

DISCHARGE - OUTPATIENT

THE LAW

“Patients have the right to be free from having **arbitrary decisions** made about them. To be **non-arbitrary**, a decision about a client must be **rationally based** upon a **legitimate treatment, management or security** interest.”

DHS 94.24(3)(h), Wis. Admin. Code [Emphasis added.]

Each patient shall... “Have the right to be **treated with respect and recognition of the patient's dignity and individuality** by all employees of the treatment facility or **community mental health program** and by licensed, certified, registered or permitted providers of health care with whom the patient comes in contact.”

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

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DHS 94.24(3)(h), Wis. Admin. Code [Emphasis added.]

The treatment facility shall maintain a patient treatment record which shall include: “**Documentation** that is specific and objective and that **adequately explains** the reasons for any **conclusions or decisions** made regarding the patient.”

DHS 94.09(6)(d), Wis. Admin. Code [Emphasis added.]

(a) A **consumer** [at an **outpatient mental health clinic**] **may be involuntarily discharged** from treatment **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.]

[Note: See also the "Discharge of Voluntary Patient" and "Treatment – Prompt & Adequate" sections of this digest.]

DECISIONS

1. A client **felt** her **termination** from **outpatient** therapy constituted "**abandonment**" which left her without mental health services and without options for a smooth transition into other services. Both she and her therapist agreed that the **attainment of measurable objectives was not being met** and that she was **no longer making progress in treatment**. The personalities involved were not meshing together in a productive fashion and the kind of therapeutic work and progress that the client really wanted was not getting done. This could have led to voluntary discharge, rather than termination, by encouraging joint decision making and agreement by both the client and the therapist. The **termination** of a client's outpatient therapy **did not rise to the level of a violation** based on the rights and rules that are currently in place. However, the **best practice** would be to **achieve consensus** that treatment goals were not being met and to **mutually agree to discontinue therapy**. (Level III Grievance Decision in Case No. 05-SGE-12 on 5/16/06)
2. A client complained about **being refused services** by the **psychiatrist in her small home town**. She was being provided those services in a larger, nearby city, but she had transportation problems. Records indicated that she had originally requested that her services be transferred to the provider's outpatient department in the city, **blaming her local psychiatrist for all of her problems**. Later, **she wanted to return** to that psychiatrist, **but he refused to take her back** as a client. Considering the history between them, **it was appropriate** for the psychiatrist to refer her to another service provider. When the **psychiatrist/client rapport was irretrievably broken**, **referral to another psychiatrist was warranted**, even if that meant that the client had to find transportation to the new provider a few miles away. (Level IV decision in Case No. 06-SGE-14 on 8/16/07)
3. A patient became upset with a staff member and was told to "settle down" in the following therapy session by the therapist, who was also the Director of the service provider. The patient left the session and slammed the therapist's door. Staff felt threatened. At the next meeting the therapist told the client that there was a breakdown in the patient/therapist relationship and that the

patient would be discharged. **There is no unconditional right to receive services from a provider. However, the decision to discharge a patient cannot be arbitrary.** To be non-arbitrary, a decision must be based on a legitimate treatment, management or security interest. Here, the termination occurred when hostility had already developed between the parties. Best practice would have been to document an attempt to reach a consensus for voluntary discharge. **However, the fact that both the patient and the therapist asserted that the patient/therapist relationship was no longer productive amounted to a legitimate treatment reason to discharge the patient.** No violation of the client's rights was found. (Level III decision in 13-SGE-0009 decided on 3/20/2013)

4. A provider telling a patient that he may be discharged if he does not improve his behavior with provider staff is not a violation of the patient's right to be treated with dignity and respect. A violation would be found if the provider threatened to discharge the patient if he continued to complain about services. However, the fact that the client's behavior arose in the context of complaining about staff or services did not alter the fact that the behavior was the cause of the threat to discharge the patient. **Since the threat to discharge the patient was made in reference to the behavior and not in reference to the fact that the patient was complaining about services means that there was no violation of the patient's right to be treated with dignity and respect or the patient's right to be free from retaliation.** (Level III decision in 13-SGE-0009 decided on 3/20/2013)
5. A patient was discharged after he expressed his dissatisfaction with the services he was receiving by raising his voice and slamming a door. The patient and provider had cultural differences that underlay the parties' increasing frustration with one another and may have contributed to their relationship becoming unworkable. The provider lacked an adequate grievance process, which exacerbated the issues because the client was prevented from having his complaints heard by a third party. Here, the discharge was held not to be retaliatory because there were documented legitimate treatment and management reasons for the discharge. (Level III decision in 13-SGE-0009 decided on 3/20/2013)
6. A patient was discharged because the provider allegedly discovered that she was audiotaping her interactions with her therapist and provider staff without permission. The patient filed the grievance in the hopes that she would be able to start seeing the same therapist again. The case was held to be moot, but the State Grievance Examiner analyzed her claims in the hope of providing closure and clarification for the parties. **Patients do not have the right to be given a list of all acts that could result in discharge from services.** Providers should give notice of anything unusual or surprising that could result in discharge from services. DHS regulations required some providers to consider whether the discharge may be the result of the patient's

mental health symptoms. However, **that regulation did not apply to this provider because this provider was not a state certified clinic. Even if the regulation had applied to the provider, the provider's actions did not rise to the level of an arbitrary decision because the client-therapist relationship was broken.** (Level III decision in 12-SGE-00017 decided on 8/22/2013)

7. 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)
8. A patient refused to work with any of the three staff that were assigned to work with him and refused to work with two entire agencies. The record showed that the patient was asked several times about whether he wanted to receive services and what type of services he should receive. The patient's right to participate in his treatment was not violated by the treatment team's discharge decision. **Participation does not mean ultimate decision making authority. Participation means that a patient has the right to have their opinion known, considered and documented by the treatment team, not necessarily followed.** Here, the grievant's feedback included alarming threats and could be interpreted to be severely negative, to the point of indicating that continued services were undesired and would be counter-therapeutic. The evidence showed that the treatment team tried to make a discharge decision with knowledge and understanding of the grievant's feedback on the issue. (Level IV decision in Case No. 15-SGE-0007 on 12/9/2016)
9. 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)

10. 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)
11. An outside agency filed a grievance on behalf of a client. The agency and client claim that the client's discharge violated her rights. The discharge was because of the client's behavior, a diminished trust and relationship between the client, the client's daughter, and the provider, and a mutual agreement to discontinue services. There were legitimate management reasons to discharge the client. Therefore, the discharge was not arbitrary. (Level III Grievance Decision in Case No. 20-SGE-03).

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