

## ACCESS TO THE GRIEVANCE PROCEDURE

### THE LAW

Each patient shall... “Have the right to **present grievances** under the procedures established under sub. (5) on his or her own behalf or that of others to the staff or administrator of the treatment facility or **community service provider without** justifiable **fear of reprisal** and to **communicate**, subject to par. (p) [the right to make phone calls], **with public officials** or with any other person **without** justifiable **fear of reprisal.**”  
§ 51.61(1)(u), Wis. Stats. [Emphasis added.]

“The department shall establish **procedures to assure protection of patients’ rights** guaranteed under this chapter, and shall... implement a grievance procedure which complies with par. (b) to assure the rights of patients under this chapter are protected and enforced by the department, by service providers and by county departments under ss. 51.42 and 51.437. The procedures established by the department under this subsection apply to patients in private hospitals or public general hospitals.” \*  
§ 51.61(5)(a), Wis. Stats. [Emphasis added.]

[\* Note: “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 those hospitals, unless the individual is otherwise covered under this subsection.” § 51.61(1), Wis. Stats. (Emphasis added.)]

“The **department shall promulgate rules** that establish standards for the grievance procedure used as specified in par. (a) by the department, county departments under ss. 51.42 and 51.437 and service providers. The standards shall include the following components:

1. **Written policies and procedures** regarding the uses and operation of the grievance system
2. A **requirement that a person, who is the contact for initiating and processing grievances, be identified** within the department and in each county department under ss. 51.42 and 51.437 and **by each service provider.**
3. **An informal process** for resolving grievances.
4. **A formal process** for resolving grievances, in cases where the informal process fails to resolve grievances to the patient’s satisfaction.
5. A process for **notification of all patients of the grievance process.**
6. **Time limits for responses to emergency and non-emergency grievances**, as well as time limits for deciding appeals.
7. A **process which patients may use to appeal unfavorable decisions** within the department or county department under s. 51.42 or 51.437 or through service providers.
8. A **process** which may be used **to appeal final decisions** under subd. 7. Of the department, county department under s. 51.42 or 51.437 or service provider to the department of health and family services.

9. **Protection against the application of sanctions** against any complainant or person, including an employee of the department, county department under s. 51.42 or 51.437 or service provider **who assists in filing a grievance.**"

§ 51.61(5)(b), Wis. Stats. [Emphasis added.]

[Note: The department promulgated Subchapter III of DHS 94 to comply with this law.]

"(1) A **patient** or a **person acting on behalf of a patient** may file a grievance under s. DHS 94.29 procedures with the administrator of a facility or other service provider or with a staff member of the facility or other service provider **without fear of reprisal** and may **communicate**, subject to s. 51.61(1)(p), Stats., [right to make phone calls] with any **public official** or any other person **without fear of reprisal**.

(2) **No person may intentionally retaliate or discriminate** against any patient, person acting on behalf of a patient or employee for **contacting** or **providing information** to any **official** or to an **employee** of any **state protection and advocacy agency**, or for **initiating, participating** in or **testifying** in a **grievance procedure** or in any action for any remedy authorized by law.

(3) **No person may deprive** a patient of the **ability to seek redress** for **alleged violations** of his or her rights by unreasonably **precluding** the patient from **using the grievance procedure** established under s. DHS 94.29 or from **communicating**, subject to any valid telephone or visitor restriction under s. DHS 94.05, with a **court, government official, grievance investigator** or staff member of a **protection and advocacy agency** or with **legal counsel**."

DHS 94.28, Wis. Admin. Code [Emphasis added.]

"**Failure** of a treatment facility **to comply** with any provision of right under s.51.61, Stats., and this chapter may be processed as a **grievance** under s.51.61(5), Stats. , and subch. III of this chapter." DHS 94.29, Wis. Admin. Code [Emphasis added.]

"**Complaints related to the existence or operation of grievance resolution systems.** (1) Clients or persons acting on behalf of clients under s. DHS 94.49 may register complaints relating to **failure of a program to have a grievance resolution system** as required by s. 51.61 (5) (b), Stats., and this subchapter, or relating to the operation of an existing grievance resolution system directly to the unit or office of the department designated to conduct administrative reviews under s. DHS 94.42(1) (b) 2.

(2) If a complaint regarding the existence or operation of a grievance resolution system is filed with the department, a **state grievance examiner shall conduct an investigation** to determine whether a grievance resolution system meeting the requirements of s. 51.61 (5) (b), Stats., and this subchapter is in place in the program.

(3) **If the program lacks a grievance resolution system, or if the operation of an existing grievance resolution system is not in substantial compliance** with the requirements of this subchapter, the **state grievance examiner shall issue a report**

**identifying the steps necessary for the program to implement a grievance resolution system that complies with this subchapter, with a timeline for implementation.**

**(4)** The client or a person acting on behalf of the client or the program manager **may seek a review of the state grievance examiner's report** under sub. (3) by the administrator designated under s. DHS 94.44 (1).

**(5)** If the program fails to implement the required steps in the expected time period, the matter shall be referred by the grievance examiner to the appropriate unit or office of the department or the county department with responsibility for oversight of the program **for action related to certification, licensure or reimbursement or for censure of the program.**

**(6)** Nothing in this section shall be read as prohibiting or limiting in any way the beginning of an action under s. 51.61 (7) or (7m), Stats., or any other civil or criminal prosecution by or on behalf of a client."

DHS 94.51, Wis. Admin. Code [Emphasis added]

"No person who, in good faith, **files a report** with the appropriate **examining board** concerning the **violation of rights** under this section by persons **licensed** under ch. 441 [**nurses**], 446 [**chiropractors**], 450 [**pharmacists**], 455 [**psychologists**] or 456 [**nursing home administrators**], or who **participates in an investigation** of an allegation by the appropriate examining board, **is liable for civil damages** for the filing or participation."

§ 51.61(10), Wis. Stats. [Emphasis added.]

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## DECISIONS

1. [Note from the Client Rights Office: A person **under guardianship** may still **file** his or her **own patient rights complaints**. The guardian's **consent is not required**. The guardian should, however, be informed of any complaint involving the guardian's ward.]
2. Where a **Level II grievance decision did not advise the complainant of his right to a state-level review**, his **rights were violated**. (Level III decision in Case No. 99-SGE-02 on 5/17/00. Appeal to Level IV by the patient was dismissed since the Level III decision was in his favor.)
3. The DHS 94 **grievance procedure does not include a "fair hearing"**. (Level IV decision in Case No. 99-SGE-02 on 5/24/00.)
4. An **ex-patient** attempted to file a complaint with a county mental health center on behalf of some of their current patients. The center asked the county's Corporation Counsel for advice. They were told that they did not have to accept the complaint

since the individual filing it was no longer a patient. However, the law says “A patient or **any person acting on behalf** of a patient...” so the center was required to accept the complaint. Failure to timely reply to the complaint was a technical violation of the complainant’s rights. That failure was remedied by the center’s acceptance and investigation of the complaint. (Level III decision in Case No. 04-SGE-001 on 7/2/04.)

5. An individual who had never been in, toured or otherwise had any connection whatsoever with the residents of a nursing home for elderly and developmentally disabled clients **tried to file a complaint** on their behalf. He claimed they should have been paid wages for the volunteer work they did. This individual was not affiliated with any advocacy group. It was ruled that the individual was **not a “person acting on behalf of a patient”** under DHS 94.28(1), Wis. Admin. Code, and, therefore the **facility did not violate his rights** by **refusing to accept his grievance** filed on behalf of the residents of that facility. (Level IV decision in Case No. 04-SGE-06 on 3/29/05)
6. Where a client **did not receive a timely response** to her grievance her rights were violated. The service provider was required to establish a policy outlining the required steps that must be taken when a client raises a concern and expresses a desire to file a formal grievance under DHS 94. The State Grievance Examiner also required that a copy of that policy and documentation that staff have been trained in how to respond to grievances be sent to the Client Rights Office in order to resolve this violation. (Level III decision in Case No. 05-SGE-03 on 4/18/05)
7. Where an investigation was conducted into a client complaint, but where **the client did not receive a response** to the grievance, **her right** of access to the grievance process **was violated**. The service provider was **required to remedy** the violation by **establishing a policy** outlining the required steps that must be taken when a client files a formal grievance under DHS 94. A copy of that policy and **documentation that staff had been trained** in how to respond to grievances, was **required to be filed** with the DDHS Client Rights Office. (Level III Decision in Case No. 05-SGE-003 on 4/18/05)
8. A client complained about lack of access to the DHS 94 grievance procedure at a clinic. The grievance was filed directly at Level III because the State Grievance Examiner has jurisdiction over issues related to access to the grievance procedure. It was determined that the **clinic does have a Client Rights brochure**, which the client was able to get a copy of. The brochure outlines the DHS 94 grievance procedure. The **clinic was reminded** that they need to **put the name** and contact information of the clinic’s **Client Rights Specialist on all their brochures**. (Level IV decision in Case No. 06-SGE-01 on 4/3/06)
9. A client alleged a **lack of response** to his grievances. The SGE accepted the case under his **original jurisdiction** over access to the grievance procedure. Investigation revealed that the client had **multiple pending complaints** that were being individually addressed by the service provider. It was concluded that the

client's right of access to the grievance process was not violated. (Level III decision in Case No. 06-SGE-06 on 5/2/06)

10. A complaint was raised about a **facility refusing to accept** a patient rights grievance on **behalf of some unnamed, unspecified clients**. The facility's Counsel advised the facility not to accept the grievance unless the complainant could name at least one client of theirs whose rights had been violated. The complainant, himself, was receiving physical health treatment at the facility, not mental health treatment. **There is nothing inherently wrong** with a facility Client Rights Specialist (CRS) **conferring with the facility's attorneys** on issues pertaining to patient rights. The patient rights laws and rules are complex. Seeking the advice of counsel is often a good way to ensure that the facility is in full compliance with those rights. The decision of the CRS, even if that decision is not to accept a complaint, is still appealable. The four-stage grievance process ensures due process of law for persons seeking to file complaints. The complainant's **rights were not violated**. (Level IV decision in Case No. 06-SGE-04 on 8/18/06)
11. A father filed a complaint about **restrictions on his visiting** with his **son**, who was in treatment foster care. The county had imposed limitations on his visits with his son as part of the child welfare system. The DHS 94 **grievance procedure has no jurisdiction over child welfare matters**. After exhausting the county's grievance process regarding child welfare issues, the next step available to the father was to contact the Office of Strategic Finance (OSF) Regional Office. (Level IV decision in Case No. 06-SGE-07 on 9/25/06)
12. An ex-patient **filed a complaint 80 days after her discharge** from a Methadone clinic. The Client Rights Specialist for the clinic informally considered the concerns and determined that no rights violations occurred. Since the **45 day time frame to file a complaint was exceeded**, the patient's **right to file** a grievance was **not violated** by the clinic's refusal to formally process the complaint. (Level III decision in Case No. 06-SGE-13 on 11/30/06)
13. DHS 94.41(5)(a)1 sets a **45-day time limit on filing complaints** to ensure that the **facts are not too stale to be investigated**. One client's **complaint was filed** with the county **214 days after the incident**. That was 4¾ months later and it was 169 days after the 45-day time limit expired. The county **could have accepted his late grievance "for good cause"** per DHS 94.41(5)(a)2, but **they opted not to**. The question then became **whether or not they "abused their discretion"** by not accepting his late complaint. The client stated that he was "not thinking correctly" during that 45-day period. But that does not constitute "good cause" for him to wait an additional 169 days after that to complain. There was **no "abuse of discretion"** by the county's refusal to accept his very late complaint. (Level IV decision in Case No. 08-SGE-04 on 6/26/08)
14. After clients complained about the **adequacy of a county's grievance procedure**,

**representatives** of the county DHS **attended Client Rights Specialist training**. Following the training, the county representatives were successfully able to identify the mistakes made in the process, how to redirect an informal exchange of letters toward the official grievance resolution procedure, how to ensure objectivity, and the importance of informing clients and advocates of the option to appeal county decisions to the state level. The county DHS also **adopted the Client Rights Office approved model policy** on grievance resolution. It was concluded that the county was **now in compliance** with the DHS 94 Grievance Resolution Procedure. (Level III Decision in Case No. 08-SGE-09 on 8/19/08)

15. In accordance with DHS 94.51, **the State Grievance Examiner's (SGE's) jurisdiction over a complaint about the adequacy of a grievance process is limited to whether or not the grievance procedure requirements were adhered to**. That is the only issue that can be addressed directly at Level III without having to go through the rest of the grievance process first. Thus, **it is also the only issue that can be addressed at Level IV** of the process on appeal of the SGE's decision. **Additional substantive issues** raised by the complainant on appeal **will not be considered** until they have been addressed at the other three levels of the process. (Level IV decision in Case No. 08-SGE-13 on 3/11/09)
16. It was concluded that a **provider was not in compliance** with the requirements for an adequate grievance procedure because: 1) **no Client Rights Specialist was listed** on the written materials available to clients; 2) **the Notification of Rights** in use by the agency was not adequate because it **contained errors**; and, 3) **a formal grievance** submitted by a client **had still not been addressed** by the agency. It was noted that, with the issuance of the Level III decision, the provider had now officially notified of those deficiencies and, **if the agency knowingly and willfully continued to remain out of compliance**, the agency **could be liable for damages and prosecution** under Sec. 51.61(7m), Wis. State Stats. (Level III decision in Case No. 09-SGE-02 on 5/29/09)
17. The State Grievance Examiner's responsibilities include assessing whether a provider's grievance resolution system is in substantial compliance with statutory provisions. If not, State Grievance Examiner is to identify the steps necessary to bring the program into compliance. In the case at hand, **requests for access to the community grievance process should have been referred by unit staff, by the end of their shift, to the program manager of a facility or to a CRS. A CRS should have been assigned to a case within 3 days of the patient's submission of a complaint. Since this did not happen, the patient's right to access the grievance process was violated**. The State Grievance Examiner referred the provider to the appropriate online training module. (Level III decision in Case No. 16-SGE-08 on 5/26/2017)

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