

RIGHTS OF CLIENTS OF LICENSED MENTAL HEALTH PROFESSIONALS

In the 2009 Budget Bill (2009 Wis. Act 28), the Legislature added a **new patient right** to Sec. 51.61, Wis. Stats.:

[Patients]...“Have the right, **if provided services** by a **licensed mental health professional** who is **not affiliated with a county department or treatment facility**, to be notified by the professional in writing of the grievance resolution procedure option that the professional makes available to the patient, as required under s. 457.04 (8).”

[§ 51.61 (1) (y), Wis. Stats. Emphasis added]

“**Licensed mental health professionals**” is defined as:

“‘Licensed mental health professional’ means a **clinical social worker** who is licensed under ch. 457, a **marriage and family therapist** who is licensed under s. 457.10, or a **professional counselor** who is licensed under s. 457.12.”

[§ 632.89(1)(dm), Wis. Stats. Emphasis added.]

Confidentiality: The bill also amended the definition of “treatment records” in the confidentiality statutes as follows:

“Treatment records’ include the registration and all other records that are created in the course of providing services to individuals for mental illness, developmental disabilities, alcoholism, or drug dependence and that are maintained by the department; by county departments under s. 51.42 or 51.437 and their staffs, and; by treatment facilities; or by psychologists licensed under s. 455.04 (1) or licensed mental health professionals who are not affiliated with a county department or treatment facility...”

[§ 51.30(1)(b), Wis. Stats.]

Such records are now explicitly accorded all the confidentiality rights and exceptions that apply to other treatment records.

Rights Limitations or Denials: The bill also amended the statute on rights limitations and denials as follows:

“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, or licensed mental health professional 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 for review of the denial of a right by a licensed mental health professional who is not affiliated with a county department or treatment facility, through the use of one of the grievance resolution procedure options required under s. 457.04 (8). Alternatively, or in addition to the use of ~~such~~ the appropriate grievance procedure, a patient or his or her representative may bring an action under sub. (7)."

[§ 51.61(2), Wis. Stats.]

The rights which may be limited or denied under this law (§ 51.61(1)(p)-(t)) are the ones related to making **telephone calls**, using one's own **clothing and personal** articles, individual **storage space**, **privacy in toileting and bathing**, and seeing **visitors**.

[Client Rights Office **Note**: Since most, if not all, licensed mental health professionals would be providing **outpatient services**, the limitation or denial of rights provisions noted above should be **rarely used** as they are more applicable to **inpatient** settings.]

Grievances: The bill also made changes to the right of access to a grievance procedure to require one for licensed mental health professionals, as follows:

"GRIEVANCES. Failure to comply with any provisions of this section [confidentiality of treatment records] may be processed as a grievance under s. 51.61 (5), except that a grievance resolution procedure option made available to the patient, as required under s. 457.04 (8), applies to failures to comply by a licensed mental health professional who is not affiliated with a county department or treatment facility. However, use of the grievance procedure is not required before bringing any civil action or filing a criminal complaint under this section."

[Sec. 51.30(8), Wis. Stats.]

"A licensed mental health professional who is not affiliated with a county department or treatment facility shall **notify in writing** each patient to whom the professional provides services **of the procedure to follow to resolve a grievance**. The notice shall provide an option that the professional makes available to the patient, as required under s. 457.04 (8). Paragraphs (a) and (b) do not apply to this paragraph."

[Newly created § 51.61(5)(e), Wis. Stats. Emphasis added.]

Grievance Procedures: The bill also created requirements for the grievance process that licensed mental health professionals must make available to their clients as follows:

“[Except as provided in ss. 250.042 (4) (b) and 457.02, **no person may do any of the following:**] **Practice clinical social work, marriage and family therapy, or professional counseling without notifying** his or her client in writing **of the procedure to follow to resolve a grievance.** The notice required under this subsection shall provide **one of the following options** for resolving a grievance to the client:

(a) A **grievance resolution procedure that contains** all of the following elements:

1. The **name, address, and telephone number of**, and any other contact information available for, the **appropriate section of the examining board** that is responsible for receiving a complaint and investigating and conducting a hearing under s. 457.26 (1).
2. The **name, address, and telephone number of**, and any other contact information available for, **a person not involved in the services, therapy, or counseling** giving rise to the complaint **who would be available to receive and investigate a complaint.**
3. The **manner by which a client may present a complaint** to a person identified in subd. 1. or 2.
4. The **manner by which a client may appeal the resolution** of a complaint presented in subd. 3.
5. **Time limits for filing, processing, and appealing the resolution** of a complaint presented under subd. 3.
6. **Protections against retaliation** for a client who presents a complaint under subd. 3. and for any person who assists the client to present a complaint under subd. 3.

(b) A grievance resolution **procedure that complies** with the rules promulgated under **s. 51.61 (5) (b).** [See DHS 94, Subchapter III]

(c) A grievance resolution **procedure that is available** to the credential holder **through a professional association** of which the credential holder is a member. [§ 457.04 (8), Wis. Stats. Emphasis added.]

[Note: The bill also made changes with regard to **insurance coverage** for such services. Please refer to the Act for those provisions.]