

## 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 protective 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 and conditions** which allow 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 of the identified county of responsibility, as determined in accordance with s. 51.40 Stats., and shall also notify the patient's guardian and guardian ad litem, if any, and the court with jurisdiction** ...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.

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(27), Wis. Admin. Code [Emphasis added.]

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### DECISIONS

1. An individual was convicted of his **5<sup>th</sup> 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)
11. A dual diagnosis patient with a history of anxiety, major depression, prior suicide attempts and substance abuse was admitted into the hospital’s inpatient psychiatry unit. She was put on one of the least restrictive precautionary treatment levels despite the fact that she had attempted to commit suicide in the past 48 hours prior to admission. The patient was given a butter knife with a meal and stabbed herself in the abdomen. **The client had unique safety needs because she had attempted to end her life with a knife before and had within the last couple of days attempted to commit suicide**. The provider had knowledge of these circumstances and still put the patient on a level on which knives are given to clients with food and on which the client had a semi-private bathroom. The level I-B decision argued that the decision to put the patient on one of the least restrictive precautionary treatment levels with additional monitoring and open seclusion (a monitored but private room because of the patient’s pseudo-seizures) was individualized and took into consideration the client’s rights and needs. **However, no documentation of the consideration process was provided in evidence**. The patient’s exceptional safety needs and her unique situation would seem to require a greater level of precaution than the level she was admitted to afforded, even with the added services. Namely, **the individual need of not giving the**

**client sharps was not met. As a whole, the provider failed to correctly weigh safety versus the least restrictive treatment conditions.** Thus, the client's right to an individualized, safe environment was not met and her right was violated by the provider in this regard. (Level III decision in 13-SGE-0004 decided on 11/5/2013)

12. A patient alleged that a strip search conducted upon her voluntary inpatient admission to a psychiatric hospital violated her right to the least restrictive environment. **Patients must be provided the least restrictive treatment and conditions that allow the maximum amount of personal and physical freedom. Inpatient treatment facilities must also specify criteria for the use of each security related procedure.** The facility is required to balance the grievant's right to the least restrictive conditions against her right to a safe environment. The facility policy contains criteria for the procedure. Here, **the strip search was a legitimate action undertaken to ensure the safety of the patient, even though doing so potentially decreased her personal and physical freedom.** Since the search was completed in accord with the facility's procedures no violation of the grievant's right to the least restrictive environment was found. (Level III decision in Case No. 15-SGE-0008 on 6/16/2016)
  
13. A patient was receiving services at a Community Based Residential Facility (CBRF) under a Court's commitment order and involuntary medication order. The patient wanted to be discharged. **All patients have the right to participate in their treatment plan and to receive the least restrictive treatment possible.** While the grievance was pending, the patient gained the ability: (i) to have supervised visits outside of the CBRF, (ii) to have access to the CBRF's exercise equipment, (iii) to receive transportation to another CBRF to use their exercise equipment, (iv) to cook and (v) to access to the library. The patient's **request to be discharged was not granted because there was a court order in place requiring her to receive inpatient care.** The Provider followed the Court's order, consequently, the patient's continued placement was not a violation of the grievant's right to participate in her own treatment or her right to the least restrictive treatment. (Level IV decision in Case No. 15-SGE-0001 on 10/17/2016)
  
14. 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. A change from a **one-person bathroom to a shared bathroom could occur at any day treatment center and is not considered overly restrictive treatment for day treatment participants,** thus the participant's right to least restrictive treatment was not found to have been violated. (Level III Grievance Decision in Case No. 19-SGE-02, upheld at Level IV)

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