

DISCHARGE OF VOLUNTARY PATIENTS

THE LAW

"(1) When a **voluntary inpatient** requests a discharge, the facility director or designee shall **either release** the patient **or file a statement of emergency detention** with the court as provided under ss. 51.10(5), 51.13(7)(b) and 51.15(10), Stats., and this section.

(2) If a voluntary inpatient requests a discharge and he or she has **no other living quarters or is in need of other services** to make the transition to the community, **the following actions** shall be taken by the facility director or designee prior to discharge:

(a) **Counsel** the patient and, when possible, **assist** the patient in **locating living quarters**;

(b) **Inform the applicable program director**, if any, of the patient's need for residential and other necessary transitional services; and

(c) If no living arrangements have been made by the time of discharge, **refer** the patient to an appropriate service agency for **emergency living arrangements**."

DHS 94.23, Wis. Admin. Code [Emphasis added.]

(a) A **consumer may be involuntarily discharged** from treatment [at an outpatient mental health clinic] **because of the consumer's inability to pay** for services **or for behavior** that is reasonably a result of mental health symptoms only as provided in par. (b).

(b) Before a clinic may involuntarily discharge a consumer under par. (a), the clinic shall **notify the consumer in writing of the reasons for the discharge**, the **effective date** of the discharge, **sources for further treatment**, and of the consumer's **right to have the discharge reviewed**, prior to the effective date of the discharge, by the subunit of the department that certifies clinics under this chapter, with the address of that subunit. A review under this paragraph is in addition to and is not a precondition for any other grievance or legal action the consumer may bring in connection with the discharge, including a grievance or action under s. 51.61, Stats. In deciding whether to uphold or overturn a discharge in a review under this paragraph, the department may consider:

1. **Whether the discharge violates the consumer's rights** under s. 51.61, Stats.

2. In cases of discharge for behavior that is reasonably a result of mental health symptoms, **whether the consumer's needs can be met by the clinic**, **whether the safety of staff or other consumers of the clinic may be endangered** by the consumer's behavior, and **whether another provider has accepted a referral to serve the consumer**.

DHS 35.24 (3), Wis. Admin. Code [Emphasis added.]

DECISIONS

1. A father claimed that his **son's discharge** from treatment at a medical center **was in retaliation** for his filing a complaint about his own mother's care there. It was determined that **other factors led to the son's discharge** and that the father had been told that it was going to occur soon. This occurred several months prior to the complainant filing a grievance about his mother's care. No retaliation for filing a complaint was found. (Level III decision in Case No. 02-SGE-06 on 1/27/03)
2. A patient grieved that he was wrongly denied Targeted Case Management (TCM); was wrongly discharged from Comprehensive Community Services (CCS) and was misled about his ability to return to TCM by the county. **The parties disagreed whether the discharge was voluntary. The patient argued that although he was compelled to demand better services, he did not freely refuse services. However, he refused all of the services that the provider offered.** It was determined that it was logical for the provider to discharge the patient after receiving a message to the effect that the patient was unhappy with the services offered and threatening to harm staff and/or the facility. **Based on the facts that the patient rejected staff assistance and whole agencies, walked out of a meeting convened to address his services and made statements via email that he wished to discontinue receiving services, the State Grievance Examiner found that the grievant voluntarily discontinued services.** Although insignificant in this case because discharge would have been appropriate whether it was voluntary or not, involuntary discharge would have required that the provider complete the legally required communication with the patient, whereas voluntary discharge did not so require. (Level IV decision in Case No. 15-SGE-0007 on 12/9/2016)
3. A patient grieved that he was wrongly discharged from Comprehensive Community Services. The discharge was held to be voluntary, with the result that no client right was violated. If the provider receives reimbursement from Wisconsin Medical Assistance and BadgerCare Plus, a patient can only be discharged for behavior that is reasonably a result of mental health symptoms if the clinic notifies the patient in writing of (i) the reasons of the discharge, (ii) the effective date of the discharge, (iii) sources of further treatment and (iv) the patient's right to have the discharge reviewed prior to the effective date of the discharge by the subunit of the DHS that certifies clinics under Chapter 36 of the Wisconsin Administrative Code. However, **since the State Grievance Examiner found that the discharge was voluntary, the staff had only to place a signed and dated discharge summary into the patient's file including (a) the reasons for discharge, (b) a summary of services and medications provided, (c) a final evaluation of the patient's progress, (d) identify remaining needs and recommendations for meeting those needs into the patient's file, which was done.** (Level IV decision in Case No. 15-SGE-0007 on 12/9/2016)
4. A patient grieved that he was wrongly denied Targeted Case Management

(TCM), was wrongly discharged from Comprehensive Community Services and was misled about his ability to return to TCM. The discharge was held to be voluntary. Per DHS 36.17, **when a patient is discharged from CCS programs, the patient must be given written notice that includes (i) a copy of the discharge summary, (ii) written procedures on how to reapply for CCS and (iii) information on how the patient can submit a written request to have the discharge reviewed by DHS. The summary must include (a) the reasons for the discharge, (b) the patient's status, condition and progress, (c) documentation on the circumstances that would lead to a renewed need for services (to be created with input from the patient) and (d) for a planned discharge, signatures of the patient and staff.** There was a dispute as to whether the patient received any of this information. However, the information that the provider claimed to have provided was incomplete and was not addressed to the grievant. It was a violation of the patient's right to adequate treatment when the provider failed to create and send to the grievant the required documentation. (Level IV decision in Case No. 15-SGE-0007 on 12/9/2016)

5. A patient was voluntarily admitted to the behavioral health unit after considerable indecision. Upon admission, the patient almost immediately refused inpatient services. The patient claimed that she was not discharged within 24 hours of refusal, as required under provider's discharge policy. However, the provider's policy includes an exception for weekends to ensure that a doctor will have an opportunity to assess the patient's safety prior to the release. Further, the patient did not claim any additional harm stemming from the additional four hours that she spent on the ward. (Level III decision in Case No. 16-SGE-08 on 5/26/2017)
6. A patient's mother acted on her daughter's behalf and claimed that services received through the Treatment Alternative and Diversion program run by the County violated her daughter's patient rights. The grievant claimed that the patient was wrongfully discharged and incorrectly accused of violating program requirements based on inaccurate lab results showing positive results for use of heroin, cocaine and morphine. The tests were determined to be accurate. However, even if the lab results had been inaccurate, evidence showed that the patient was struggling in treatment, had a negative attitude and was undermining and defensive when confronted on her behaviors by staff. **A provider may involuntarily discharge patients for behavior that is reasonably the result of their mental health symptoms if the provider notifies the patient** in writing about: (i) the reasons for the discharge; (ii) the effective date of the discharge; (iii) sources for further treatment; and (iv) the patient's right to have the discharge reviewed, prior to the effective date of the discharge by the subunit of the Department of Health Services that certifies clinics. The review may weigh: (a) whether the discharge violated the patients Wis. Stat. § 51.61 rights; (b) whether the patient's needs can be met by the clinic; and (c) whether safety is endangered by the patient's behavior and (d) whether another provider has

accepted a referral for the patient. (Level IV decision in Case No. 16-SGE-0006 on 10/23/2017)

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