

LEAST RESTRICTIVE CONDITIONS NECESSARY

THE LAW

Each patient shall... "...have the right to the **least restrictive conditions necessary** to achieve the purposes of admission, commitment or placement, **except in the case of a patient** who is **admitted** or **transferred** under **s. 51.35(3)** or **51.37** or under **ch. 971** or **975**." § 51.61(1)(e), Wis. Stats. [Emphasis added.]

"(1) Except in the case of a patient who is admitted or transferred under s.51.35(3) or 51.37, Stats., or under ch. 971 or 975, Stats., each patient shall be provided the **least restrictive treatment** which allows the **maximum amount of personal and physical freedom** in accordance with s. 51.61(1)(e), Stats., and this section.

(2) No patient may be **transferred** to a setting which increases personal or physical restrictions unless the transfer is **justified by documented treatment or security reasons or by a court order**.

(3) Inpatient and residential treatment facilities shall **identify all patients ready for placement in less restrictive settings** and shall, for each of these patients, **notify the county department or social services department that placed the patient** that the patient is ready for placement in a less restrictive setting. The **county department or social services department** then shall act in accordance with s. 51.61(1)(e), Stats., to **place the patient in a less restrictive setting**.

(4) Inpatient and residential treatment facilities shall **identify security measures in their policies and procedures** and shall specify criteria for the use of each security-related procedure.

(5) Inpatients shall be permitted to conduct **personal and business affairs in any lawful manner not otherwise limited by statute** so long as these do not interfere with the patient's **treatment plan**, the **orderly operation of the facility**, **security** or the **rights of other patients**." DHS 94.07, Wis. Admin. Code [Emphasis added.]

"**Least restrictive treatment'** means treatment and services which will best meet the patient's treatment and security needs and which **least limit the patient's freedom of choice and mobility**." DHS 94.02(17), Wis. Admin. Code [Emphasis added.]

DECISIONS

1. An individual was convicted of his **5th Operating While Intoxicated (OWI)** and received an assessment. His **assessment recommended inpatient** treatment. The individual

tried a voluntary admission, but left after five days. He was **offered outpatient counseling** as an alternative, but **never accepted it.** His **right** to the least restrictive setting was **not violated.** (Level III decision in Case No. 98-SGE-02 on 10/13/98, upheld at Level IV.)

2. A county human services department (HSD) **did not have a policy** in place for **contacting clients who are emergency detained.** Having such a policy is **not mandated by law,** but is a **good risk-management practice.** Had the HSD had such a policy, they would have found out that **this particular client had insurance** that would have covered her stay in another facility, where her treating physician also happened to work. This **resulted in her staying at the original place of detention longer** than necessary and costing her money from her own pocket. It **violated her right to the least restrictive setting.** Also, the client should not be held personally responsible for the increased cost of care. (Level IV decision in Case No. 99-SGE-03 on 11/3/99, reversing the Level III decision.)
3. A client was placed in a **more restrictive setting than necessary** under an **emergency detention.** She was **advised to execute an Advance Directive** to identify her **hospital preference** and her treating physician and to provide a copy to the county, too. That would assist the county to **appropriately place her** if she ever needed emergency detention again. (Level IV decision in Case No. 99-SGE-03 on 11/3/99, reversing the Level III decision.)
4. **Methadone** is a **nationally recognized treatment modality for heroin addiction.** Where a patient has done well on a methadone program, staying drug-free for a period of 18 months, the **continuation of outpatient treatment for her is appropriate.** It is also the **least restrictive alternative to inpatient treatment.** (Level IV decision in Case No. 99-SGE-01 on 5/16/00.)
5. A patient in an **outpatient methadone treatment program** was observed “**splitting his dose**” in a bathroom at the clinic. The clinic subsequently **increased his “monitoring level”** for a six-month probationary period. This **did not violate** his right to the least restrictive treatment. (Level IV decision in Case No. 99-SGE-02 on 5/24/00, upholding the Level III.)
6. Where a developmentally disabled young woman ended up in an **acute inpatient mental health setting,** it was appropriate for the Level I Client Rights Specialist to recommend a potential “**crisis intervention plan**” for her in case the situation arose again. Such an approach is an element of ongoing quality assurance on the part of the county program, too. (Level III decision in Case No. 99-SGE-07 on 1/3/01.)
7. A client was **denied CIP 1-B funding for an addition to her house.** The county followed all applicable laws and policies in denying the request, so the client’s **rights were not violated.** However, the county and the department **worked together to find another way to pay for** the remodeling project. (Level III decision in Case No. 00-SGE-06 on 2/5/01.)

8. A client who was about to be discharged from an inpatient facility **felt she was not being given enough input or choices** in terms of to **where she would be discharged**. She **wanted to be placed in an apartment** in the community. Facility staff were considering placement at other inpatient settings or a CBRF (group home) setting. Ultimately, she was transferred to a community **supported living arrangement** in an apartment. Since this was what she wanted, the grievance was dismissed at Level III as being **“resolved”**. (Level III decision in Case No. 00-SGE-05 on 2/16/01.)
9. A man made several statements about **wanting to take his own life**. His wife called the police and he was **emergency detained**. He wanted to be detained at a local hospital, but the police made the decision to detain him at a state mental health facility, over his objections. Since **other, less-restrictive options were available** and he adamantly did not want to go to the state facility, **his right to the least restrictive conditions was violated**. (Level III decision in Case No. 00-SGE-04 on 4/9/01.)
10. A civil patient complained about his county not placing him in the **least restrictive** setting. Since he had a **pending criminal charge**, the matter was **placed on hold** until a final disposition was made about the charge. As part of his criminal commitment, he was **placed on Conditional Release** through the department’s Community Forensic Services Program and his **Ch. 51 proceedings were terminated** by the court. Thus, the county whose actions he had originally complained about had no further involvement in his care and treatment. **As a “forensic” (criminal) client, he no longer had the right to the least restrictive conditions** as set forth in §51.61(1)(e), Wis. Stats. All decisions about his placement or living arrangements had to be approved by his agent and the Conditional Release program. The matter was considered resolved and the complaint dismissed. (Level IV decision in Case No. 05-SGE-13 on 10/15/07)