPLICABILITY TO MINORS. (a) Except as otherwise stated in this section, this section shall apply equally to minors and adults.

(b) Subject to the limitations specified in s. 51.47, a minor may consent to treatment under this section.

(c) In proceedings for the commitment of a minor under sub. (12) or (13):

1. The court may appoint a guardian ad litem for the minor; and

2. The parents or guardian of the minor, if known, shall receive notice of all proceedings.

(3) POWERS OF DEPARTMENT. To implement this section, the department may:

(a) Plan, establish and maintain treatment programs as necessary or desirable.

(b) Make contracts necessary or incidental to the performance of its duties and the execution of its powers, including contracts with public and private agencies, organizations, and individuals to pay them for services rendered or furnished to alcoholics or intoxicated persons.

(c) Keep records and engage in research and the gathering of relevant statistics.

(d) Provide information and referral services as optional elements of the comprehensive program it develops under sub. (7).

(4) DUTIES OF DEPARTMENT. The department shall:

(a) Develop, encourage and foster statewide, regional, and local plans and programs for the prevention of alcoholism and treatment of alcoholics and intoxicated persons in cooperation with public and private agencies, organizations, and individuals and provide technical assistance and consultation services for these purposes.

(b) Coordinate the efforts and enlist the assistance of all public and private agencies, organizations and individuals interested in prevention of alcoholism and treatment of alcoholics and intoxicated persons.

(c) Provide treatment for alcoholics and intoxicated persons in or on parole from state correctional institutions and assure that the community board provides treatment for such persons in county, town and municipal institutions for the detention and incarceration of persons charged with or convicted of a violation of a state law or a county, town or municipal ordinance.

(d) Cooperate with the department of public instruction, local boards of education, schools, police departments, courts, and other public and private agencies, organizations and individuals in establishing programs for the prevention of alcoholism and treatment of alcoholics and intoxicated persons, and preparing curriculum materials thereon for use at all levels of school education.

(e) Prepare, publish, evaluate and disseminate educational material dealing with the nature and effects of alcohol.

(f) Develop and implement and assure that community boards develop and implement, as an integral part of treatment programs, an educational program for use in the treatment of alcoholics and intoxicated persons, which program shall include the dissemination of information concerning the nature and effects of alcohol.

(g) Organize and foster training programs for all persons engaged in treatment of alcoholics and intoxicated persons.

(h) Sponsor and encourage research into the causes and nature of alcoholism and treatment of alcoholics and intoxicated persons, and serve as a clearinghouse for information relating to alcoholism.

(i) Specify uniform methods for keeping statistical information by public and private agencies, organizations, and individuals, and collect and make available relevant statistical information, including number of persons treated, frequency of admission and readmission, and frequency and duration of treatment.

(j) Advise the governor or the state health planning and development agency under P.L. 93-641, as amended, in the preparation of a comprehensive plan for treatment of alcoholics and intoxicated persons for inclusion in the state's comprehensive health plan.

(k) Review all state health, welfare and treatment plans to be submitted for federal funding under federal legislation, and advise the governor or the state health planning and development agency under P.L. 93-641, as amended, on

provisions to be included relating to alcoholics and intoxicated persons.

(l) Develop and maintain, in cooperation with other state agencies, local governments and businesses and industries in the state, appropriate prevention, treatment and rehabilitation programs and services for alcohol abuse and alcoholism among employes thereof.

(m) Utilize the support and assistance of interested persons in the community, particularly recovered alcoholics, to encourage alcoholics voluntarily to undergo treatment.

(n) Cooperate with the department of transportation in establishing and conducting programs designed to deal with the problem of persons operating motor vehicles while intoxicated.

(o) Encourage general hospitals and other appropriate health facilities to admit without discrimination alcoholics and intoxicated persons and to provide them with adequate and appropriate treatment.

(p) Submit to the governor or the state health planning and development agency under P.L. 93-641, as amended, an annual report covering the activities of the department relating to treatment of alcoholism.

(q) Gather information relating to all federal programs concerning alcoholism, whether or not subject to approval by the department, to assure coordination and avoid duplication of efforts.

(7) COMPREHENSIVE PROGRAM FOR TREATMENT. (a) The department shall establish a comprehensive and coordinated program for the treatment of alcoholics and intoxicated persons.

(b) The program of the department shall include:

1. Emergency medical treatment provided by a facility affiliated with or part of the medical service of a general hospital.

2. Nonmedical emergency treatment provided by a facility having a written agreement with a general hospital for the provision of emergency medical treatment to patients as may be necessary.

3. Inpatient treatment.

4. Intermediate treatment as a part-time resident of a treatment facility.

5. Outpatient and follow-up treatment.

6. Extended care in a sheltered living environment with minimal staffing providing a program emphasizing at least one of the following elements: the development of self-care, social and recreational skills or prevocational or vocational training.

7. Prevention and intervention services.

(c) The department shall provide for adequate and appropriate treatment for alcoholics and intoxicated persons admitted under subs. (10) to (13). Treatment may not be provided at a correctional institution except for inmates.

(d) The superintendent of each facility shall make an annual report of its activities to the secretary in the form and manner the secretary specifies.

(e) All appropriate public and private resources shall be coordinated with and utilized in the program if possible.

(f) The secretary shall prepare, publish and distribute annually a list of all approved public and private treatment facilities.

(g) The department may contract for the use of any facility as an approved public treatment facility if the secretary considers this to be an effective and economical course to follow.

(8) STANDARDS FOR PUBLIC AND PRIVATE TREATMENT FACILITIES; ENFORCEMENT PROCEDURES. (a) The department shall establish minimum standards for approved treatment facilities that must be met for a treatment facility to be approved as a public or private treatment facility, and fix the fees to be charged by the department for the required inspections. The standards may concern only the health standards to be met and standards of treatment to be afforded patients and shall distinguish between facilities rendering different modes of treatment. In setting standards, the department shall consider the residents' needs and abilities, the services to be provided by the facility, and the relationship between the physical structure and the objectives of the program. Nothing in this subsection shall prevent community boards from establishing reasonable higher standards.

(b) The department periodically shall make unannounced inspections of approved public and private treatment facilities at reasonable times and in a reasonable manner.

(c) Approval of a facility must be secured under this section before application for a grant-in-aid for such facility under s. 51.42 or before treatment in any facility is rendered to patients.

(d) Each approved public and private treatment facility shall file with the department on request, data, statistics, schedules and information the department reasonably requires. An approved public or private treatment facility that without good cause fails to furnish any data, statistics, schedules or information as requested, or files fraudulent returns thereof, shall be removed from the list of approved treatment facilities.

(e) The department, after notice and hearing, may suspend, revoke, limit, or restrict an approval, or refuse to grant an approval, for failure to meet its standards.

(f) The circuit court may restrain any violation of this section, review any denial, restriction, or revocation of approval, and grant other relief required to enforce its provisions.

(9) ACCEPTANCE FOR TREATMENT; RULES. The secretary shall adopt and may amend and repeal rules for acceptance of persons into the treatment program, considering available treatment resources and facilities, for the purpose of early and effective treatment of alcoholics and intoxicated persons. In establishing the rules the secretary shall be guided by the following standards:

(a) If possible a patient shall be treated on a voluntary rather than an involuntary basis.

(b) A patient shall be initially assigned or transferred to outpatient or intermediate treatment, unless he is found to require inpatient treatment.

(c) No person may be denied treatment solely because he has withdrawn from treatment against medical advice on a prior occasion or because he has relapsed after earlier treatment.

(d) An individualized treatment plan shall be prepared and maintained on a current basis for each patient.

(e) Provision shall be made for a continuum of coordinated treatment services, so that a person who leaves a facility or a form of treatment will have available and utilize other appropriate treatment.

(10) VOLUNTARY TREATMENT OF ALCOHOLICS. (a) An adult alcoholic may apply for voluntary treatment directly to an approved public treatment facility. If the proposed patient is an incompetent person who has not been deprived of the right to contract under subch. I of ch. 880, the person or a legal guardian or other legal representative may make the application. If the proposed patient is an incompetent person who has been deprived of the right to contract under subch. I of ch. 880, a legal guardian or other legal representative may make the application.

(am) A minor may apply for voluntary treatment directly to an approved public treatment facility, but only for those forms of treatment specified in sub. (7) (b) 5 and 7. Section 51.13 shall govern voluntary admission of a minor alcoholic to an inpatient treatment facility.

(b) Subject to rules adopted by the department, the superintendent in charge of an approved public treatment facility may determine who shall be admitted for treatment. If a person is refused admission to an approved public treatment facility, the superintendent, subject to rules adopted by the department, shall refer the person to another approved public treatment facility for treatment if possible and appropriate.

(c) If a patient receiving inpatient care leaves an approved public treatment facility, the patient shall be encouraged to consent to appropriate outpatient or intermediate treatment. If it appears to the superintendent in charge of the treatment facility that the patient is an alcoholic or intoxicated person who requires help, the community board shall arrange for assistance in obtaining supportive services and residential facilities. If the patient is an incompetent person the request for discharge from an inpatient facility shall be made by a legal guardian or other legal representative or by the incompetent if he or she was the original applicant.

(d) If a patient leaves an approved public treatment facility, with or against the advice of the superintendent in charge of the facility, the community board may make reasonable provisions for the patient's transportation to another facility or to his or her home or may assist the patient in obtaining temporary shelter.

(e) This subsection applies only to admissions of alcoholics whose care and treatment is to be paid for by the department or a community board.

(11) TREATMENT AND SERVICES FOR INTOXICATED PERSONS AND OTHERS INCAPACITATED BY ALCOHOL. (a) An intoxicated person may come voluntarily to an approved public treatment facility for emergency treatment. Any law enforcement officer, or designated person upon the request of a law enforcement officer, may assist a person who appears to be intoxicated in a public place and to be in need of help to his or her home, an approved treatment facility or other health facility, if such person consents to the proffered help. Section 51.13 shall govern voluntary admission of an intoxicated minor to an inpatient facility under this paragraph.

(b) A person who appears to be incapacitated by alcohol shall be placed under protective custody by a law enforcement officer. The law enforcement officer shall either bring such person to an approved public treatment facility for emergency treatment or request a designated person to bring such person to the facility for emergency treatment. If no approved public treatment facility is readily available or if, in the judgment of the law enforcement officer or designated person, the person is in need of emergency medical treatment, the law enforcement officer or designated person upon the request of the law enforcement officer shall take such person to an emergency medical facility. The law enforcement officer or designated person, in detaining such person or in taking him or her to an approved public treatment facility or emergency medical facility, is holding such person under protective custody and shall make every reasonable effort to protect the person's

health and safety. In placing the person under protective custody the law enforcement officer may search such person for and seize any weapons. Placement under protective custody under this subsection is not an arrest. No entry or other record shall be made to indicate that such person has been arrested or charged with a crime. A person brought to an approved public treatment facility under this paragraph shall be deemed to be under the protective custody of the facility upon arrival.

(bm) If the person who appears to be incapacitated by alcohol under par. (b) is a minor, either a law enforcement officer or a person authorized to take a child into custody under ch. 48 may take the minor into custody as provided in par. (b).

(c) A person who comes voluntarily or is brought to an approved treatment facility shall be examined by trained staff as soon as practicable in accordance with a procedure developed by the facility in consultation with a licensed physician. The person may then be admitted as a patient or referred to another treatment facility or to an emergency medical facility, in which case the community board shall make provision for transportation. Upon arrival, the person shall be deemed to be under the protective custody of the facility to which he or she has been referred.

(d) A person who by examination pursuant to par. (c) is found to be incapacitated by alcohol at the time of admission, or to have become incapacitated at any time after admission, shall be detained at the appropriate facility for the duration of the incapacity but may not be detained when no longer incapacitated by alcohol, or if the person remains incapacitated by alcohol for more than 72 hours after admission as a patient, exclusive of Saturdays, Sundays and legal holidays, unless he or she is committed under sub. (12). A person may consent to remain in the facility as long as the physician or official in charge believes appropriate.

(e) The community board shall arrange transportation home for a person who was brought under protective custody to an approved public treatment facility or emergency medical facility and who is not admitted, if the home is within 50 miles of the facility. If the person has no home within 50 miles of the facility, the community board shall assist him or her in obtaining shelter.

(f) If a patient is admitted to an approved public treatment facility, the family or next of kin shall be notified as promptly as possible unless an adult patient who is not incapacitated requests that no notification be made.

(g) Any law enforcement officer, designated person or officer or employe of an approved treatment facility who acts in compliance with this section is acting in the course of official duty and is not criminally or civilly liable for false imprisonment.

(h) Prior to discharge, the patient shall be informed of the benefits of further diagnosis and appropriate voluntary treatment.

(i) No provision of this section may be deemed to require any emergency medical facility which is not an approved private or public treatment facility to provide to incapacitated persons nonmedical services including, but not limited to, shelter, transportation or protective custody.

(12) EMERGENCY COMMITMENT. (a) An intoxicated person who has threatened, attempted or inflicted physical harm on himself or herself or on another and is likely to inflict such physical harm unless committed, or a person who is incapacitated by alcohol, may be committed to the community board and brought to an approved public treatment facility for emergency treatment. A refusal to undergo treatment does not constitute evidence of lack of judgment as to the need for treatment.

(b) The physician, spouse, guardian or a relative of the person sought to be committed, or any other responsible person, may petition a court commissioner or the circuit court of the county in which the person sought to be committed resides or is present for commitment under this subsection. The petition shall:

1. State facts to support the need for emergency treatment;

2. State facts sufficient for a determination of indigency of the person; and

3. Be supported by one or more affidavits which aver with particularity the factual basis for the allegations contained in the petition.

(c) Upon receipt of a petition under par. (b), the court commissioner or court shall:

1. Determine whether the petition and supporting affidavits sustain the grounds for commitment and dismiss the petition if the grounds for commitment are not sustained thereby. If the grounds for commitment are sustained by the petition and supporting affidavits, the court or court commissioner shall issue an order temporarily committing the person to the custody of the community board pending the outcome of the preliminary hearing under sub. (13) (d).

2. Assure that the person sought to be committed is represented by counsel and, if the person claims or appears to be indigent, refer the person to the authority for indigency determinations specified under s. 977.07 (1).

3. Issue an order directing the sheriff or other law enforcement agency to take the person into protective custody and bring him or her to an approved public treatment facility designated by the community board, if the person is not detained under sub. (11).

4. Set a time for a preliminary hearing under sub. (13) (d), such hearing to be held not later than 48 hours after receipt of a petition under par. (b), exclusive of Saturdays, Sundays and legal holidays. If at such time the person is unable to assist in the defense because he or she is incapacitated by alcohol, an extension of not more than 48 hours, exclusive of Saturdays, Sundays and legal holidays, may be had upon motion of the person or the person's attorney.

(d) Upon arrival at the approved public treatment facility, the person shall be advised both orally and in writing of the right to counsel, the right to consult with counsel before a request is made to undergo voluntary treatment under sub. (10), the right not to converse with examining physicians, psychologists or other personnel, the fact that anything said to examining physicians, psychologists or other personnel may be used as evidence against him or her at subsequent hearings under this section, the right to refuse medication which would render him or her unable adequately to prepare a defense, the exact time and place of the preliminary hearing under sub. (13) (d), and of the reasons for detention and the standards under which he or she may be committed prior to all interviews with physicians, psychologists or other personnel. Such notice of rights shall be provided to the patient's immediate family if they can be located and may be deferred until the patient's incapacitated condition, if any, has subsided to the point where the patient is capable of understanding the notice. Under no circumstances may interviews with physicians, psychologists or other personnel be conducted until such notice is given, except that the patient may be questioned to determine immediate medical needs. The patient may be detained at the facility to which he or she was admitted or, upon notice to the attorney and the court, transferred by the community board to another appropriate public or private treatment facility, until discharged under par. (e).

(e) When on the advice of the treatment staff the superintendent of the facility having custody of the patient determines that the grounds for commitment no longer exist, he or she shall discharge a person committed under this subsection. No person committed under this subsection shall be detained in any treatment facility beyond the time set for a preliminary hearing under par. (c) 4. If a petition for involuntary commitment under sub. (13) has been filed and a finding of probable cause for believing the patient is in need of commitment has been made under sub. (13) (d), the person may be detained until the petition has been heard and determined.

(f) A copy of the written application for commitment and all supporting affidavits shall be given to the patient at the time notice of rights is given under par. (d) by the superintendent, who shall provide a reasonable opportunity for the patient to consult counsel.

(13) INVOLUNTARY COMMITMENT. (a) A person may be committed to the custody of the community board by the circuit court upon the petition of 3 adults, at least one of whom has personal knowledge of the conduct and condition of the person sought to be committed. A refusal to undergo treatment shall not constitute evidence of lack of judgment as to the need for treatment. The petition for commitment shall:

1. Allege that the condition of the person is such that he or she habitually lacks self-control as to the use of alcohol beverages, and uses such beverages to the extent that health is substantially impaired or endangered and social or economic functioning is substantially disrupted;

2. Allege that such condition of the person is evidenced by a pattern of conduct which is dangerous to the person or to others;

3. State facts sufficient for a determination of indigency of the person;

4. Be supported by the affidavit of each petitioner who has personal knowledge which avers with particularity the factual basis for the allegations contained in the petition; and

5. Contain a statement of each petitioner who does not have personal knowledge which provides the basis for his or her belief.

(b) Upon receipt of a petition under par. (a), the court shall:

1. Determine whether the petition and supporting affidavits meet the requirements of par. (a) and dismiss the petition if the requirements of par. (a) are not met thereby. If the person has not been temporarily committed under sub. (12) (c) and the petition and supporting affidavits meet the requirements of par. (a), the court may issue an order temporarily committing the person to the custody of the community board pending the outcome of the preliminary hearing under par. (d).

2. Assure that the person is represented by counsel and, if the person claims or appears to be indigent, shall refer the person to the authority for indigency determinations specified under s. 977.07 (1). The person shall be represented by counsel at the preliminary hearing under par. (d). The person may, with the approval of the

court, waive his or her right to representation by counsel at the full hearing under par. (f).

3. If the court orders temporary commitment, issue an order directing the sheriff or other law enforcement agency to take the person into protective custody and to bring the person to an approved public treatment facility designated by the community board, if the person is not detained under sub. (11) or (12).

4. Set a time for a preliminary hearing under par. (d). If the person is taken into protective custody, such hearing shall be held not later than 48 hours after receipt of a petition under par. (a), exclusive of Saturdays, Sundays and legal holidays. If at such time the person is unable to assist in the defense because he or she is incapacitated by alcohol, an extension of not more than 48 hours, exclusive of Saturdays, Sundays and legal holidays, may be had upon motion of the person or the person's attorney.

(c) Effective and timely notice of the preliminary hearing, together with a copy of the petition and supporting affidavits under par. (a), shall be given to the person unless he or she has been taken into custody under par. (b), the spouse or legal guardian if the person is incompetent, the person's counsel and the petitioner. The notice shall include a written statement of the person's right to an attorney, the right to trial by jury, the right to be examined by a physician, and the standard under which he or she may be committed under this section. If the person is taken into custody under par. (b), upon arrival at the approved public treatment facility, the person shall be advised both orally and in writing of the right to counsel, the right to consult with counsel before a request is made to undergo voluntary treatment under sub. (10), the right not to converse with examining physicians, psychologists or other personnel, the fact that anything said to examining physicians, psychologists or other personnel may be used as evidence against him or her at subsequent hearings under this section, the right to refuse medication which would render him or her unable adequately to prepare a defense, the exact time and place of the preliminary hearing under par. (d), the right to trial by jury, the right to be examined by a physician and of the reasons for detention and the standards under which he or she may be committed prior to all interviews with physicians, psychologists or other personnel. Such notice of rights shall be provided to the person's immediate family if they can be located and may be deferred until the person's incapacitated condition, if any, has subsided to the point where the person is capable of understanding the notice. Under no circumstances may interviews with physicians, psychologists or other personnel be conducted until such notice is given, except that the person may be questioned to determine immediate medical needs. The person may be detained at the facility to which he or she was admitted or, upon notice to the attorney and the court, transferred by the community board to another appropriate public or private treatment facility, until discharged under this subsection. A copy of the petition and all supporting affidavits shall be given to the person at the time notice of rights is given under this paragraph by the superintendent, who shall provide a reasonable opportunity for the patient to consult counsel.

(d) Whenever it is desired to involuntarily commit a person, a preliminary hearing shall be held under this paragraph. The purpose of the preliminary hearing shall be to determine if there is probable cause for believing that the allegations of the petition under par. (a) are true. The person shall be represented by counsel at the preliminary hearing and, if the person is indigent, counsel shall timely be appointed at public expense, as provided in s. 967.06 and ch. 977. Counsel shall have access to all reports and records, psychiatric and otherwise, which have been made prior to the preliminary hearing. The person shall be present at the preliminary hearing and shall be afforded a meaningful opportunity to be heard. Upon failure to make a finding of probable cause under this paragraph, the court shall dismiss the petition and discharge the person from the custody of the community board.

(dm) For the purposes of this section, duties to be performed by a court shall be carried out by the judge of such court or a court commissioner of such court who is an attorney and is designated by the judge to so act, in all matters prior to a final hearing under this subsection.

(e) Upon a finding of probable cause under par. (d), the court shall fix a date for a full hearing to be held within 14 days. An extension of not more than 14 days may be granted upon motion of the person sought to be committed upon a showing of cause. Effective and timely notice of the full hearing, the right to counsel, the right to jury trial and the standards under which the person may be committed shall be given to the person, the immediate family other than a petitioner under par. (a) or sub. (12) (b) if they can be located, the spouse or legal guardian if the person is incompetent, the superintendent in charge of the appropriate approved public treatment facility if the person has been temporarily committed under par. (b) or sub. (12), the person's counsel, unless waived, and to the petitioner under par. (a). Counsel, or the person if counsel is waived, shall have access to all reports and records, psychiatric and otherwise, which have been made prior to the full

hearing on commitment, and shall be given the names of all persons who may testify in favor of commitment and a summary of their proposed testimony at least 96 hours before the full hearing, exclusive of Saturdays, Sundays and legal holidays.

(f) The hearing shall be open, unless the person sought to be committed or the person's attorney moves that it be closed, in which case only persons in interest (including representatives of the community board in all cases) and their attorneys and witnesses may be present. At the hearing the jury, or, if trial by jury is waived, the court, shall consider all relevant evidence, including, if possible, the testimony of at least one licensed physician who has examined the person whose commitment is sought. Ordinary rules of evidence shall apply to any such proceeding. The person whose commitment is sought shall be present and shall be given an opportunity to be examined by a court-appointed licensed physician. If the person refuses and there is sufficient evidence to believe that the allegations of the petition are true, or if the court believes that more medical evidence is necessary, the court may make a temporary order committing the person to the community board for a period of not more than 5 days for purposes of diagnostic examination.

(g) The court shall make an order of commitment to the community board if, after hearing all relevant evidence, including the results of any diagnostic examination, the trier of fact finds: 1) that the allegations of the petition under par. (a) have been established by clear and convincing evidence; and 2) that there is a relationship between the alcoholic condition and the pattern of conduct during the 12-month period immediately preceding the time of petition which is dangerous to the person or others and that such relationship has been established to a reasonable medical certainty; and 3) that there is an extreme likelihood that the pattern of conduct will continue or repeat itself without the intervention of involuntary treatment or institutionalization. The court may not order commitment of a person unless it is shown by clear and convincing evidence that there is no suitable alternative available for the person and that the community board is able to provide appropriate and effective treatment for the individual.

(h) A person committed under this subsection shall remain in the custody of the community board for treatment for a period set by the court, but not to exceed 90 days. During this period of commitment the community board may transfer the person from one approved public treatment facility or program to another as provided in par. (k). At the end of the period set by the court, the person shall be discharged automatically unless the community board before expiration of the period obtains a court order for recommitment upon the grounds set forth in par. (a) for a further period not to exceed 6 months. If after examination it is determined that the person is likely to inflict physical harm on himself or herself or on another, the community board shall apply for recommitment. Only one recommitment order under this paragraph is permitted.

(j) Upon the filing of a petition for recommitment under par. (h), the court shall fix a date for a recommitment hearing within 10 days, assure that the person sought to be recommitted is represented by counsel and, if the person is indigent, appoint counsel for him or her, unless waived. The provisions of par. (e) relating to notice and to access to records, names of witnesses and summaries of their testimony shall apply to recommitment hearings under this paragraph. At the recommitment hearing, the court shall proceed as provided under pars. (f) and (g).

(k) The community board shall provide for adequate and appropriate treatment of a person committed to its custody. Any person committed or recommitted to custody may be transferred by the community board from one approved public treatment facility or program to another upon the written application to the community board from the facility or program treating the person. Such application shall state the reasons why transfer to another facility or program is necessary to meet the treatment needs of the person. Notice of such transfer and the reasons therefor shall be given to the court, the person's attorney and the person's immediate family, if they can be located.

(l) If an approved private treatment facility agrees with the request of a competent patient or a parent, sibling, adult child, or guardian to accept the patient for treatment, the community board may transfer the person to the private treatment facility.

(m) A person committed under this section may at any time seek to be discharged from commitment by habeas corpus proceedings.

(n) The venue for proceedings under this subsection is the place in which the person to be committed resides or is present.

(o) All fees and expenses incurred under this section which are required to be assumed by the county shall be governed by s. 51.20 (19).

(p) A record shall be made of all proceedings held under this subsection. Transcripts shall be made available under SCR 71.03. The community board may in any case request a transcript.

(14) CONFIDENTIALITY OF RECORDS OF PATIENTS. (a) Except as otherwise provided in s.

51.30, the registration and treatment records of alcoholism treatment programs and facilities shall remain confidential and are privileged to the patient. The application of s. 51.30 is limited by any rule adopted under s. 51.30 (4) (c) for the purpose of protecting the confidentiality of alcoholism treatment records in conformity with federal requirements.

(b) Any person who violates this subsection shall forfeit not more than $5,000.

(15) CIVIL RIGHTS AND LIBERTIES. (a) Except as provided in s. 51.61 (2), a person being treated under this section does not thereby lose any legal rights.

(b) No provisions of this section may be deemed to contradict any rules or regulations governing the conduct of any inmate of a state or county correctional institution who is being treated in an alcoholic treatment program within the institution.

(c) A private or public general hospital may not refuse admission or treatment to a person in need of medical services solely because that person is an "alcoholic", "incapacitated by alcohol" or is an "intoxicated person" as defined in sub. (2). This paragraph does not require a hospital to admit or treat the person if the hospital does not ordinarily provide the services required by the person. A private or public general hospital which violates this paragraph shall forfeit not more than $500.

(16) PAYMENT FOR TREATMENT. (a) Liability for payment for care, services and supplies provided under this section, the collection and enforcement of such payments, and the adjustment and settlement with the several counties for their proper share of all moneys collected under s. 46.10, shall be governed exclusively by s. 46.10.

(b) Payment for treatment of persons treated under s. 53.38 shall be made under that section.

(c) Payment of attorney's fees for appointed attorneys in the case of indigents shall be in accordance with ch. 977.

(17) APPLICABILITY OF OTHER LAWS; PROCEDURE. (a) Nothing in this section affects any law, ordinance or rule the violation of which is punishable by fine, forfeiture or imprisonment.

(b) All administrative procedure followed by the secretary in the implementation of this section shall be in accordance with ch. 227.

(18) CONSTRUCTION. This section shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this section insofar as possible among states which enact similar laws.

(19) SHORT TITLE. This section may be cited as the "Alcoholism and Intoxication Treatment Act".

History: 1973 c. 198; 1975 c. 200, 428; 1975 c. 430 s. 80; 1977 c. 29; 1977 c. 187 ss. 44, 134, 135; 1977 c. 203 s. 106; 1977 c. 428; 1977 c. 449 s. 497; Sup. Ct. Order, 83 W (2d) xiii; 1979 c. 32 s. 92 (11); Sup. Ct. Order, eff. 1-1-80; 1979 c. 221 ss. 417, 2200 (20); 1979 c. 300, 331, 356; 1981 c. 20; 1981 c. 79 s. 17; 1981 c. 289, 314; 1983 a. 27 ss. 1116 to 1121, 2202 (20).

Judicial Council Note, 1981: Reference to a "writ" of habeas corpus in sub. (13) (m) has been removed because that remedy is now available in an ordinary action. See s. 781.01, stats., and the note thereto. [Bill 613-A]

See note to 55.06, citing Guardianship & Protective Placement of Shaw, 87 W (2d) 503, 275 NW (2d) 143 (Ct. App. 1979).

Persons incapacitated by alcohol who engage in disorderly conduct in treatment facility may be so charged, but not merely for the purpose of arranging for their confinement in jail for security during detoxification. 64 Atty. Gen. 161.

The revision of Wisconsin's law of alcoholism and intoxication. Robb, 58 MLR 88.

Wisconsin's new alcoholism act encourages early voluntary treatment. 1974 WBB No. 3.

51.47 Alcohol and other drug abuse treatment for minors. (1) Except as provided in subs. (2) and (3), any physician or health care facility licensed, approved or certified by the state for the provision of health services may render preventive, diagnostic, assessment, evaluation or treatment services for the abuse of alcohol or other drugs to a minor 12 years of age or over without obtaining the consent of or notifying the minor's parent or guardian. Unless consent of the minor's parent or guardian is required under sub. (2), the physician or health care facility shall obtain the minor's consent prior to billing a 3rd party for services under this section. If the minor does not consent, the minor shall be responsible for paying for the services, which the department shall bill to the minor under s. 46.03 (18) (b).

(2) The physician or health care facility shall obtain the consent of the minor's parent or guardian:

(a) Before performing any surgical procedure on the minor, unless the procedure is essential to preserve the life or health of the minor and the consent of the minor's parent or guardian is not readily obtainable.

(b) Before administering any controlled substances to the minor, except to detoxify the minor under par. (c).

(c) Before admitting the minor to an inpatient treatment facility, unless the admission is to detoxify the minor for ingestion of alcohol or other drugs.

(d) If the period of detoxification of the minor under par. (c) extends beyond 72 hours after the minor's admission as a patient.

(3) The physician or health care facility shall notify the minor's parent or guardian of any services rendered under this section as soon as practicable.

(4) No physician or health care facility rendering services under sub. (1) is liable solely because of the lack of consent or notification of the minor's parent or guardian.

History: 1979 c. 331

51.59 Incompetency not implied. (1) No person is deemed incompetent to manage his or her affairs, to contract, to hold professional, occupational or motor vehicle operator's licenses, to marry or to obtain a divorce, to vote, to make a will or to exercise any other civil right solely by reason of his or her admission to a facility in accordance with this chapter or detention or commitment under this chapter.

(2) This section does not authorize an individual who has been involuntarily committed or detained under this chapter to refuse treatment during such commitment or detention.

History: 1977 c. 428

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. 55 or who is detained, committed or placed under this chapter or ch. 55, 971 or 975, or who is transferred to a treatment facility under s. 51.35 (3) or 51.37 or who is receiving care or treatment for such conditions through the department or a board established 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. 53.01. 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 such 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.

(c) Have an unrestricted right to send sealed mail and receive sealed mail to or from legal counsel, the courts, governmental 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 which 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 paragraph.

(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) Have the right to the least restrictive conditions necessary to achieve the purposes of admission, commitment or placement, 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.

(f) Have a right to receive prompt and adequate treatment, rehabilitation and educational services appropriate for his or her condition.

(g) Prior to the final commitment hearing and court commitment orders, have the right to refuse all medication and treatment except as ordered by the court under this paragraph, or in a situation where such medication or treatment is necessary to prevent serious physical harm to the patient or to others. Medications and treatment during such period may be refused on religious grounds only as provided in par. (h). At or after the hearing to determine probable cause for commitment but prior to the final commitment order, the court may issue an order permitting medication to be administered to the individual regardless of his or her consent if it finds that such medication will have therapeutic value and will not unreasonably impair the ability of the individual to prepare for or participate in subsequent legal proceedings, and that there is probable cause to believe that the individual is not competent to refuse medication. Before issuing such an order, the court shall hold a hearing on the matter which meets the requirements of s. 51.20 (5), except for the right to a jury trial. An individual is not competent to refuse medication if because of mental illness, developmental disability, alcoholism or drug dependence, the individual is incapable of expressing an understanding of the advantages and disadvantages of accepting treatment, and the alternatives to accepting the particular treatment offered, after the advantages, disadvantages and alternatives have been explained to the individual. Following a final commitment order, the subject individual does not have the right to refuse medication and treatment except as provided by this section.

(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 which 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. In the instance where 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 undertakes such treatment. Such treatment plan 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 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 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 in the maximum security facility at the Mendota mental health institute 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 maximum security facility or his or her designee and shall be approved within one hour after it is authorized by the director of the Mendota mental health facility 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 shall have a written policy covering the use of isolation which 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. Each policy shall be reviewed and approved by the director of the Mendota mental health institute or the director's designee.

(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 clergyman 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 which 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 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) Be permitted 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.

(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).

(3) The rights accorded to patients under this section apply to patients receiving services in outpatient and day-service facilities, insofar as applicable.

(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, employes 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.

(5) (a) The department shall establish procedures to assure protection of patients' rights guaranteed under this chapter, and shall implement a grievance procedure to assure that rights of patients under this chapter are protected and enforced by the department, by service providers and by boards established under ss. 51.42 and 51.437. The procedures established by the department under this subsection do not apply to patients in private hospitals or public general hospitals except for patients who are admitted through the department or a board established under s. 51.42 or 51.437, or who are admitted in accordance with a written agreement between the hospital and the department or such a board.

(b) Each private hospital or public general hospital receiving patients who are subject to this section shall establish a grievance procedure to assure the protection of patients' rights under this section.

(6) Subject to the rights of patients provided under this chapter, the department or boards established under s. 51.42 or 51.437, or any agency providing services under an agreement with the department or such boards has 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 who was voluntarily admitted shall first be obtained. In the case of a minor, the written, informed consent of the parent or guardian is required, and if the minor

is aged 14 or over, the written, informed consent of the minor and the minor's parent or guardian is required.

(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 wilfully, 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.

(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.

(9) The department shall promulgate rules to implement this section.

History: 1975 c. 430; 1977 c. 428 ss. 96 to 109, 115; 1981 c. 20; 1981 c. 314 s. 144; 1983 a. 189 s. 329 (5); 1983 a. 293, 357, 538.

51.63 Private pay for patients. Any person may pay, in whole or in part, for the maintenance and clothing of any mentally ill, developmentally disabled, alcoholic or drug dependent person at any institution for the treatment of persons so afflicted, and his or her account shall be credited with the sums paid. The person may also be likewise provided with such special care in addition to those services usually provided by the institution as is agreed upon with the director, upon payment of the charges therefor.

History: 1975 c. 430

51.65 Segregation of tuberculosis patients. The department shall make provision for the segregation of tuberculosis patients in the state-operated and community-operated facilities, and for that purpose may set apart facilities and equip facilities for the care and treatment of such patients.

History: 1975 c. 430.

51.67 Alternate procedure; protective services. If, after hearing under s. 51.13 (4) or 51.20, the court finds that commitment under this chapter is not warranted and that the subject individual is a fit subject for guardianship and protective placement or services, the court may, without further notice, appoint a temporary guardian for the subject individual and order temporary protective placement or services under ch. 55 for a period not to exceed 30 days. Any interested party may then file a petition for permanent guardianship or protective placement or services under ch. 55. If the individual is in a treatment facility, the individual may remain in the facility during the period of temporary protective placement if no other appropriate facility is available.

History: 1975 c. 430; 1977 c. 187, 428; 1979 c. 89, 336.

51.75 Interstate compact on mental health. The interstate compact on mental health is enacted into law and entered into by this state with all other states legally joining therein substantially in the following form:

THE INTERSTATE COMPACT ON MENTAL HEALTH

The contracting states solemnly agree that:

(1) ARTICLE I. The party states find that the proper and expeditious treatment of the mentally ill and mentally deficient can be facilitated by co-operative action, to the benefit of the patients, their families and society as a whole. Further, the party states find that the necessity of and desirability for furnishing such care and treatment bears no primary relation to the residence or citizenship of the patient but that, on the contrary, the controlling factors of community safety and humanitarianism require that facilities and services be made available for all who are in need of them. Consequently, it is the purpose of this compact and of the party states to provide the necessary legal basis for the institutionalization or other appropriate care and treatment of the mentally ill and mentally deficient under a system that recognizes the paramount importance of patient welfare and

to establish the responsibilities of the party states in terms of such welfare.

(2) ARTICLE II. As used in this compact:

(a) "Aftercare" means care, treatment and services provided a patient, as defined herein, on convalescent status or conditional release.

(b) "Institution" means any hospital or other facility maintained by a party state or political subdivision thereof for the care and treatment of mental illness or mental deficiency.

(c) "Mental deficiency" means mental deficiency as defined by appropriate clinical authorities to such extent that a person so afflicted is incapable of managing himself and his affairs, but shall not include mental illness as defined herein.

(d) "Mental illness" means mental disease to such extent that a person so afflicted requires care and treatment for his own welfare, or the welfare of others, or of the community.

(e) "Patient" means any person subject to or eligible as determined by the laws of the sending state, for institutionalization or other care, treatment or supervision pursuant to the provisions of this compact.

(f) "Receiving state" means a party state to which a patient is transported pursuant to the provisions of the compact or to which it is contemplated that a patient may be so sent.

(g) "Sending state" means a party state from which a patient is transported pursuant to the provisions of the compact or from which it is contemplated that a patient may be so sent.

(h) "State" means any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(3) ARTICLE III. (a) Whenever a person physically present in any party state is in need of institutionalization by reason of mental illness or mental deficiency, he shall be eligible for care and treatment in an institution in that state irrespective of his residence, settlement or citizenship, qualifications.

(b) The provisions of par. (a) to the contrary notwithstanding any patient may be transferred to an institution in another state whenever there are factors based upon clinical determinations indicating that the care and treatment of said patient would be facilitated or improved thereby. Any such institutionalization may be for the entire period of care and treatment or for any portion thereof. The factors referred to in this paragraph include the patient's full record with due regard for the location of the patient's family, character of the illness and probable duration thereof, and such other factors as are considered appropriate.

(c) No state is obliged to receive any patient under par. (b) unless the sending state has given advance notice of its intention to send the patient, furnished all available medical and other pertinent records concerning the patient and given the qualified medical or other appropriate clinical authorities of the receiving state an opportunity to examine the patient if said authorities so wish, and unless the receiving state agrees to accept the patient.

(d) If the laws of the receiving state establish a system of priorities for the admission of patients, an interstate patient under this compact shall receive the same priority as a local patient and shall be taken in the same order and at the same time that he would be taken if he were a local patient.

(e) Pursuant to this compact, the determination as to the suitable place of institutionalization for a patient may be reviewed at any time and such further transfer of the patient may be made as seems likely to be in the best interest of the patient.

(4) ARTICLE IV. (a) Whenever, pursuant to the laws of the state in which a patient is physically present, it is determined that the patient should receive aftercare or supervision, such care or supervision may be provided in a receiving state. If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state have reason to believe that aftercare in another state would be in the best interest of the patient and would not jeopardize the public safety, they shall request the appropriate authorities in the receiving state to investigate the desirability of affording the patient such aftercare in said receiving state, and such investigation shall be made with all reasonable speed. The request for investigation shall be accompanied by complete information concerning the patient's intended place of residence and the identity of the person in whose charge it is proposed to place the patient, the complete medical history of the patient and such other documents as are pertinent.

(b) If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state and the appropriate authorities in the receiving state find that the best interest of the patient would be served thereby, and if the public safety would not be jeopardized thereby, the patient may receive aftercare or supervision in the receiving state.

(c) In supervising, treating or caring for a patient on aftercare pursuant to the terms of this subsection, a receiving state shall employ the same standards of visitation, examination, care and treatment that it employs for similar local patients.

(5) ARTICLE V. Whenever a dangerous or potentially dangerous patient escapes from an institution in any party state, that state shall promptly notify all appropriate authorities within and without the jurisdiction of the escape, in a manner reasonably calculated to facilitate the speedy apprehension of the escapee. Immediately upon the apprehension and identification of any such dangerous or potentially dangerous patient, he shall be detained in the state where found, pending disposition in accordance with law.

(6) ARTICLE VI. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the patient, shall be permitted to transport any patient being moved pursuant to this compact through any state party to this compact, without interference.

(7) ARTICLE VII. (a) No person shall be deemed a patient of more than one institution at any given time. Completion of transfer of any patient to an institution in a receiving state shall have the effect of making the person a patient of the institution in the receiving state.

(b) The sending state shall pay all costs of and incidental to the transportation of any patient pursuant to this compact, but any 2 or more party states may, by making a specific agreement for that purpose, arrange for a different allocation of costs as among themselves.

(c) No provision of this compact shall be construed to alter or affect any internal relationships among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs or responsibilities therefor.

(d) Nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person in regard to costs for which such party state or subdivision thereof may be responsible pursuant to any provision of this compact.

(e) Nothing in this compact shall be construed to invalidate any reciprocal agreement between a party state and a nonparty state relating to institutionalization, care or treatment of the mentally ill or mentally deficient or any statutory authority pursuant to which such agreements may be made.

(8) ARTICLE VIII. (a) Nothing in this compact shall be construed to abridge, diminish or in any way impair the rights, duties and responsibilities of any patient's guardian on his own behalf or in respect of any patient for whom he may serve, except that where the transfer of any patient to another jurisdiction makes advisable the appointment of a supplemental or substitute guardian, any court of competent jurisdiction in the receiving state may make such supplemental or substitute appointment and the court which appointed the previous guardian shall, upon being duly advised of the new appointment, and upon the satisfactory completion of such accounting and other acts as such court by law requires, relieve the previous guardian of power and responsibility to whatever extent is appropriate in the circumstances. In the case of any patient having settlement in the sending state, the court of competent jurisdiction in the sending state has the sole discretion to relieve a guardian appointed by it or continue his power and responsibility, whichever it deems advisable. The court in the receiving state may, in its discretion, confirm or reappoint the person previously serving as guardian in the sending state in lieu of making a supplemental or substitute appointment.

(b) The term "guardian" as used in par. (a) includes any guardian, trustee, legal committee, conservator or other person or agency however denominated who is charged by law with power to act for or responsibility for the person or property of a patient.

(9) ARTICLE IX. (a) No provision of this compact except sub. (5) applies to any person institutionalized while under sentence in a penal or correctional institution or while subject to trial on a criminal charge, or whose institutionalization is due to the commission of an offense for which, in the absence of mental illness or mental deficiency, said person would be subject to incarceration in a penal or correctional institution.

(b) To every extent possible, it is the policy of states party to this compact that no patient shall be placed or detained in any prison, jail or lockup, but such patient shall, with all expedition, be taken to a suitable institutional facility for mental illness or mental deficiency.

(10) ARTICLE X. (a) Each party state shall appoint a "compact administrator" who, on behalf of his state, shall act as general coordinator of activities under the compact in his state and who shall receive copies of all reports, correspondence and other documents relating to any patient processed under the compact by his state either in the capacity of sending or receiving state. The compact administrator or his duly designated representative shall be the official with whom other party states shall deal in any matter relating to the compact or any patient processed thereunder.

(b) The compact administrators of the respective party states shall have power to promulgate reasonable rules and regulations to carry out more effectively the terms and provisions of this compact.

(11) ARTICLE XI. The duly constituted administrative authorities of any 2 or more party states may enter into supplementary agreements for the provision of any service or facility or for the maintenance of any institution on a joint or co-operative basis whenever the states concerned find that such agreements will improve services, facilities or institutional care and treatment in the fields of mental illness or mental deficiency. No such supplementary agreement shall be construed so as to relieve any party state of any obligation which it otherwise would have under other provisions of this compact.

(12) ARTICLE XII. This compact enters into full force and effect as to any state when enacted by it into law and such state shall thereafter be a party thereto with all states legally joining therein.

(13) ARTICLE XIII. (a) A state party to this compact may withdraw therefrom by enacting a statute repealing the same. Such withdrawal takes effect one year after notice thereof has been communicated officially and in writing to the governors and compact administrators of all other party states. However, the withdrawal of any state shall not change the status of any patient who has been sent to said state or sent out of said state pursuant to the provisions of the compact.

(b) Withdrawal from any agreement permitted by sub. (7) (b) as to costs or from any supplementary agreement made pursuant to sub. (11) shall be in accordance with the terms of such agreement.

(14) ARTICLE XIV. This compact shall be liberally construed so as to effectuate the purpose thereof. The provisions of this compact are severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state, or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact is held contrary to the constitution of any party state thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History: 1981 c. 390; 1983 a. 189.

51.76 Compact administrator. Pursuant to the interstate compact on mental health, the secretary shall be the compact administrator and, acting jointly with like officers of other party states, may promulgate rules to carry out more effectively the terms of the compact. The compact administrator shall co-operate with all departments, agencies and officers of and in the government of this state and its subdivisions in facilitating the proper administration of the compact or any supplementary agreement entered into by this state thereunder.

51.77 Transfer of patients. (1) In this section "relatives" means the patient's spouse, parents, grandparents, adult children, adult siblings, adult aunts, adult uncles and adult cousins, and any other relative with whom the patient has resided in the previous 10 years.

(2) Transfer of patients out of Wisconsin to another state under the interstate compact on mental health shall be upon recommendation of no less than 3 physicians licensed under ch. 448 appointed by the court of competent jurisdiction and shall be only in accord with the following requirements:

(a) That the transfer be requested by the patient's relatives or guardian or a person with whom the patient has resided for a substantial period on other than a commercial basis. This requirement does not preclude the compact administrator or the institution in which the patient is in residence from suggesting that relatives or the guardian request such transfer.

(b) That the compact administrator determine that the transfer of said patient is in his best interest.

(c) That the patient have either interested relatives in the receiving state or a determinable interest in the receiving state.

(d) That the patient, guardian and relatives, as determined by the patient's records, whose addresses are known or can with reasonable diligence be ascertained, be notified.

(e) That none of the persons given notice under par. (d) object to the transfer of said patient within 30 days of receipt of such notice.

(f) That records of the intended transfer, including proof of service of notice under par. (d) be reviewed by the court assigned to exercise probate jurisdiction for the county in which the patient is confined or by any other court which a relative or guardian requests to do so.

(3) If the request for transfer of a patient is rejected for any of the reasons enumerated under sub. (2), the compact administrator shall notify all persons making the request as to why the request was rejected and of his right to appeal the decision to a competent court.

(4) If the patient, guardian or any relative feels that the objections of other relatives or of the compact administrator raised under sub. (2) are not well-founded in preventing transfer, such person may appeal the decision not to transfer to a competent court having jurisdic-

tion which shall determine, on the basis of evidence by the interested parties and psychiatrists, psychologists and social workers who are acquainted with the case, whether transfer is in the best interests of the patient. The requirements of sub. (2) (c) shall apply to this subsection.

(5) The determination of mental illness or developmental disability in proceedings in this state requires a finding of a court in accordance with the procedure contained in s. 51.20.

History: 1975 c. 430; 1977 c. 449.

51.78 Supplementary agreements. The compact administrator may enter into supplementary agreements with appropriate officials of other states under s. 51.75 (7) and (11). If such supplementary agreements require or contemplate the use of any institution or facility of this state or county or require or contemplate the provision of any service by this state or county, no such agreement shall take effect until approved by the head of the department or agency under whose jurisdiction said institution or facility is operated or whose department or agency will be charged with the rendering of such service.

History: 1981 c. 390.

51.79 Transmittal of copies. Duly authorized copies of ss. 51.75 to 51.80 shall, upon its approval, be transmitted by the secretary of state to the governor of each state, the attorney general and the administrator of general services of the United States and the council of state governments.

History: 1979 c. 89.

51.80 Patients' rights. Nothing in the interstate compact on mental health shall be construed to abridge, diminish or in any way impair the rights or liberties of any patient affected by the compact.

51.81 Uniform extradition of persons of unsound mind act; definitions. The terms "flight" and "fled" as used in ss. 51.81 to 51.85 shall be construed to mean any voluntary or involuntary departure from the jurisdiction of the court where the proceedings hereinafter mentioned may have been instituted and are still pending with the effect of avoiding, impeding or delaying the action of the court in which such proceedings may have been instituted or be pending, or any such departure from the state where the person demanded then was, if he then was under detention by law as a person of unsound mind and subject to detention. The word "state" wherever used in ss. 51.81 to 51.85 shall include states, territories, districts and insular and other possessions of the United States. As applied to a request to return any person within the purview of ss. 51.81 to 51.85 to or from the District of Columbia, the words, "executive authority," "governor" and "chief magistrate," respectively, shall include a justice of the supreme court of the District of Columbia and other authority.

History: 1971 c. 40 s. 93.

51.82 Delivery of certain nonresidents. A person alleged to be of unsound mind found in this state, who has fled from another state, in which at the time of his flight: (a) He was under detention by law in a hospital, asylum or other institution for the insane as a person of unsound mind; or (b) he had been theretofore determined by legal proceedings to be of unsound mind, the finding being unreversed and in full force and effect, and the control of his person having been acquired by a court of competent jurisdiction of the state from which he fled; or (c) he was subject to detention in such state, being then his legal domicile (personal service of process having been made) based on legal proceedings there pending to have him declared of unsound mind, shall on demand of the executive authority of the state from which he fled, be delivered up to be removed thereto.

History: 1975 c. 430.

51.83 Authentication of demand; discharge; costs. (1) Whenever the executive authority of any state demands of the executive authority of this state, any fugitive within the purview of s. 51.82 and produces a copy of the commitment, decree or other judicial process and proceedings, certified as authentic by the governor or chief magistrate of the state whence the person so charged has fled with an affidavit made before a proper officer showing the person to be such a fugitive, it is the duty of the executive authority of this state to cause him to be apprehended and secured, if found in this state, and to cause immediate notice of the apprehension to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he appears.

(2) If no such agent appears within 30 days from the time of the apprehension, the fugitive may be discharged. All costs and expenses incurred in the apprehending, securing, maintaining and transmitting such fugitive to the state making such demand, shall be paid by such state. Any agent so appointed who receives the fugitive into his custody shall be empowered to transmit him to the state from which he has fled. The executive authority of

this state is hereby vested with the power, on the application of any person interested, to demand the return to this state of any fugitive within the purview of ss. 51.81 to 51.85.

History: 1971 c. 40 s. 93.

51.84 Limitation of time to commence proceeding. Any proceedings under ss. 51.81 to 51.85 shall be begun within one year after the flight referred to in ss. 51.81 to 51.85.

History: 1971 c. 40 s. 93; 1981 c. 314 s. 146.

Limitation period commences on date committing state discovers patient in asylum state. State ex rel Melentowich v. Klink, 108 W (2d) 374, 321 NW (2d) 272 (1982).

51.85 Interpretation. Sections 51.81 to 51.85 shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: 1971 c. 40 s. 93.

51.87 Interstate contracts for mental health services. (1) PURPOSE AND POLICY. The purpose of this section is to enable appropriate treatment to be provided to individuals, across state lines from the individuals' state of residence, in qualified facilities that are closer to the homes of the individuals than are facilities available in their home states.

(2) DEFINITIONS. In this section:

(a) "Receiving agency" means a public or private agency or board which, pursuant to this section, provides treatment to individuals from a state other than the state in which the agency or board is located.

(b) "Receiving state" means the state in which a receiving agency is located.

(c) "Sending agency" means a public or private agency or board located in a state which sends an individual to another state for treatment pursuant to this section.

(d) "Sending state" means the state in which a sending agency is located.

(3) PURCHASE OF SERVICES. A board created under s. 46.23, 51.42 or 51.437 may contract as provided under this section with public or private agencies in states bordering on Wisconsin to secure services under this chapter for persons who receive services through the board, except that services may not be secured for persons committed pursuant to s. 971.14 or 971.17. Section 46.036 (1) to (6) applies to contracts entered into under this section by boards established under s. 46.23, 51.42 or 51.437.

(4) PROVISION OF SERVICES. A board created under s. 46.23, 51.42 or 51.437 may contract as provided under this section with public or private agencies in a state bordering on Wisconsin to provide services under this chapter for residents of the bordering state in approved treatment facilities in this state, except that services may not be provided for residents of the bordering state who are involved in criminal proceedings.

(5) CONTRACT APPROVAL. A contract under this section may not be validly executed until the department has reviewed and approved the provisions of the contract, determined that the receiving agency provides services in accordance with the standards of this state and the secretary has certified that the receiving state's laws governing patient rights are substantially similar to those of this state.

(6) RESIDENCE NOT ESTABLISHED. No person establishes legal residence in the state where the receiving agency is located while the person is receiving services pursuant to a contract under this section.

(7) TREATMENT RECORDS. Section 51.30 applies to treatment records of an individual receiving services pursuant to a contract under this section through a receiving agency in this state, except that the sending agency has the same right of access to the treatment records of the individual as provided under s. 51.30 for boards established under s. 51.42 or 51.437.

(8) INVOLUNTARY COMMITMENTS. An individual who is detained, committed or placed on an involuntary basis under s. 51.15, 51.20 or 51.45 or ch. 55 may be confined and treated in another state pursuant to a contract under this section. An individual who is detained, committed or placed under the civil law of a state bordering on Wisconsin may be confined and treated in this state pursuant to a contract under this section. Court orders valid under the law of the sending state are granted recognition and reciprocity in the receiving state for individuals covered by a contract under this section to the extent that the court orders relate to confinement for treatment or care of a mental disability. Such court orders are not subject to legal challenge in the courts of the receiving state. Persons who are detained, committed or placed under the law of a sending state and who are transferred to a receiving state under this section continue to be in the legal custody of the authority responsible for them under the law of the sending state. Except in emergencies, those persons may not be transferred, removed or furloughed from a facility of the receiving agency without the specific approval of the authority responsible for them under the law of the sending state.

(9) APPLICABLE LAWS. While in the receiving state pursuant to a contract under this section, an individual shall be subject to all of the provisions of law and regulations applicable to persons detained, committed or placed pursuant to the corresponding laws of the receiving

state, except those laws and regulations of the receiving state relating to length of confinement, reexaminations and extensions of confinement and except as otherwise provided by this section. The laws and regulations of the sending state relating to length of confinement, reexaminations and extensions of confinement shall apply. No person may be sent to another state pursuant to a contract under this section until the receiving state has enacted a law recognizing the validity and applicability of this state's laws as provided in this section.

(10) VOLUNTARY PLACEMENTS. If an individual receiving treatment on a voluntary basis pursuant to a contract under this section requests discharge, the receiving agency shall immediately notify the sending agency and shall return the individual to the sending state as directed by the sending agency within 48 hours after the request, excluding Saturdays, Sundays and legal holidays. The sending agency shall immediately upon return of the individual either arrange for the discharge of the individual or detain the individual pursuant to the emergency detention laws of the sending state.

(11) ESCAPED INDIVIDUALS. If an individual receiving services pursuant to a contract under this section escapes from the receiving agency and the individual at the time of the escape is subject to involuntary confinement under the law of the sending state, the receiving agency shall use all reasonable means to recapture the escapee. The receiving agency shall immediately report the escape to the sending agency. The receiving state has the primary responsibility for, and the authority to direct, the pursuit, retaking and prosecution of escaped persons within its borders and is liable for the cost of such action to the extent that it would be liable for costs if its own resident escaped.

(12) TRANSFERS BETWEEN FACILITIES. An individual may be transferred between facilities of the receiving state if transfers are permitted by the contract under this section providing for the individual's care.

(13) REQUIRED CONTRACT PROVISIONS. All contracts under this section shall do all of the following:

(a) Establish the responsibility for the costs of all services to be provided under the contract.

(b) Establish the responsibility for the transportation of clients to and from receiving facilities.

(c) Provide for reports by the receiving agency to the sending agency on the condition of each client covered by the contract.

(d) Provide for arbitration of disputes arising out of the provisions of the contract which cannot be settled through discussion between the contracting parties and specify how arbitrators will be chosen.

(e) Include provisions ensuring the nondiscriminatory treatment, as required by law, of employes, clients and applicants for employment and services.

(f) Establish the responsibility for providing legal representation for clients in legal proceedings involving the legality of confinement and the conditions of confinement.

(g) Establish the responsibility for providing legal representation for employes of the contracting parties in legal proceedings initiated by persons receiving treatment pursuant to the contract.

(h) Include provisions concerning the length of the contract and the means by which the contract can be terminated.

(i) Establish the right of qualified employes and representatives of the sending agency and sending state to inspect, at all reasonable times, the records of the receiving agency and its treatment facilities to determine if appropriate standards of care are met for clients receiving services under the contract.

(j) Require the sending agency to provide the receiving agency with copies of all relevant legal documents authorizing confinement of persons who are confined pursuant to law of the sending state and receiving services pursuant to a contract under this section.

(k) Require individuals who are seeking treatment on a voluntary basis to agree in writing to be returned to the sending state upon making a request for discharge as provided in sub. (10) and require an agent or employe of the sending agency to certify that the individual understands that agreement.

(l) Establish the responsibility for securing a reexamination for an individual and for extending an individual's period of confinement.

(m) Include provisions specifying when a receiving facility can refuse to admit or retain an individual.

(n) Specify the circumstances under which individuals will be permitted home visits and granted passes to leave the facility.

History: 1983 a. 365

51.90 Antidiscrimination. No employe, prospective employe, patient or resident of an approved treatment facility, or consumer of services provided under this chapter may be discriminated against because of age, race, creed, color, sex or handicap.

History: 1975 c. 430.

51.91 Supplemental aid. (1) DECLARATION OF POLICY. The legislature recognizes that mental health is a matter of state-wide and county

concern and that the protection and improvement of health are governmental functions. It is the intent of the legislature, therefore, to encourage and assist counties in the construction of community mental health facilities, and public medical institutions as defined by rule of the department.

(2) ELIGIBILITY. (a) Any county which qualifies for additional state aid under s. 51.26 [Stats. 1971] and has obtained approval for the construction of mental health facilities pursuant to s. 46.17 may apply for the financial assistance authorized by this section if such county has, at the time of application for assistance, an existing obligation to pay interest on loans for the construction of mental health facilities approved pursuant to s. 46.17.

(b) Any county may apply for the financial assistance authorized by this section if such county has, at the time of application for assistance, an existing obligation to pay interest on loans for the construction of public medical institutions as defined by rule of the department.

(c) Any county may apply for the financial assistance authorized by this section if such county has, at the time of application for assistance, an existing obligation to pay interest on loans for the construction of mental health facilities as defined by rule of the department.

(d) No county may claim aid under this section on any single obligation for more than 20 years.

(e) Termination of eligibility for aid under s. 51.26 [Stats. 1971] shall terminate eligibility for aid for the construction of mental health facilities, and failure to meet the requirements established for public medical institutions by rule of the department shall terminate eligibility for aid for the construction of public medical institutions. Failure to meet the requirements for mental health facilities established by rule of the department shall terminate eligibility for aid for the construction of mental health facilities.

(f) Mental health facilities shall include services required for the prevention, diagnosis, treatment and rehabilitation of the mentally ill, as established by rule of the department.

(3) LIMITATION OF AID. (a) Aid under this section shall be paid only on interest accruing after January 1, 1967, or after the date construction begins, whichever is later.

(b) Until June 30, 1970, such aid shall be at the rate of 60% of the interest obligations eligible under this section or that amount of such obligation as is equal to the percentage rate of participation of the state set forth in s. 49.52 (2) (a) [1971 Stats.], whichever is higher. The contribution of the state for such interest accruing in each fiscal year shall be controlled by the percentage rate of participation under s. 49.52 (2) (a) [1971 Stats.] on January 1 of that fiscal year. Beginning July 1, 1970, such aid shall be at the rate of 100%.

(c) This section applies only to construction projects approved for state interest aid by the department of health and social services prior to June 30, 1973.

(4) APPLICATION FOR AID. Application for aid under this section shall be filed with the department as prescribed by it. Such application shall include evidence of the existence of the indebtedness on which the county is obligated to pay interest. The department may by audit or investigation satisfy itself as to the amount and validity of the claim and, if satisfied, shall grant the aid provided by this section. Payment of aid shall be made to the county treasurer.

History: 1971 c. 125, 164, 211, 215; 1975 c. 430 s. 23.

51.95 Short title. This chapter shall be known as The State Mental Health Act.

History: 1975 c. 430 s. 59.