

INFORMED OF RIGHTS - - RIGHT TO BE

THE LAW

Each patient shall: "Upon admission or commitment be **informed orally and in writing of his or her rights under [s. 51.61]**. Copies of this section shall be **posted conspicuously** in each patient area, and shall be **available to the patient's guardian or immediate family.**"
§ 51.61(1)(a), Wis. Stats. [Emphasis added.]

"NOTIFICATION OF RIGHTS. (1) **Before or upon admission** or, in the case of an outpatient, before treatment is begun, the patient shall be **notified orally** and given a **written copy** of his or her **rights** in accordance with s. 51.61(1)(a), Stats., and this chapter. **Oral notification may be accomplished by showing the patient a video** about patient rights under s. 51.61, Stats., and this chapter. The guardian of a patient who is incompetent and the parent of a minor patient shall also be notified, if they are available. Notification is not required before admission or treatment when there is an emergency.

(2) **Before**, upon or at a reasonable time **after admission**, a patient shall be informed in writing, as required by s. 51.61(1)(w), Stats., of any **liability** that the patient or any of the patient's relatives may have for the **cost** of the patient's **care and treatment** and the right to receive information about charges for care and treatment services.

(3) Patients who receive services for an extended period of time shall be **orally re-notified** of their rights **at least annually** and be given **another copy** of their rights **in writing** if they **request** a copy **or** if there has been **statutory changes** in any of their rights since the time of admission.

(4) If a patient is **unable to understand** the notification of rights, written and oral **notification** shall be made to the **parent** or **guardian**, if available, at the time of the patient's admission or, in the case of an outpatient, before treatment is begun, and **to the patient** when the patient **is able to understand**.

(5) **All notification of rights**, both oral and written, shall be in **language understood by the patient**, including **sign language, foreign language** or **simplified language** when that is necessary. A simplified, **printed version** of patients rights shall be **conspicuously posted** in each patient area."

DHS 94.04, Wis. Admin. Code [Emphasis added.]

"**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** [to access their records] as provided in this subsection."
§ 51.30(4)(d)4., Wis. Stats. [Emphasis added]

DECISIONS

1. An intense **inpatient AODA program** requires 24-hour, 7-day a week involvement of the patient for up to 30 days. Where this is **explained to all patients upon intake**, the patients' right to **notification** of their rights is **not violated**. (Level III decision in Case No. 98-SGE-02 on 10/13/98, upheld at Level IV.)
2. Where a **methadone clinic did not ensure that all clinic employees were aware of patient rights and the grievance process**, they **violated** the patients' rights. (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. A patient received services from an **agency contracted by the county**. He felt he was **not adequately informed** of his patient rights because his rights were provided in a **perfunctory way, without dialog or the ability on his part to ask questions** or seek **further clarification**. He wanted clarification of the notification requirements and expectations. Given his requested relief, there was **no conclusion** made that the provider was out of compliance, but recommendations were made for **further review** of the agency's rights **notification process**. (Level III decision in Case No. 00-SGE-01 on 6/29/01.)
4. The **notification of rights** is a **very important task** as it is intended to convey to clients that, indeed, **they have many rights** while receiving services, and that there are **mechanisms designed to protect their rights** – such as the DHS 94 **grievance resolution procedure**. Yet, as clients begin receiving services, they may be at various **functioning levels** in terms of their **ability to process** this information and understand their rights. The law emphasizes the **need for flexibility and follow-up** by providers as may be warranted in any given situation. For example, if a client is admitted to an inpatient setting in an **acutely psychotic state**, that may be a **time when the rights are the least meaningful or understandable**. Thus, someone will need to **follow up** with the rights notification at a later time when the client is **more likely to understand** them. There are creative and effective ways in which information can be shared, explained, and discussed to make it meaningful. Usually some combination of oral notification (unless a client states that is not wanted) **and written notification** followed by an **opportunity to ask questions, discuss** what the rights mean, ensure the client **knows who the Client Rights Specialist is**, etc., is effective. The key part of this entire process is **documentation**. Having a patient **sign an acknowledgement** of receipt of rights information is always a **good idea** but, **without more, this alone is not always meaningful**. If there is a question later, additional and **contemporaneous documentation** about what the rights notification process entailed is a **good protective measure** for both a client and agency. It is always positive to include such documentation in the client's record. Documentation of **annual re-notification** of rights is **also necessary**. Who does the follow-up in up to the provider, but logically the Client Rights Specialists should have some role. (Level III decision in Case No. 00-SGE-01 on 6/29/01.)

5. It is **not necessary** for each treatment **staff person** of a clinic, hospital or treatment program to **notify a client of his or her rights** and the grievance process. **One timely notification** prior to the patient beginning his or her treatment is **sufficient**. (Level III decision in Case No. 03-SGE-01 on 7/16/03.)
6. Even though the DHS 94 grievance process has **no jurisdiction** over an **independent physician** delivering services through an office that is not part of a program, the **physician was still obligated to inform his patients of their rights** under Sec. 51.61, Wis. Stats. And, **when the physician became part of an organized service corporation**, he was **also obliged to inform his patients** that the **DHS 94 grievance process** applied as of that time. (Level III decision in Case No. 03-SGE-01 on 7/16/03.)
7. A client complained about lack of access to the DHS 94 grievance procedure at a clinic. 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)
8. A grievant claimed that a strip search conducted upon her was improperly performed by staff at an inpatient psychiatric hospital. Although the search was conducted according to protocol and the patient was not touched, she found it highly invasive. **Patients have the right to be orally informed of their rights and to be given a copy of their rights, unless there is an emergency, but patients do not have the right to refuse policy and protocol in the same way that they have the right to refuse treatment**. In this case there was no emergency and evidence showed that the patient was informed of her rights orally and in writing. The provider did not specifically inform the patient that a strip search is a routine part of admission procedure, or that she could refuse the search. She was not informed that refusal of the search would lead to an inability to provide treatment. It was held that **the right of notification pertains to notification of the client rights granted by statute, not notice of a facility's search policy. Since the patient received notice of her rights, and there is no right to advance warning of a strip search in the relevant statute, no violation was found**. (Level III decision in Case No. 15-SGE-0008 on 6/16/2016)

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