

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 mental health program 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. **Protections against the application of sanctions** against any complainant or any person, including an employee of the department, county department under s. 51.42 or 51.437 or service provider **who assists a complainant 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.]

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 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)

10. 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)
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. A client was seen at the provider's emergency room for suicidal ideations and entered the inpatient mental health treatment facility at the hospital. The client claimed that the provider violated many of his client rights. The grievant **asked to speak to the patient advocate about his rights repeatedly and these requests were evaded by provider staff.** The patient claimed that he was never given an opportunity to speak with any staff member at the provider who counseled him about his rights as a patient. Staff should be aware that when a patient asks to speak to a patient advocate they want to know about their client rights and should be referred to a client rights specialist (CRS). **No person may deprive a patient of the ability to seek redress for alleged violations of the patient's rights by unreasonably precluding the patient from using the grievance procedure.** The **client had the burden of proof** to show that it is more likely than not that his use of the provider's grievance procedure was hindered or even prevented by the provider. The State Grievance Examiner found that it was most likely that the patient did complain about wanting to be discharged and about wanting to see a patient advocate during his stay. The SGE also found it likely that the provider did not

direct the patient to a CRS during his stay. These actions **violated the grievant's right to access the grievance procedure by unreasonably precluding the patient from using the grievance procedure.** (Level III decision in case No. 12-SGE-10 decided on 5/8/2013)

18. A patient complained that the **provider put its client's rights poster in a location that was not readily visible to patients, that the provider's brochure was not regularly redistributed to long term patients, and contained inaccurate contact information for the Client Rights Specialist.** The provider **violated the patient's right to the proper grievance procedure** when it did not have an accurate and visible client rights poster and when it routinely provided inaccurate client rights brochures to patients. (Level III decision in 13-SGE-0009 decided on 3/20/2013)
19. A provider did not make the client rights poster and brochure readily available or provide it at intervals to long term clients. Further, the poster and brochures had the wrong contact information for the provider's Client Rights Specialist (CRS). **The provider violated the grievants' rights to notification of her rights because the poster was not hung in a place where clients could see it. Further, the grievant's right to notification of her rights was violated because the provider's poster and brochure contained inaccurate contact information for the CRS.** (Level III decision in 13-SGE-0011 decided on 4/11/2014)
20. A client filed a grievance with a CRS who helped the patient file a formal grievance and completed a level I-A decision. The CRS stated that the time limit for completing the report was 45 days when it was in fact 30 days. **The CRS report was two weeks late.** The level I-A decision **did not explicitly state whether a violation was found** related to a complaint that the provider retaliated against the patient for filing the grievance. No harm was reported. **The errors were each held to be a technical violation of the patient's right to proper grievance procedure.** (Level III decision in 13-SGE-0011 decided on 4/11/2014)
21. Grievants were **husband and wife receiving services from the same provider.** Their complaints were divided into two separate grievance decisions. The provider was aware that both **clients had a conflict with the same member of the provider's staff.** The husband attempted to file a complaint with the provider. The provider, who had never had a patient use the grievance process, admitted that they **did not have a Client Rights Specialist. (CRS).** The provider **violated the patient's right to a proper grievance procedure when the provider was aware of a staff patient conflict and did not direct the patient to a CRS to file a complaint because the provider did not notify the patient of her right to file a formal client rights grievance.** (Level III decision in 13-SGE-0011 decided on 4/11/2014)
22. A client complained that he was not properly notified of the Community Grievance Procedure and his client rights because there was no client rights poster in the specific room where he received most of his treatment. The patient did receive copy

of the provider's client rights policies and signed off on his receipt of them. **There is no violation of the patient's right because the provider is not required to have a client rights poster in each of its treatment rooms.** (Level IV decision in 14-SGE-0001 decided on 12/22/2014)

23. A case was investigated and analyzed two years after the underlying alleged incident occurred. The long time lag made investigation difficult because evidence becomes harder to track down and memories become fuzzy. Part of the delay stems from the patient's decision to contact DQA. Part of the delay was due to the parties' attempt to settle the dispute informally. Part of the delay appears to have stemmed from the provider not channeling the patient's complains properly through the Client Rights Community Grievance Procedure. After starting as an informal grievance one of the parties switched the grievance to a formal grievance on a now non ascertainable date. **Once the provider realized that the client had filed a formal grievance the Level I-A and I-B decisions were issued in a timely manner. No violation to proper grievance procedure was found in this complaint because the decisions were rendered within the applicable time frame.** (Level IV decision in 14-SGE-0001 decided on 12/22/2014)
24. Evidence was sufficient to find that provider staff misinformed the client about the identity and contact information of the provider's Client Rights Specialist (CRS). The client had difficulty filing his grievance because he did not have correct contact information for the CRS. **The client's right to access the Grievance Procedure was violated when the proper CRS information was not provided upon request. The determination that there was a violation did not require a finding that the provider willfully withheld the information.** (Level III decision in 14-SGE-0003 decided on 6/26/2015)
25. A patient filed a complaint with a provider. The provider responded informally and never issued a formal response until the State Grievance Examiner was called by the patient. The provider knew that the patient was unhappy with the provider's first informal response and so issued a second informal response. This should have triggered the provider to follow up and determine if the patient wished to use the formal grievance procedure. **None of the provider's informal responses contained any reference to the formal grievance procedure. There was no evidence that the provider informed the grievant that she had the right to pursue a formal grievance.** It was determined that a violation of the patient's client rights occurred. (Level IV decision in 14-SGE-0005 decided on 10/17/2016)
26. A patient's **grievance was admittedly put in the Director of a provider's desk for two weeks.** The director thought that this was acceptable because the patient might have changed her mind and because nothing in the documents said "grievance." **People receiving services for mental health, substance abuse or developmental disability are required to have access to the grievance procedure.** Any complaint submitted to a provider should be sent to a Client Rights Specialist (CRS) by the end of the work shift of the person who received it under the

applicable administrative code. The CRS has the responsibility to determine if it is a formal or informal grievance related to client rights. The CRS must then provide a written response. **The provider violated the patient's right to a proper grievance procedure by setting aside the grievant's initial submission of her complaints.** (Level III decision in Case No. 15-SGE-0002 on 01/29/2016)

27. A patient's grievance lead to a Client Rights Specialist (CRS) Report that did not **respond to many of the complaints** contained in the grievance. Evidence showed that the original grievance contained 63 allegations. The CRS Report identified three complaints and responded to one. **There was no excuse for the meagre investigation and analysis completed in the CRS Report.** Also, the CRS Report did not contain any appeal information. The relevant administrative code requires that the report contain a discussion of the rights implicated by the complaints, determinations of whether the complaints are founded or unfounded and a determination of whether the patient's rights were violated. The CRS Report should include information about appeal process, time limits and contact information. Since the CRS Report did not contain these items the client's right to proper grievance process was **violated**. (Level III decision in Case No. 15-SGE-0002 on 01/29/2016)
28. A grievant complained that a Client Rights Specialist (CRS) was a friend of the Director of the provider that she was grieving about. The grievance process is not litigation. The purpose of the grievance process is to ensure that patients are heard and to improve services. **The essential qualification if a CRS is that a CRS is able to make relatively objective decisions regarding the client's complaints and that the CRS is trained in the requirements of the position.** The patient's right to proper grievance procedure was not violated by the relationship between the Director and the CRS because there was not an inherent conflict of interest. (Level III decision in Case No. 15-SGE-0002 on 01/29/2016)
29. A director of a provider wrote a Program Manager's decision in response to complaints about the director's wife (who was also an employee of the provider) and therapy sessions where the director was acting as the patient's therapist. **The director had a direct and glaring conflict of interest** which should have precluded him from issuing the decision. The administrative code requires that providers have a process to protect a Client Rights Specialist's (CRS) neutrality. Providers must have a back-up CRS and Program Manager reviewer or designee who can respond to complaints when the **complaints are directly pertaining to the CRS, program manager or close family member.** In this case, no designee was named even though the complaints were directly related to the issuer of the Program Manager's decision and his spouse. **A violation of the Client's right to proper grievance procedure was found.** (Level III decision in Case No. 15-SGE-0002 on 01/29/2016)
30. A grievant claimed he was **involuntarily dismissed** from outpatient services received through the county and **did not receive notice of the grievance process.** The grievant claimed that he stated to staff that he wished to file a verbal grievance.

The county's Client Rights Specialist (CRS) indicated that the grievant had stated that he did not wish to file a grievance. The fact that the grievant called the provider and told them that he wished to file a verbal grievance demonstrates that the grievant had **notice of the grievance procedure**. Further, the grievant had accessed the grievance process previously and received written decisions in response to his concerns. No violation of the client's right to notice was found. (Level III decision in Case No. 15-SGE-0006 on 7/11/2016)

31. A grievant claimed that his right to access the grievance process was obstructed because he was not promptly directed to the Client Rights Specialist (CRS) after being discharged. Documentary evidence showed that the grievant initially tried to resolve matters informally. Thereafter the patient was assisted by the CRS and then by counsel in preparing a formal grievance. **The formal grievance prepared by counsel focused on Federal law, not clients rights. However, the CRS attempted to respond to the grievant's client rights complaints, which is best practice.** It is not required that the CRS invent client rights issues when none are presented in the grievance. (Level IV decision in Case No. 16-SGE-01 on 12/15/2016)
32. **The patient alleged** that the Director of a service provider insisted on handling her claims informally and informed her that all client rights violations are "subjective." Evidence confirmed that the clinic director initially insisted that the patient's grievances be handled informally. At any time during the formal resolution process either party may initiate a switch to an informal procedure, with the consent of the other party. **Neither party has the power to insist on the use of an informal process without the consent of the other.** Although it was found that the Clinic Director initially misled the patient regarding proper grievance procedure, the patient was aware of her rights and consented to reversion to an informal procedure for her own reasons. **Since there was no harm to the grievant in this case, no procedural violation was found.** (Level III decision in Case No. 16-SGE-04 on 4/20/2017)
33. A patient claimed that her right to access the grievance procedure was violated when the client rights specialist failed to address all of her grievances. Evidence showed that **some Client Rights Specialists like to group grievants' complaints and some like to handle them one by one. Either method is valid as long as the grievances that were originally submitted by the patient are addressed.** In the case at hand the CRS did an excellent job of handling each issue, so no violation was found. (Level III decision in Case No. 16-SGE-04 on 4/20/2017)
34. A patient's mother acted on her daughter's behalf and claimed that services received through the Treatment Alternative and Diversion program run by the County violated her daughter's patient rights. The grievant alleged that a patient's right to the grievance procedure was violated when the patient was not interviewed as part of the grievance investigation. The provider claimed that there was no requirement to interview the patient in this case because the patient's mother filed

the grievance. The State Grievance Examiner (SGE) must consider whether a provider's grievance resolution system is in substantial compliance with the requirements of Wis. Stat. §51.61. If it is determined that the resolution system is not in compliance, the SGE must issue a report identifying the steps necessary to bring the program into compliance. Here, the fact that the patient's mother filed the grievance did not relieve the CRS from the responsibility to investigate complaints and interview the parties. In this case no violation of the grievant's right to the proper grievance procedure was found because in another Level IV case it was held that **although CRS' are obligated to gather facts from the parties, a failure to interview a party does not rise to the level of a violation of a patient's rights.** Further, in this case the patient's position is indistinguishable from the position of the grievant. (Level IV decision in Case No. 16-SGE-0006 on 10/23/2017)

35. A patient's mother acted on her daughter's behalf and claimed that services received through the Treatment Alternative and Diversion program run by the County violated her daughter's patient rights. The grievant alleged that her daughter's right to the grievance procedure was violated when the report from the Client Rights Specialist (CRS) was seven days late. A CRS has 30 days to provide a grieving party with a report from the date of the submission of the client's grievance form. The grieving party did not claim that they suffered any damage as a result of the delay. **It was held that some damage must be shown before a reasonably brief delay in provision of a CRS report may rise to the level of a violation. Consequently, no violation of the grievant's right to proper grievance procedure was found.** (Level IV decision in Case No. 16-SGE-0006 on 10/23/2017)
36. 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)
37. A Client Rights Specialist and a Program Manager failed to address issues that were raised by a patient in her initial grievance. A violation of the patient's right to the grievance procedure was found. This finding was based on the facts that the **code requires the Client Rights Specialist and the Program Manager to conduct an inquiry into all of the incidents which are the focus of the grievance.** Prior case precedent has held that omissions of this sort are a violation of the patient's right to proper grievance procedure. Recommendations were made to the provider to address issues with their grievance procedure. (Level III, Case

No. 17-SGE-03 III)

38. It was determined that the **Level I-A report did not contain a description of the relevant facts, the application of the appropriate laws and rules to those facts, determinations as to whether the grievance is founded or unfounded or the basis for those determinations.** The Program Manager also did not provide a decision which described the matters which remained in dispute. Nor did the Program Manager's decision state the findings and determinations or recommendations which form the official position of the program. Since these essential pieces of information were missing from both reports, a violation of the grievants's right to access the grievance procedure was found. Recommendations were made to the provider. The Level IV Decision concluded that the Level III Decision was reasonably based in fact and law and was upheld. (Level III and IV Decision, Case No. 17-SGE-04)
39. A patient's family grieved after the patient committed suicide, however the family faced difficulties during the grievance process. The **family alleged the following: they were informed there was not a Client Rights Specialist to file their grievance with; the Level I-A report was five days late; and the provider decisions did not contain appeal information.** There was no enough information to verify that the family was told that there was not a Client Rights Specialist. It was also not a violation of the 30 day timeframe a CRS has to issue a Level I-A decision when the Level I-A report was issued five days late. It was a violation of the grievance process when the provider's Level I-A and I-B reports did not include information of the appeal process in writing. (Level III Grievance Decision in Case No. 18-SGE-01).
40. A five year old patient's family grieved on behalf of the minor. The provider is required to assign a Client Rights Specialist to investigate a grievance and provide a written decision within 30 days the grievance was filed, which must include the findings of the investigation and analysis. The grieving party then has the ability to appeal the decision to the Program Manager, and he or she will provide a written decision upholding, modifying or overturning the CRS report. It was determined that **the provider violated the patient's right to notification of the grievance procedure and failed to follow the proper grievance procedure, because none of the requirements of the applicable law or code were met in the investigation, and the response to the grieving party's concerns was a mere five sentence summary.** (Level III Grievance Decision in Case No 18-SGE-02)
41. A patient complained when **the Level I-B was issued over a month late.** The patient claimed the provider received the appeal to Level I-B on 5/08/18, but the provider claimed to not have received the appeal until 6/15/18. It was determined the provider violated the patient's right to a timely grievance procedure, as evidence supported the patient's claims that the appeal was sent on 5/08/18. (Level III Grievance Decision in Case No. 18-SGE-04)

42. A patient complained when the provider did not acknowledge receipt of her complaint related to provision requests to the patient's crisis plan. It was found that **it is not required that the provider has to send an acknowledgement of the complaint immediately or within a certain timeframe a complaint is submitted. The provider had met all mandatory time limits**, therefore a violation of the patient's right to the grievance procedure was not found. (Level III Grievance Decision, upheld at Level IV, in Case No. 18-SGE-05)
43. A provider violated a patient's right to the grievance procedure through the following: when the **patient's family initially did not have access to the grievance procedure; the Level I and II decisions were considerably late; and the appeal instructions provided to the grieving party were inaccurate**. (Level III Grievance in Case No. 18-SGE-06)
44. A mother/guardian complained, on behalf of her adult son about a number of his rights having been violated at a day treatment service provider. The **provider did not respond correctly to the grieving party's initial requests to grieve these issues under Wis. Stat. s. 51.61 and DHS 94, Wis. Admin. Code**. As such, a violation of the participant's right to access the grievance procedure is found. Recommendations were made to the provider to correct the problem. (Level III Grievance Decision, upheld at Level IV, in Case No. 19-SGE-02)
45. A **patient did not receive a copy of client rights when requested numerous times. It was determined that this was a violation of the patient's right to assistance in exercising her rights**. At minimum, the patient should have received information about client rights and the grievance procedure that is easy to read and understand. (Level III Grievance Decision in Case No. 20-SGE-02)
46. A provider's **grievance process did not notify individuals how to file a complaint using the DHS 94 grievance procedure, did not provide accurate time limits to file a grievance, and the provider did not have a designated Client Rights Specialist**. Over the course of the grievance, the provider updated its grievance process to be in compliance with DHS 94 Subchapter III, Wis. Admin. Code, and also established a Client Rights Specialist. The issues pertaining to the grievance process were dismissed as resolved. (Level III Grievance Decision in Case No. 20-SGE-03)
47. A patient complained when the Program Manager's **decision was received two months late**. The grievant was residing at the county jail at the time the decision was issued, but a couple days later the grievant transferred to a different institution. The Program Manager's decision never made it the grievant prior to his transfer. Once it was made aware the grievant did not receive his decision, the Program Manager resent the decision to the grievant's current location. The **circumstances surrounding the reason for the delay were beyond the control of the Program Manager**. The grievant's rights were not violated. (Level III grievance decision in Case No. 20-SGE-04)

48. A client's guardian filed a grievance on behalf of her son. A majority of the complaint was related to the way the mother was treated, however there were issues that related to the client. The **county did not provide a Level I-A report in response to the grievance, therefore violating the client's right to access the grievance procedure.** (Level III Grievance Decision in Case No. 20-SGE-05)
49. A technical violation was found of a patient's right to access the grievance procedure when the **patient was not provided copies of the grievance complaint forms upon request. The Case Manager at the time had attempted to address the patient's concerns informally, but it was not indicated in the patient's documentation that his concerns were resolved, or that the patient no longer wanted to file a grievance.** (Level III Grievance Decision in Case No. 20-SGE-06)
50. A patient claimed **the provider did not have a grievance process and did not inform the patient of her patient rights. The patient signed an acknowledgement that she received information related to the grievance procedure and patient rights.** The real issue was determined to be the provider was informally attempting to resolve the patient's complaints. However, **both parties have to agree to an informal resolution process,** which was not done in this case. The grievant's right to the grievance procedure was violated. (Level III grievance decision in Case No. 20-SGE-07)
51. A **patient was not provided with information on how to appeal to Level III** in the Medical Director's decision, as required within DHS 94.41(4)(e), Wis. Admin. Code. This was a violation of her right to the grievance process. (Level III grievance decision in Case No. 20-SGE-07)
52. A patient complained about the medications she was receiving. The **provider addressed the complaints, but did not use the DHS 94 grievance process** as they were not aware of the process. The provider did have a grievance policy, however, the policy did not follow the procedure requirements within DHS 94, Wisconsin Administrative Code. This was a violation of the patient's right to access the grievance procedure. (Level III grievance decision in Case No. 20-SGE-09).
53. An individual filed a complaint on behalf of his wife, alleging that a longstanding policy enacted by a clinic which required that patients meet with their current psychiatrist to initiate a request to transfer to a different psychiatrist. **The grieving party filed the complaint after the patient filed a complaint which was handled by the provider as an informal complaint. In the grieving party's appeal to Level III, he alleges that the mishandling of the patient's complaint and the written material received in response to the formal complaint filed violated the patient's right to access the client rights grievance procedure.** Additionally, the grieving party pointed to the Level III decision being overdue per the timelines specified in Wisconsin law. **The provider did not follow the grievance procedure when it handled the patient's complaint in an informal manner and when the**

written decisions failed to include or specify information required by Wisconsin law. Further, due to staffing changes and challenges, the Level III decision was far beyond the timeline outlined by Wisconsin law. The grievant's right to access the grievance procedure was violated. The provider proactively reached out to the Client Rights Office for guidance and training for staff, which would have been the recommendation which was appropriate in this case. (Level III decision in case number 21-SGE-07)

54. A patient alleged that the facility violated his rights by not allowing him access to the Wisconsin Department of Health Services (DHS) Client Rights grievance procedure. **The grievant requested his file from the provider and upon receipt of the file the grievant realized none of his complaints had been addressed.** After review of the grievant's file and after multiple requests for proof of a grievance procedure at the facility, it was found that the facility was in violation of the patient's right to access the grievance procedure. It was recommended that the facility show proof of a grievance procedure that follows the DHS 94 grievance procedure within 120 days of receipt of the Level III decision. (Level III Decision Case No. 22-SGE-05)
55. A patient submitted a **formal grievance to a provider via certified mail and never received any acknowledgment from the provider. There is no indication that an investigation into the formal grievance was conducted,** and no decision letter was issued to the patient. Per Wisconsin Administrative Code DHS 94, patients have the right to access the patient grievance process and providers are to have a system in place to complete these grievances. **The patient's right to access a proper grievance procedure was violated.** (Level III Decision 25-01700)

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