

WORK - RIGHT TO RECEIVE WAGES  
AND  
PATIENT WORK PROGRAMS

THE LAW

Each patient shall...

- "1. Have the **right to refuse** to perform **labor which is of financial benefit to the facility** in which the patient is receiving treatment or service. **Privileges or release** from the facility **may not be conditioned upon the performance of any labor** which is regulated by this paragraph.

Patients may **voluntarily engage in therapeutic labor** which is of financial benefit to the facility if such labor is **compensated in accordance with a plan approved** by the department and if:

- a. The specific labor is an **integrated part of the patient's treatment plan** approved as a therapeutic activity by the professional staff member responsible for supervising the patient's treatment;
  - b. The labor is **supervised** by a staff member who is **qualified to oversee the therapeutic aspects** of the activity;
  - c. The patient has given his or her **written informed consent** to engage in such labor and has been informed that such consent may be withdrawn at any time; and
  - d. The labor involved is **evaluated for its appropriateness** by the staff of the facility **at least once every 120 days**.
2. Patients may also **voluntarily engage in non-compensated therapeutic labor** which is of financial benefit to the facility, if the conditions for engaging in compensated labor **under this paragraph are met and if**:
    - a. The facility has attempted to provide compensated labor as a first alternative and **all resources for providing compensated labor have been exhausted**;
    - b. Uncompensated therapeutic labor **does not cause lay-offs of staff hired by the facility** to otherwise perform such labor; and
    - c. The patient is **not required in any way to perform such labor**. Tasks of a **personal housekeeping** nature are **not to be considered compensable labor**.
  3. **Payment to a patient** performing labor under this section shall **not be applied to costs of treatment without the informed, written consent** of such patient. This

paragraph **does not apply to individuals serving a criminal sentence** who are transferred from a state correctional institution under s. 51.37(5) to a treatment facility."

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

"LABOR PERFORMED BY PATIENTS. (1) Any **labor performed by a patient which is of financial benefit to the treatment facility** shall be conducted within the requirements under s. 51.61(1)(b), Stats., and this section.

(2) Patients may only be **required to perform tasks** that are equivalent to **personal housekeeping chores** performed in common or private living areas of an ordinary home....

(3) **Payment for therapeutic labor** authorized under s. 51.61(1)(b), Stats., shall be made in accordance with wage guidelines established under state and federal law.

(4) **Documentation shall be made in the treatment record** of any compensated, uncompensated, voluntary or involuntary labor performed by any patient.

(5) The document used to obtain **informed consent** for application of a patient's **wages toward the cost of treatment** shall **conspicuously state that the patient has a right to refuse consent** without suffering any adverse consequences."

DHS 94.15, Wis. Admin. Code [Emphasis added.]

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## DECISIONS

1. A patient was **encouraged** by his treatment plan to **seek employment**. This **was not "forced employment"** as the patient later claimed. He had, in fact, agreed to his treatment plan. (Level III decision in Case No. 02-SGE-05 on 3/19/03)
2. An ex-patient of a mental health complex complained about current **developmentally disabled residents** being **paid less than minimum wages** for their work in a sheltered workshop. The Department of Workforce Development (DWD) had **licensed and certified** that **sheltered workshop to pay sub-minimum wages**. Sheltered workshops that have been approved by DWD [or the federal Department of Labor] to pay sub-minimum wages are, by such approval, deemed in compliance with the client wage requirements of § 51.61(1)(b), Stats. The DHS 94 grievance procedure has no jurisdiction over issues of compliance with the federal Fair Labor Standards Act. (Level IV decision in Case No. 04-SGE-04 on 11/11/04)
3. The **geriatric residents** of a **nursing home** for elderly and developmentally disabled clients who **occasionally volunteer** to assist staff in **simple tasks** for **short periods** of time are **not doing work that is of financial benefit** to the facility. They are

volunteering to do those tasks in order to have something to do. The facility is **not obligated to pay them wages** under those circumstances. (Level IV decision in Case No. 04-SGE-06 on 3/29/05)

4. A man whose adult son had been protectively placed with him as an Adult Family Home provider requested to be reimbursed from the county for the “respite” hours and mileage he had provided when the assigned respite staff did not show up to take his son out. That issue is not grievable as a client rights issue. Rather, it is an issue between the provider/father and the county to work out. (Level IV Decision in Case No. 06-SGE-03 on 9/01/10)

[See: “Introduction to Digest-Date Last Updated” page]