

Rights of Minors Receiving Services for Developmental Disability, Mental Health, and Substance Use



WISCONSIN DEPARTMENT
of **HEALTH SERVICES**

Division of Care and Treatment Services
Client Rights Office

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Disclaimer

This document provides guidance on the subject of the rights of minors—individuals under the age of 18—to consent to treatment and to authorize the disclosure of information about their diagnosis and care regarding services for developmental disability, mental health, and substance use. The rules are complex and vary by type of care and age group. The information in this document does not constitute legal advice.

The term **parent** in this document means a parent with legal custody.

Except as noted in this document, minors receiving services for developmental disability, mental health, and substance use have the same rights as adults.

The Wisconsin Department of Health Services Client Rights Office promotes the rights of individuals receiving services for development disability, mental health, and substance use. For more information, visit www.dhs.wisconsin.gov/clientrights/index.htm.

SECTION 1: Admission to Inpatient Treatment

1. May a minor consent to inpatient treatment without the parent/guardian's authorization?

Developmental Disability

Under the age of 14	No	Parent/guardian only must agree in writing to a minor receiving inpatient developmental disability treatment. ¹ If the minor disagrees with the proposed admission, it must be noted on the front page of the application for admission. ² Exceptions exist when a parent/guardian cannot be found or refuses and a petition is filed with the court for a review. ³
14 years of age or over	No	Both the minor and the parent/guardian must consent to treatment. ⁴ A minor cannot consent to inpatient treatment without parent/guardian authorization. If the minor refuses, a parent/guardian of the minor may complete the application on the minor's behalf and the petition must be filed. ⁵

Mental Health

Under the age of 14	No	Parent/guardian only must agree in writing to minor receiving inpatient mental health treatment. ⁶ If the minor disagrees with the proposed admission, it must be noted on the front page of the application for admission and the court must hold a hearing to determine the appropriateness of the admission, but the minor can be admitted anyway. ⁷ Exceptions exist when a parent/guardian cannot be found or refuses and a petition is filed. ⁸
Over the age of 14	No	Parent/guardian AND the minor must agree in writing to minor receiving inpatient mental health treatment. ⁹ If the minor disagrees with the proposed admission, it must be noted on the front page of the application for admission and the court must hold a hearing to determine the appropriateness of the admission, but the minor can be admitted anyway. ¹⁰ Exceptions exist when a parent/guardian cannot be found or refuses and a petition is filed. ¹¹

See Wis. Stat. §§ 51.14(3) and 51.14(4) for information about the petition, hearing, and judicial review. A judicial finding is not a finding of mental illness and a person who is directly affected by the decision may appeal to the Court of Appeals.¹²

¹ Wis. Stat. § 51.13(1)(a)

² Wis. Stat. §§ 51.13(1)(a) and 51.61(6), 42 C.F.R. § 2.14

³ Wis. Stat. §§ 51.13(1)(c) and 51.13(4)

⁴ Wis. Stat. §§ 51.13(1)(b), 51.13(6)(a)(2), and 51.61(6)

⁵ Wis. Stat. § 51.61(1)(b)

⁶ Wis. Stat. § 51.13(1)(a)

⁷ Wis. Stat. §§ 51.13(1)(a) and 51.61(6), 42 C.F.R. § 2.14

⁸ Wis. Stat. §§ 51.13(1)(c) and 51.13(4)

⁹ Wis. Stat. § 51.13(1)(a)

¹⁰ Wis. Stat. §§ 51.13(1)(a) and 51.61(6), 42 C.F.R. § 2.14

¹¹ Wis. Stat. §§ 51.13(1)(c) and 51.13(4)

¹² Wis. Stat. §§ 51.14(5) and 51.14(6)

Substance Use

Under the age of 14	No	Parent/guardian only must agree in writing to minor receiving substance use treatment. ¹³ If the minor disagrees with the proposed admission, that must be noted on the front page of the application for admission. ¹⁴ Exceptions exist when a parent/guardian cannot be found or refuses and a petition is filed. ¹⁵
14 years of age or over	No	A minor cannot consent to inpatient treatment because the parent/guardian must complete the application for admission. ¹⁶ If the minor disagrees with the proposed admission, that must be noted on the front page of the application for admission. ¹⁷

In other words, individuals under 18 can only be admitted to inpatient substance use treatment if a parent/guardian agrees in writing.

Alcohol and Drug Treatment

There is an exception to the substance use law discussed above for prevention and control of alcoholism and drug use treatment.¹⁸ This section addresses detoxification services but is not limited to those services.

Under the age of 12	No	A minor cannot consent to treatment unless a parent/guardian cannot be found or there is no parent/guardian. ¹⁹ A parent/guardian must be notified as soon as possible. ²⁰ The petition requirement is not mentioned in this section.
12 years of age or over	Yes	A minor can consent to treatment and any physician or licensed facility can provide limited services (preventative, diagnostic, assessment, evaluation, or treatment services for the abuse of alcohol or drugs) without obtaining the consent of or notifying the minor's parent/guardian. ²¹

The minor's parent/guardian's consent is required for:

- Surgical procedures unless it is essential to save her or his life.
- Administering any controlled substances unless it is for detoxification services.
- Admission to an inpatient facility, unless it is to detoxification services.
- Any admission for detox if it extends past 72 hours.²²

The physician or facility must obtain the minor's consent before billing a third party. If the minor does not consent, the minor must be solely responsible for paying for the services.²³

¹³ Wis. Stat. § 51.13(1)(a)

¹⁴ Wis. Stat. §§ 51.13(1)(a) and 51.61(6), 42 C.F.R. § 2.14

¹⁵ Wis. Stat. §§ 51.13(1)(c) and 51.13(4).

¹⁶ Wis. Stat. § 51.13(1)(bm)

¹⁷ Wis. Stat. § 51.13(1)(bm)

¹⁸ Wis. Stat. § 51.45(2m)(b)

¹⁹ Wis. Stat. § 51.47(1)

²⁰ Wis. Stat. § 51.47(3)

²¹ Wis. Stat. § 51.47(1)

²² Wis. Stat. § 51.47(2)

²³ Wis. Stat. § 51.47(1)

2. What if there is no parent/guardian to consent to treatment or that person refuses to consent?

Under the age of 14	Yes	The minor may petition the court to be admitted to inpatient treatment under Wis. Stat. chs. 48 or 938. For outpatient treatment, a petition may be filed with the county mental health review officer (MHRO) for review. ²⁴
14 years of age or over	Yes	If a minor wishes to be admitted to an inpatient treatment facility, the minor, or the person acting on the minor's behalf, may petition the court and the court may temporarily approve the admission pending a hearing of the petition, if such a hearing is required. ²⁵

In both cases, the court must approve the admission if it finds that the admission is proper.

3. What authority and limitations do parents/guardians have over minors in treatment settings?

This is the legal role of parents/guardians.

- Ensure that basic needs (food, shelter, clothing, and education) are provided by the facility
- Ensure that there is a treatment plan in place that is appropriate for the minor's needs
- Participate in the planning of the care and treatment of the minor
- Act and make decisions in the best interests of the child

Parents/guardian also are expected to provide consents. For example, in the case of the treatment plan or usual medical care, written, informed consent by the parents/guardian is usually needed for:

- Psychotropic medications
- Behavior treatment programs, behavior support plans, and any nonemergency use of restrictive management techniques (such as time-out)
- Experimental research and any drastic treatment
- Filming, taping, and some releases of treatment records

Parents/guardian always have the right to provide input and to make requests of caregivers and treatment providers. However, the treatment team within the facility or program has the primary role to care for the minor.

Parents/guardian may influence decisions in the following areas:

- Individual preferences of clothes, food, drink, etc.
- Lifestyle choices and leisure activities (freedom of expression)
- Friendships and associations with others (freedom of association)
- Community access and community involvement (freedom of movement)

In these areas, individual rights and autonomy are to be respected as much as possible. Service providers are to place the least possible restrictions on personal liberty and the exercising of personal rights while protecting a minor from exploitation or harm.

²⁴ Wis. Stat. §§ 51.13(1)(c) and 51.13(4)

²⁵ Wis. Stat. §§ 51.13(9)(c) and 51.13(4)

For example, a parent/guardian cannot unilaterally dictate who should be allowed to visit or be denied visits. Sometimes a court order²⁶ may include restrictions related to these areas. Providers should follow the court order or seek further clarification or modification of the order as necessary.

4. May a minor refuse treatment?

Yes; however, the minor will be admitted despite refusal, and discharge based on refusal is dependent on a number of factors, and an independent evaluation is necessary. If the admission was made under an application completed by the minor's parent/guardian despite the minor's refusal, or if a hearing has been requested by the minor or by the minor's counsel, parent, or guardian, the court must order an independent evaluation of the minor and hold a hearing to review the admission within seven (7) days, exclusive of weekends and legal holidays, after admission or application for admission, whichever is sooner, and must appoint counsel to represent the minor if the minor is not represented. If the court considers it necessary, the court must also appoint a guardian ad litem to represent the minor. The minor must be informed about how to contact the state protection and advocacy agency, Disability Rights Wisconsin.²⁷

When the minor is under the age of 14?

No. The minor may refuse, but will be admitted because the parent/guardian has authority to apply for admission of the minor for treatment for mental illness, developmental disability, alcoholism, or drug abuse. However, any statement or conduct by a minor indicating that the minor does not agree to admission to the facility must be noted on the front page of the application.²⁸

When the minor is 14 or older?

It depends on the type of services. See below.

- **Mental Health**—Yes, a minor may refuse treatment for mental health because the minor and the parent/guardian must consent to admission. However, any statement or conduct by a minor indicating that the minor does not agree to admission to the facility must be noted on the front page of the application and in the petition filed.²⁹ The petition is described below.
- **Developmental Disability**—Yes, because the minor and the parent/guardian must consent to admission. However, any statement or conduct by a minor indicating that the minor does not agree to admission to the facility must be noted on the front page of the application and in the petition filed.³⁰ The petition is described below.
- **Substance Use**—Inpatient Treatment: No. For inpatient treatment, the minor's parent/guardian must complete the application for admission and provide consent for treatment.³¹ Consent of the minor is not required.³² However, any statement or conduct by a minor who is the subject of an application for inpatient admission indicating that the minor does not agree to admission to the facility must be noted on the front page of the application and in the petition filed.³³

Assessment: No. If assessment is determined to be a less restrictive means of assisting the minor, a minor's parent/guardian may consent to have the minor tested for the presence of alcohol or other drugs in the

²⁶ Wis. Stat. chs. 48 or 51

²⁷ Wis. Stat. § 51.13(4)

²⁸ Wis. Stat. § 51.13(1)(a)

²⁹ Wis. Stat. § 51.13(1)(b), (c) and (bm)

³⁰ Wis. Stat. § 51.13(1)(b), (c) and (bm)

³¹ Wis. Stat. § 51.13(1)(bm)

³² Wis. Stat. § 51.48

³³ Wis. Stat. § 51.13(1)(bm)

minor's body or to have the minor assessed by an approved treatment facility for the minor's abuse of alcohol or other drugs according to the criteria described in Wis. Stat. § 938.547(4), namely, an intake worker must determine whether or not a juvenile is in need of an alcohol or other drug abuse assessment. The screen must also include indicators that screen juveniles for: family dysfunction, school or truancy problems, mental health problems, and delinquent behavior patterns as well as criteria established by regulation. If, based on the assessment, the approved treatment facility determines that the minor is in need of treatment for the abuse of alcohol or other drugs, the approved treatment facility must recommend a plan of treatment that is appropriate for the minor's needs and that provides for the least restrictive form of treatment consistent with the minor's needs. This treatment may consist of outpatient treatment, day treatment or, if the minor is admitted in accordance with Wis. Stat. § 51.13, inpatient treatment. The parent/guardian of the minor may consent to the treatment recommended. Consent of the minor for testing, assessment, or treatment is not required.³⁴

5. What does admission have to be based on?

- Informed professional opinion that the minor is in need of services for developmental disability, mental health, and/or substance use.
- The treatment facility must offer inpatient therapy or treatment that 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.³⁵
- In the case of substance use, approval must also be based on the results of an alcohol or other drug abuse assessment that conforms to criteria described in Wis. Stat. § 938.547(4).

6. What should happen upon admission?

Prior to admission or as soon thereafter as possible, a self-admitted minor and parent/guardian must be informed, orally and in writing, of:

- The minor's right to request discharge
- To be discharged within 48 hours (unless a petition is filed)
- The minor's right to consent to or refuse treatment

On admission all minors and their parent/guardian must be informed, orally and in writing, of their client rights.³⁶

In addition, writing materials for use in requesting a hearing or discharge must be available at all times. Staff must assist minors in preparing and submitting any request for discharge or hearing.

If possible, prior to admission, or as soon after as possible, the minor and the minor's parent/guardian must be informed by facility staff, both orally and in writing, in easily understandable language, of the petition and review procedure, including court standards and possible court decisions.³⁷

The parent/guardian also must be informed of the following.

- The minor's right to an independent evaluation, if ordered by the court.

³⁴ Wis. Stat. § 51.48

³⁵ Wis. Stat. § 51.13(1)(em)

³⁶ Wis. Stat. § 51.61

³⁷ Wis. Stat. § 51.13(4)

- The minor’s right to be informed about how to contact the state protection and advocacy agency (Disability Rights Wisconsin).
- The minor’s right to a hearing upon request; the right to appointed counsel if a hearing is held.
- The minor’s right (except minor’s 14 years or older that are admitted for mental health or developmental disability) to request a discharge under some circumstances.
- The minor’s right to a hearing to determine continued appropriateness of the admission, under some circumstances.³⁸
- The minor’s right (if 14 years or older and admitted for alcohol or drug use), if requested, to be discharged within 48 hours of the request, if nothing is filed for emergency detention, emergency commitment, involuntary commitment, or protective placement.
- The minor’s right (if 14 years or older and admitted for alcohol or drug use) to consent or to refuse treatment.³⁹

7. What is a petition for treatment and when must a petition be filed

A petition for admission to inpatient treatment is a document that may be filed with a court in order to have a judge review the admission of a minor for treatment services.

A petition for admission to inpatient treatment should be filed with the local circuit court when:

- The minor is 14 years of age or older and refuses to join in the application.
- The minor wants treatment and the minor's parent/guardian refuses to join in the application.
- There is no parent/guardian.
- The parent/guardian cannot be found.

Within three (3) days after the admission of a minor for mental health or developmental disability, or within (3) days after an application is completed for admission of the minor, whichever occurs first, the treatment director of the facility or the center for the developmentally disabled to which the minor is admitted, or his or her designee, must file a verified petition for review of the admission in the court assigned to exercise jurisdiction under Wis. Stat. chs. 48 and 938 in the county in which the facility is located.⁴⁰

If the parent/guardian is not the petitioner, a copy of the petition and a notice of hearing must be served on the parent/guardian at his or her last known address. A copy of the application for admission and of any relevant professional evaluations must be attached to the petition.⁴¹

What has to be in the petition?

The petition must contain all of the following:

- The name, address, and date of birth of the minor.
- The names and addresses of the minor's parents/guardian.
- The facts substantiating the petitioner's belief in the minor's need for services for developmental disability, mental health, and/or substance use.
- The facts substantiating the appropriateness of treatment in the inpatient treatment facility.
- The basis for the petitioner's opinion that inpatient care in the facility is the least restrictive treatment consistent with the needs of the minor.

³⁸ Wis. Stat. § 51.13(3)

³⁹ Wis. Stat. § 51.13(3)(b)

⁴⁰ Wis. Stat. § 51.13(4)

⁴¹ Wis. Stat. § 51.13(4)

- Notation of any refusal of the minor 14 years of age or older to join in the application.

A copy of the petition must be provided by the petitioner to the minor and, if available, his or her parent/guardian within five (5) days after admission.⁴²

What if it is not in the minor’s best interests to file a petition in that county?

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 Wis. Stat. chs. 48 and 938 of the county of residence of the parent/guardian.⁴³

What are the criteria for approving admission?

Within five (5) days after the filing of the petition, the court assigned to exercise jurisdiction under Wis. Stat. chs. 48 and 938 must determine based on the allegations of the petition and accompanying documents, whether there is a prima facie (or the presentation of sufficient evidence to support the legal claim) showing the following.

- The minor is in need of services for developmental disability, mental health, or substance use.
- Whether the treatment facility offers inpatient therapy or treatment that is appropriate to the minor's needs.
- Whether inpatient care in the treatment facility is the least restrictive therapy or treatment consistent with the needs of the minor.
- If the minor 14 years of age or older has been admitted to the treatment facility for the primary purpose of treatment for mental illness or developmental disability, whether the admission was made under an application completed by the minor and the minor's parent/guardian.

If such a showing is made, the court must permit admission.⁴⁴

What if the criteria aren’t met?

If the court is unable to make those decisions based on the petition and accompanying documents, the court may:

- Dismiss the petition.
- Order additional information, including an independent evaluation, to be produced as necessary for the court to make those decisions within seven (7) days.
- Hold a hearing within seven (7) days, exclusive of weekends and legal holidays, after admission or application for admission, whichever is sooner.⁴⁵

When must a hearing be held?

A court hearing is mandatory (not optional) if:

- The petition notes that the minor is unwilling to be admitted.
- The minor is 14 or over and the parent/guardian admitted the minor over the minor’s refusal.
- A request for a hearing was made by the minor, the minor’s counsel, parent/ guardian.

Any mandatory hearings should be held within seven (7) working days after admission or application for admission, whichever is sooner.

- Counsel must be appointed if the minor is unrepresented.
- The court may also, if it deems necessary, appoint a Guardian ad Litem.
- The minor must be informed of how to contact Disability Rights Wisconsin.

⁴² Wis. Stat. § 51.13(4)

⁴³ Wis. Stat. § 51.13(4).

⁴⁴ Wis. Stat. § 51.13(4)(g)

⁴⁵ Wis. Stat. § 51.13(4)

The court should:

- Provide notice of the hearing 96 hours prior by certified mail.
- Follow the rules of evidence for civil actions.
- Maintain a record of the hearing.
- Draw conclusions based on findings of fact and the law.
- Base findings on clear and convincing evidence.⁴⁶

What could the court decide?

If the court finds that the minor is in need of treatment, that the facility offers appropriate treatment, and that it is the least restrictive setting, the admission must be permitted.⁴⁷

If treatment is needed but the facility is not appropriate or not the least restrictive setting, the court may place or transfer the minor to a less restrictive inpatient setting. Wisconsin Stat. § 51.13(4)(g) outlines the approvals needed to place a minor at a center for developmentally disabled individuals.

If the court does not approve admission to a less restrictive or more appropriate setting, it should do one of the following:

- Dismiss the petition and release the minor.
- Treat the petition as one for involuntary commitment and refer to another court.
- If the minor is 14 or over and appears to be developmentally disabled, proceed with a protective placement, but without appointing a temporary guardian.
- If the minor is in need of protective services or pregnant, process it as a Child In Need of Protection and Services (CHIPS) petition.

Who must approve of an alternate placement or transfer?

For the primary purpose of treatment for developmental disability or mental illness, transferred placement must be approved by:

- A parent/guardian, if the minor is under 14 years of age.
- The minor and a parent/guardian, except if the minor refuses approval, a parent/guardian may provide approval on the minor's behalf, if the minor is 14 years of age or older.
- The minor, if the minor lacks a parent/guardian to consent to treatment and is admitted via petition.
- The treatment director of the facility or his or her designee.
- The director of the appropriate county department, if the county department is to be responsible for the cost of the minor's therapy or treatment.⁴⁸
- The Department of Health Services, if the placement or transfer is to a state center for the developmentally disabled.⁴⁹

What if the petition is not approved?

If the court does not permit admission, it should do one of the following.

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

⁴⁶ Wis. Stat. § 51.13(4)(e) and (f)

⁴⁷ Wis. Stat. § 51.13(4)(g)

⁴⁸ Wis. Stat. §§ 51.42 or 51.437

⁴⁹ Wis. Stat. § 51.13(4)

individual's parent/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.

- If the minor is 14 years of age or older and appears to be developmentally disabled, proceed to determine whether the minor should receive protective placement or protective services, except that a minor must not have a temporary guardian appointed if he or she has a parent/ guardian.⁵⁰
- If there is a reason to believe the minor is in need of protection or services or the minor is an expectant mother of an unborn child in need of protection or services, dismiss the petition and authorize the filing of a petition under Wis. Stat. § 48.25 (3) or 938.25 (3). The court may release the minor or may order that the minor be taken and held in custody under Wis. Stat. § 48.19 (1) (c) or (cm) or 938.19 (1) (c).

What does it mean if my child is admitted via petition?

Approval of an admission under this subsection does not constitute a finding of mental illness, developmental disability, or substance use.⁵¹

Can the decision be appealed?

Any person who is aggrieved by a decision or order under this section and who is directly affected by it may appeal to the court of appeals under Wis. Stat. § 809.30.⁵²

8. Are there special rules for short-term admissions?

Yes.⁵³ A minor may be admitted to an inpatient treatment facility without petition and review, for diagnosis and evaluation or for dental, medical, or psychiatric services, for up to 12 days.

The application for short-term admission of a minor must be signed by the minor's parent/guardian, unless the minor lacks a parent/guardian.

If the minor is 14 years of age or older, the application must be signed by the minor's parent/guardian and the minor, except if the minor refuses to complete the application, the parent/guardian may complete the application.

If the minor refuses, a review may be requested and the treatment director (or designee) of the facility to which the minor is admitted must file a verified petition for review of the admission on behalf of the minor.

If a minor 14 years of age or older who refused to complete the application is admitted after court review, the minor may not be readmitted to an inpatient treatment facility for psychiatric services within 120 days of a previous admission.

The application must be reviewed by the treatment director of the facility or, in the case of a state center for the developmentally disabled, by the director, and must 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.

⁵⁰ Wis. Stat. § 51.67

⁵¹ Wis. Stat. § 51.13(4)

⁵² Wis. Stat. § 51.13(5)

⁵³ Wis. Stat. § 51.13(6)

At the end of the 12-day period, the minor must be released unless an application has been filed for admission; a statement has been filed for emergency detention; or a petition has been filed for emergency commitment, involuntary commitment, or protective placement.⁵⁴

⁵⁴ Wis. Stat. § 51.31(6)

SECTION 2: Admission to Outpatient Treatment

1. May a minor consent to outpatient treatment without the parent/guardian's authorization?

Any minor may consent to outpatient alcohol treatment at a public treatment facility as long as it is for prevention, intervention, or follow-up.⁵⁵

A minor aged 14 or older (or a person acting on the minor's behalf) may petition the mental health review officer in the county the minor's parent/guardian resides for review of a refusal or inability of the minor's parent/guardian to consent for outpatient mental health treatment.⁵⁶

A minor admitted under Wis. Stat. § 51.45 has additional rights⁵⁷ as described below.

Minor Refusal of Alcohol and Other Drug Abuse Outpatient Treatment

Consent of the minor for testing, assessment, or treatment is not required. A minor's parent/guardian may consent to have the minor tested for the presence of alcohol or other drugs or to have the minor assessed for substance use. Treatment may consist of outpatient treatment, day treatment, or inpatient treatment if admitted according to the rules described above.⁵⁸

2. What is a review by a mental health review officer (MHRO) and when should one happen?

A review by an MHRO is an investigation of the informed consent for admission to outpatient treatment provided in some cases involving minors.

A petition must be filed to obtain an MHRO review⁵⁹ No person may be an MHRO in a proceeding if he or she has provided treatment or services to the minor who is the subject of the proceeding.⁶⁰

An MHRO review may occur when either:

- A minor's (aged 14 years or older) parent/guardian refused or was unable to provide informed consent for outpatient mental health treatment; or
- Consent for outpatient treatment was provided by the minor's parent/guardian despite the minor's refusal.

A review by an MHRO may be requested by either the minor, someone acting on the minor's behalf, or the treatment director of the outpatient facility⁶¹.

What does a petition for an MHRO review have to contain?

- The name, address, and birth date of the minor.

⁵⁵ Wis. Stat. § 51.45(10)(am)

⁵⁶ Wis. Stat. §§ 51.13(4), 51.14(3), and § 51.14(4)

⁵⁷ Wis. Stat. § 51.45(12)(d)

⁵⁸ Wis. Stat. § 51.48

⁵⁹ Wis. Stat. § 51.14(3)

⁶⁰ Wis. Stat. § 51.14(3)

⁶¹ Wis. Stat. § 51.14(3)

- The name and address of the parent/guardian of the minor.
- The facts substantiating the petitioner's belief that the minor needs, or does not need, outpatient mental health treatment.
- Any available information that substantiates the appropriateness of the particular treatment sought for the minor and that the particular treatment sought is the least restrictive treatment consistent with the needs of the minor.
 - Any professional evaluations relevant should be attached to the petition.
 - The court that appointed the MHRO must ensure that necessary assistance is provided to the petitioner in the preparation of the petition.
 - The county department may, following review of the petition contents, make recommendations to the MHRO as to the need for and appropriateness and availability of treatment.
 - If prior to a hearing, the minor requests and the MHRO determines that the best interests of the minor would be served, a petition may be filed for court judicial review without further review.

What happens at an MHRO review?

Within 21 days after the filing of a petition, the MHRO should hold a hearing on the refusal or inability of the minor's parent/guardian to provide informed consent for outpatient treatment or on the provision of informed consent by the parent/guardian despite the minor's refusal.

The MHRO should provide notice of the date, time, and place of the hearing to the minor and, if available, the minor's parent/ guardian at least 96 hours prior to the hearing.

If the MHRO finds all of the following after the hearing and taking into consideration the recommendations, if any, of the county department, he or she should issue a written order that outpatient mental health treatment for the minor is appropriate (without informed consent):

- The informed consent of the parent/guardian is unreasonably withheld or the refusal of the minor to provide informed consent is unreasonable,
- The minor is in need of treatment,
- The particular treatment sought is appropriate for the minor and is the least restrictive treatment available,
- The proposed treatment is in the best interests of the minor, and
- The findings and the reasons supporting each finding are in writing.

The MHRO may make a decision that informed consent is not required for outpatient mental health treatment for the minor, despite the informed consent requirements of Wis. Stat. § 51.61(6) and despite the refusal or inability of either of the parties to consent⁶².

The MHRO must notify the minor and the minor's parent/guardian, if available, of the right to judicial review.

3. What is judicial review?

Within 21 days after the issuance of the order by an MHRO, the minor or a person acting on behalf of the minor may petition a court assigned to exercise jurisdiction in the county of residence of the minor's parent/guardian for a review of the refusal or inability of the minor's parent/guardian to provide the informed consent for outpatient mental health treatment required.⁶³

⁶² Wis. Stat. § 51.14(3)

⁶³ Wis. Stat. § 51.14(4)

Petition for judicial review must contain the same things required for the MHRO and, if the minor refused to provide informed consent, a notation of this fact must be made on the front page of the petition.⁶⁴ If a notation of a minor's refusal to provide informed consent to outpatient mental health treatment appears on the petition, the court must, at least seven (7) days prior to the time scheduled for the hearing, appoint counsel to represent the minor if the minor is unrepresented. If the minor's parent/guardian has refused to provide informed consent and the minor is unrepresented, the court must appoint counsel to represent the minor, if requested by the minor or determined by the court to be in the best interests of the minor.⁶⁵

The court should hold a hearing on the petition within 21 days after filing of the petition.⁶⁶

Notice of the hearing under this subsection must be provided by the court by certified mail, at least 96 hours prior to the hearing, to the minor, the minor's parent/guardian, the minor's counsel and guardian ad litem, if any, and any other interested party known to the court.⁶⁷

The rules of evidence in civil actions should apply to any hearing under this section. A record, including written findings of fact and conclusions of law, must be maintained of the entire proceedings. Findings must be based on evidence that is clear, satisfactory, and convincing.⁶⁸

After the hearing, the court may issue a written order stating that the written, informed consent of the parent/guardian is not required for outpatient mental health treatment for the minor or that, if the parent/guardian provided informed consent despite the minor's refusal, the outpatient mental health treatment for the minor is appropriate.⁶⁹

The court must issue that finding if:

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

Can a judicial review decision be appealed?

Yes, any person who is aggrieved by a judicial review decision and who is directly affected by the decision or order may appeal to the court of appeals.

A finding or order under this section does not constitute a finding of mental illness.

⁶⁴ Wis. Stat. § 51.14(4)

⁶⁵ Wis. Stat. § 51.14(4)

⁶⁶ Wis. Stat. § 51.14(4)

⁶⁷ Wis. Stat. § 51.14(4)

⁶⁸ Wis. Stat. § 51.14(4)

⁶⁹ Wis. Stat. § 51.14(4)

SECTION 3: Discharge

1. When can/should a minor be discharged?

Any minor who is self-admitted to inpatient treatment may request discharge in writing.

There are exceptions.

- Under age 14: If admitted for developmental disability, mental health, and/or substance use, only the parent/guardian can request discharge.
- Age 14 to 17: If admitted for substance use, only the parent/guardian can request discharge.
- Age 14 to 17: If admitted for developmental disability and/or mental health, the minor and parent/guardian can request discharge. If parent/guardian refuses to request the minor's discharge and the director agrees in writing that the minor is in need of services, the facility's therapy or treatment is appropriate, and inpatient treatment is the least restrictive consistent with the minor's needs, the director may hold the minor.

Discharge of a 14-year-old who still needs services can be avoided:

- 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 primarily for mental illness or developmental disability, the director of the facility must request the minor and the minor's parent/guardian complete an application for admission.
- If the minor refuses, the minor's parent/guardian may complete the application on the minor's behalf. Such an application may be completed within 30 days prior to a minor's 14th birthday.
- If the application is completed, a petition for review must be filed unless such a review has been held within the last 120 days.
- If the application is not completed by the time of the minor's 14th birthday, the minor must 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.⁷⁰

If a minor can and does request discharge, or if a minor's parent/guardian can and does request discharge, or if both the minor and the parent/guardian request discharge, the minor must be discharged within 48 (working) hours unless a petition for emergency detention, emergency commitment, involuntary commitment, or protective placement is filed.

If discharge is required and the minor is not discharged within 48 hours (not including weekends or holidays) after a discharge request, the minor can petition the court for discharge.⁷¹

Upon receipt of any written request by a minor for discharge, the director of the facility must immediately notify the minor's parent/guardian, if available.

What are the rules for a minor who was voluntarily admitted and lacked a parent/guardian to consent to admission?

A minor who was voluntarily admitted and lacked a parent/guardian to consent to admission may request discharge in writing.⁷²

⁷⁰ Wis. Stat. § 51.13(7)(a)

⁷¹ Wis. Stat. § 51.13(7)(c)

⁷² Wis. Stat. § 51.13(7)(b)(1)

He or she must 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.⁷³

What are the rules for a minor who is 14 years or older and admitted for substance use?

If a parent/guardian requests discharge in writing, the minor must 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.⁷⁴

What are the rules for a minor who is 14 years or older and admitted for mental health or developmental disability?

If a minor or their parent/guardian requests discharge in writing, the minor must 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.⁷⁵

If the parent/guardian of the minor refuses to request discharge and if the director of the facility to which the minor is admitted or his or her designee agrees, in writing, that the minor is in need of psychiatric services or services for developmental disability, that the facility's therapy or treatment 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, the minor may not be discharged under this paragraph.⁷⁶

What are the rules for a minor under 14 years of age who is admitted for the primary purpose of treatment for mental illness, developmental disability, or substance use?

If the minor's parent/guardian requests discharge in writing, the minor must 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.⁷⁷

Who should be informed of their rights regarding records at the time of discharge?

All clients must be informed of their rights regarding their records at the time of discharge.⁷⁸

2. What if the minor is not discharged?

He or she can submit a written request to the court for a hearing to determine the continued appropriateness of the admission, unless he or she lacked parent/guardian consent to be admitted.

3. What if the minor acts like they want to leave?

If the director or staff of the inpatient treatment facility to which a minor is admitted observes conduct by the minor that demonstrates an unwillingness to remain at the facility, including a written expression of opinion or unauthorized absence, the director must file a written request with the court to determine the continued

⁷³ Wis. Stat. § 51.13(7)

⁷⁴ Wis. Stat. § 51.13(7)

⁷⁵ Wis. Stat. § 51.13(7)

⁷⁶ Wis. Stat. § 51.13(7)

⁷⁷ Wis. Stat. § 51.13(7)

⁷⁸ Wis. Stat. § 51.30(d)(4)

appropriateness of the admission. A request that is made personally by a minor under this paragraph must be signed by the minor but need not be written or composed by the minor. A request for a hearing under this paragraph that is received by staff or the director of the facility in which the minor is admitted must be filed with the court by the director.

The court must order a review hearing upon request if no hearing concerning the minor's admission has been held within 120 days before court receipt of the request. If a hearing is held, the court must hold the hearing within 14 days after receipt of the request, unless the parties agree to a longer period. After the hearing, the court must dispose of the matter in the manner provided.⁷⁹

⁷⁹ Wis. Stat. § 51.13(7)

SECTION 4: Medications

1. Can a minor consent to medications without the parent/guardian’s authorization?

Under the age of 14	No	The parent/guardian must consent.
14 years of age or over	No	Both the minor and the minor’s parent/guardian must consent. ⁸⁰

2. Can a minor consent to medication when he/she is committed to treatment but without an involuntary medication order?

If the minor is under an Order of Commitment only, then the minor may refuse medications. If the minor refuses, the treatment team may request a hearing for involuntary medication.⁸¹

3. Can a minor consent to medication when he/she is under an involuntary medication order?

There is no need for the minor to consent when there is a court order for medication.⁸²

⁸⁰ Wis. Stat. § 51.61(1)(g)(4), Wis. Admin. Codes §§ DHS 94.09(4) and 94.09(2)

⁸¹ Wis. Stat. § 51.14(3)(h)(4)(g), Wis. Admin. Code § DHS 94.09(4)

⁸² Wis. Stat. § 51.14(3)(h)(4)(g), Wis. Admin. Code § DHS 94.09(4)

SECTION 5: Records

In general, a parent/guardian has a right to access the treatment records of a minor; however, a parent/guardian who has been denied periods of physical placement may not have access.

1. May a parent/guardian of a minor/person adjudicated incompetent have access to that person's court or treatment records?

Yes, unless there is an exception listed in this chapter.⁸³

2. May a minor or a facility deny a parent/guardian access to protected health information?

Under the age of 14	No	Generally, no, unless it is a parent/guardian requesting the access to records and that parent/guardian has been denied periods of physical placement with the child. ⁸⁴
14 years of age or over	No	Generally, no, unless it is a parent requesting the access to records and that parent/guardian has been denied periods of physical placement with the child. ⁸⁵ Also, access may be denied if the minor is developmentally disabled and files a written objection to such access with the custodian of the records. ⁸⁶

Developmentally Disabled Minors Records

A developmentally disabled minor aged 14 or older must be notified of the right to file a written objection to parent/guardian access to his or her treatment records and that notification must be documented in the minor's treatment record.⁸⁷

Substance Use Treatment Records

A minor's drug or alcohol abuse treatment records may only be released with the consent of both the minor and the minor's parent/guardian.⁸⁸ A minor's outpatient or detox records⁸⁹ can only be released with the consent of the minor if he or she is 12 years or older.⁹⁰ Note: Section 42 CRF 2.14(b) provides that when a minor under state law can obtain treatment for alcohol abuse or drug abuse without the parent/guardian's approval, only the minor's consent is required for disclosure of records of that treatment.

3. May a provider refuse to disclose a minor's health records to a parent/guardian?

A health care provider may refuse to disclose a minor's records to a parent/guardian if, in the provider's professional judgment, the provider believes that disclosure would endanger the minor.⁹¹

Also, a health care provider may refuse to disclose a minor's records to a parent/guardian if a parent/guardian has been denied physical placement.⁹²

⁸³ Wis. Stat. § 51.30(5)(b)(1)

⁸⁴ Wis. Stat. § 51.30(5)(bm)

⁸⁵ Wis. Stat. § 51.30(5)(bm)

⁸⁶ Wis. Stat. § 51.30(5)(b)

⁸⁷ Wis. Admin. Code DHS 92.06(3)

⁸⁸ Wis. Admin. Code DHS 92.06(2)

⁸⁹ Wis. Stat. § 51.47(2)

⁹⁰ Wis. Admin. Code DHS 92.06(2)

⁹¹ 45 C.F.R. § 164.502(g)(5) and Wis. Admin. Code § DHS 92.05(1)(b)(1)

Access to medication and physical health issues may not be restricted.

4. May a minor have access to his or her own treatment and court records?

Under the age of 14	Yes	The minor should have access to court records but only in the presence of a parent, guardian, counsel, guardian ad litem, judge, or a staff member of the treatment facility. ⁹³
Over the age of 14	Yes	The minor must have access to his or her own court and treatment records. ⁹⁴

Generally, access to some treatment records by a person receiving treatment may be restricted by the director of the facility, but access to records of medications and medical treatments must never be denied the individual at any time.⁹⁵ After discharge, the individual has a right to receive a copy of all records. The facility may require a reasonable and uniform charge for a copy of records.⁹⁶

5. May a minor authorize disclosure of protected health information without parent/guardian consent?

Generally, informed consent of the subject individual is required.

All treatment records must remain confidential and are privileged to the subject individual. Protected health information may be released only to designated persons with the informed written consent of the subject individual or to the persons designated in the law.⁹⁷ Attorney-client and physician-patient communications are governed by Wis. Stat. §§ 905.03 and 905.04.

Informed consent

Informed consent is required for release of any protected health information. Informed consent for release 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.
- The signature of the individual or person legally authorized to give consent for the individual.⁹⁸

Records include materials on which written, drawn, printed, spoken, visual, electromagnetic, or digital information is recorded or preserved, regardless of physical form or characteristics.⁹⁹

⁹² Wis. Stat. § 51.30(5)(bm)

⁹³ Wis. Stat. § 51.30(5)(b)(2)

⁹⁴ Wis. Stat. § 51.30(5)(b)(2)

⁹⁵ Wis. Stat. § 51.30(d)

⁹⁶ Wis. Stat. § 51.30(d)

⁹⁷ Wis. Stat. § 51.30(4)(a)

⁹⁸ Wis. Stat. § 51.30(2)

⁹⁹ Wis. Stat. § 51.30(5)(f)

Under the age of 14	No	Only the parent/guardian can consent to the release of confidential in court or treatment records. ¹⁰⁰
Over the age of 14	Yes	Consent to disclose must meet requirements in Wis. Stat. § 51.30(5)(b)(2).

If the patient is a minor with a developmental disability who has a parent or a guardian (appointed according to Wis. Stat. §51.30(4)(b)18c, information concerning the patient that staff can access, without informed consent, is limited (with some exceptions) to:

- The nature of an alleged rights violation, if any.
- The name, birth date, and county of residence of the patient.
- Information regarding whether the patient was voluntarily admitted, involuntarily committed, or protectively placed.
- The date and place of admission, placement, or commitment.
- The name, address, and telephone number of the guardian of the patient and the date and place of the guardian's appointment.
- The name, address, and telephone number of the parent or guardian appointed under Wis. Stat. § 48.831 of the patient, if the patient is a minor with a developmental disability who has a parent or a guardian appointed under Wis. Stat. § 48.831.¹⁰¹

What if a minor, who is receiving services for mental health or developmental disability, wishes to share information?

Limited information can be shared if involvement with a parent or guardian who is directly involved with care is verified by the minor’s physician, psychologist, or by a person other than the spouse, domestic partner, parent, adult child, or sibling who is responsible for providing treatment to the subject individual, and is needed to:

- Assist in the provision of care or monitoring of treatment.
- The request for treatment records must be in writing, by the requester, except in an emergency as determined by the person verifying the involvement of the parent, adult child, or sibling.

Unless the subject individual has been adjudicated incompetent in this state, the person verifying the involvement must notify the subject individual about the release of his or her treatment records.

Treatment records released under this section are limited to the following:

- A summary of the subject individual's diagnosis and prognosis.
- A listing of the medication the individual has received and is receiving.
- A description of the subject individual's treatment plan.¹⁰²

What about if a minor receiving treatment for substance use wants to share information?

When a minor receives treatment for substance use, some federal restrictions on release of information may apply.¹⁰³

When a minor is on unauthorized absence from a facility

When a minor is on unauthorized absence from a facility, under some circumstances, some information may be released.¹⁰⁴

¹⁰⁰ Wis. Stat. § 51.30(5)(a)

¹⁰¹ Wis. Stat. § 51.30(4)(b)18c

¹⁰² Wis. Stat. § 51.30(4)(b)20

¹⁰³ Wis. Stat. § 51.30(4)(c)

Any time records are released, a notation must be made in the client's record that includes the name of the person information was released to, the information released, the purpose of the release, and the date of the release.¹⁰⁵

6. Can the records of minors who have been committed under Wis. Stat. ch. 51 be kept with all the minor's court records?

No. Those records must be kept separately.¹⁰⁶

7. What happens if these records laws are violated?

If a person affected by these rules believes the rules were violated, the concern can be processed as a grievance under Wis. Stat. § 51.61(5).

It is not necessary to use the grievance procedure before bringing any civil action or filing a criminal complaint.

Any person, including the state, that violates these laws must be liable to any person damaged as a result of the violation for such damages as may be proved, together with exemplary damages of up to \$1,000 for each violation. Attorney fees may also be repaid.

If the court determines that the violator acted knowingly and willfully, the violator must be liable for such damages as may be proved together with exemplary damages of up to \$25,000 for each violation, together with costs and reasonable actual attorney fees.

The plaintiff does not need to have suffered or have been threatened with actual damages. The individual may recover costs and reasonable actual attorney fees if he or she prevails.¹⁰⁷

¹⁰⁴ Wis. Stat. § 51.30(cm)

¹⁰⁵ Wis. Stat. § 51.30(e)

¹⁰⁶ Wis. Stat. § 51.30(5)(c)

¹⁰⁷ Wis. Stat. § 51.30(8) and (9)