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Presentation Before the Joint Legislative Council
Interim Study Committee On Legal Interventions for
Persons With Alzheimer's Disease and Related Dementias

By Dyann Hafner
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Population of Elderly in Dane County

Dane County has 50,144 residents who are 65 years of age or older, which is a little over 10% of the total population according to 2010 Census data. Dane County's elderly citizens live in their own homes or with relatives, or in nursing homes, community based residential facilities (CBRFs), residential care apartment complexes and adult family homes. Of the people enrolled in the Dane County Community Options Program, approximately 50% have some form of dementia.

While elderly people seem to be more susceptible to having dementia, younger people can also have dementia, as can people who have developmental disabilities and mental illnesses. There are different forms of dementia having different behavioral symptoms; Alzheimer's dementia is but one type.

Dane County has 2,120 licensed CBRF beds, 1,562 of which are designated for dementia care and 160 state licensed adult family home beds, 59 of which are designated for dementia care.[1]

Funding for Assisted Living

In Dane County, residential care for the elderly can be funded privately, through Medicaid waiver programs such as the Community Options Program, through Medicaid for nursing home residents, and through the Care Wisconsin Partnership Program. Dane County does not have Family Care at this time.

The Medicaid waiver programs are funded by the federal government and state and county matching funds. For those persons in need who do not qualify for a Medicaid Waiver Program, Medicaid or the Care Wisconsin program, the county must find funds under the property tax base. Dane County funds residential placements by contracting with private care facilities.[2]

Substitute Decision Making

People who have moderate to severe dementia likely have substitute decision makers, either agents under power of attorney documents or guardians. If a person has a guardian and is in a facility of more than 16 beds, the person must also have a protective placement order under Chapter 55, Wis. Stats. Protective placement provides court oversight over the conditions of the placement.[3] Section 55.12(3), Wis. Stats., requires that persons under protective placement must be provided the least restrictive environment and the least restrictive care consistent with their needs and the resources of the county.

The requirements of Chapter 55 for protective placements are separate from, and at times seemingly unrelated to, the funding and licensing provisions in place for residential facilities. In practice, placing a person in the least restrictive environment consistent with his or her needs means that the person will be placed in the least restrictive available private facility willing to take the person and willing to contract with the county, given available funding and available beds open at the time. People who want to avoid future court guardianship and protective placement proceedings can execute a Health Care Power of Attorney document, naming a health care agent and authorizing the agent to admit the person to a nursing home or CBRF.

State Regulation of Assisted Living Facilities

All assisted living facilities are regulated. Chapter DHS 132 of the Wisconsin Administrative Code regulates nursing homes, Chapter DHS 83 regulates CBRFs and Chapters DHS 82 and 88 regulate those adult family homes. Each of these regulations require that the facility may not admit or retain any resident requiring care greater than the facility can provide.[4] If a facility's staff cannot overcome a person's resistance to personal cares, the facility may not maintain that person as a resident. Additionally, a facility may not admit or retain any person who is known to be destructive, self-injurious, or disturbing or abusive to other residents. Regulations also limit use of restraints.

While these regulations are appropriate to providing humane care to residents as a whole, the question left unanswered is what to do when a dementia resident's behaviors become unmanageable within the resources of the facility. The recent case of *Helen E.F.*, 2012 WI 50, changed the landscape of protective care, potentially eliminating the previously relied on emergency response when dementia residents present aggressive or dangerous behaviors that cannot be handled safely by the facility.

Involuntary Administration of Psychotropic Medication

"Psychotropic medication" means a prescription drug that is used to treat or manage a psychiatric symptom or challenging behavior."[5] When a person with dementia experiences hallucinations, lability, isolative, threatening or self-harmful behavior, the appropriate use of psychotropic medications can, on a case by case basis, improve the person's functioning.

Both the guardian and the health care agent have the authority to approve the use of psychotropic medication. However, if the person in some way demonstrates objection to taking psychotropic medication, involuntary administration of the medication can only occur either through an involuntary commitment under Chapter 51 or through use of a procedure authorizing the guardian to consent as a protective service, which we still informally call a "medication guardianship."

"Involuntary administration of psychotropic medication" includes placing psychotropic medication in an individual's food or drink with the knowledge that the individual protests receipt of the medication. A "protest" is defined as a discernable negative response other than silence.[6]

A dementia resident's combativeness is generally interpreted as a protest to taking medication. The definition of "involuntary administration of psychotropic medication" can also include forcibly restraining an individual to administer psychotropic medication or requiring an individual to take psychotropic medication as a condition of receiving privileges or benefits.[7] Assisted living facilities are charged with complying with statutes regarding the involuntary administration of psychotropic medication at risk of citation by the state and therefore act cautiously.[8]

Authorization of Guardian to Consent To Involuntary Administration of Psychotropic Medication Under Chapter 55

In 2006, the concept of obtaining authorization for the guardian to consent to the involuntary use of psychotropic medication was moved from Chapter 880, Wis. Stats., considered as a guardian power, to Chapter 55, where it is now considered a protective service. The proofs required are numerous. In order to authorize a guardian to consent to this protective service, the petitioner must prove the following elements by clear and convincing evidence:[9]

- That a physician has prescribed psychotropic medication for the person. A physician having personal knowledge of the person must also provide a written statement of general clinical information regarding the appropriate use of psychotropic medication for the person's condition and specific data indicating that the individual's current condition necessitates the use of the medication.
- That the person is not competent to refuse psychotropic medication, specifically, after the advantages and disadvantages of and alternatives to accepting the particular psychotropic medication have been explained to the person, the person is incapable of expressing an understanding of this information or the individual is substantially

incapable of applying an understanding to the advantages, disadvantages and alternatives to his or her condition in order to make an informed choice as to whether to accept or refuse the medication.

- That the person has refused to take the psychotropic medication voluntarily and the reasons why; or, attempting to administer psychotropic medication to the person voluntarily is not feasible and the reasons why; or attempting to administer psychotropic medication to the person voluntarily is not in the person's best interest and the reasons why.
- Evidence exists showing that a reasonable number of documented attempts to administer psychotropic medication voluntarily using appropriate interventions to increase the person's willingness to take psychotropic medications voluntarily, have been unsuccessfully tried.
- That the person's condition is likely to be improved by the administration of psychotropic medication and that the person is likely to respond positively to the medication.
- That unless psychotropic medication is administered involuntarily, the individual will incur a substantial probability of physical harm, impairment, injury or debilitation; or unless psychotropic medication is administered involuntarily, the individual will present a substantial probability of physical harm to others. Substantial probability must be evidenced by one of the following:
    1. The person has had at least two episodes indicating a pattern of overt activity, attempts, threats to act, or omissions that resulted from the individual's failure to participate in treatment, including psychotropic medication, that resulted in a finding of probable cause for commitment under section 51.20(7), a settlement agreement approved by a court order section 51.20(8)(bg), or a commitment order under section 51.20(13), Wis. Stats. One of these episodes must have occurred within the previous 24 months.
    2. That the person meets one of the dangerousness criteria set forth in section 51.20(1)(a)2. a. to e., (the same standards as for dangerousness for the purposes of an involuntary mental commitment), as follows:
        - The person evidences a substantial probability of physical harm to himself or herself as manifested by evidence of recent threats or attempts at suicide or serious bodily harm.
        - The person evidences a substantial probability of physical harm to other individuals as manifested by evidence of recent homicidal or other violent behavior; or the person evidences a substantial probability of physical harm to others as manifested by evidence that others are placed in reasonable fear of violent behavior and serious physical harm to them, as evidenced by a recent overt act, attempt or threat to do serious physical harm.
        - The person evidences such impaired judgment, manifested by evidence of a pattern of recent acts or omissions, that there is a substantial probability of physical impairment or injury to himself or herself. However, the probability of physical impairment or injury is not substantial if there is a reasonable provision for the person's protection

in the community or if the person may be provided protective placement or protective services under Chapter 55, Wis. Stats.

- The person evidences behavior manifested by recent acts or omissions that, due to mental illness, the person is unable to satisfy basic needs for nourishment, medical care, shelter or safety without prompt and adequate treatment, so that a substantial probability exists that death, serious physical injury, serious physical debilitation, or serious physical disease will imminently ensue unless the individual receives prompt and adequate treatment for this mental illness. There is no substantial probability of harm if a reasonable provision for the person's treatment and protection is available in the community or if the person may be provided a protective placement or protective services under Chapter 55, Wis. Stats. This requirement hinges on there being a mental illness. Dementia may not meet this condition under *Helen E.F.* A "mental illness" is a mental disease to such extent that a person so afflicted requires care and treatment for his or her own welfare or the welfare of others, or of the community.[10] For the purposes of involuntary mental commitment under Chapter 51 however, a "mental illness" is a substantial disorder of thought, mood, perception, orientation, or memory which grossly impairs judgment, behavior, capacity to recognize reality, or the ability to meet the ordinary demands of life.[11]
- For persons not alleged to be drug dependent or developmentally disabled, after the advantages and disadvantages of and alternatives to accepting a particular medication or treatment had been explained, and because of mental illness, the person evidences the inability of expressing that understanding or the inability to apply that understanding to his or her mental illness. In addition, the person's treatment history (for mental illness) and recent acts or omissions demonstrate that the person needs care or treatment to prevent further disability or deterioration and there is a substantial probability that he or she will, if left untreated, lack services necessary for his or her health or safety and will suffer the loss of one of the following:
  1. the ability to function independently in the community, or
  2. the loss of cognitive or volitional control over thoughts or actions.

  The probability of suffering severe mental, emotional or physical harm is not substantial if there if reasonable provision for the person's care or treatment in the community or if the person may be provided protective placement or services under Chapter 55, Wis. Stats.

Because authorizing a guardian to consent to the involuntary use of psychotropic medication is a protective service, the petitioner seeking its use must also meet the protective service standard found in section 55.08(2), Wis. Stats., which requires the following evidentiary proofs:

- The person has been determined to be incompetent by a circuit court. This means there must be in place a general or limited guardianship. If there is a previous

guardianship that is older than twelve months, the petitioner must reprove incompetency.[12]

- As a result of developmental disability, degenerative brain disorder, serious and persistent mental illness, or other like incapacities, the individual is so totally incapable of providing for his or her own care or custody as to create a substantial risk of serious harm to himself or herself or others.

There is no authority or procedure permitting an agent under a health care power of attorney to consent to the involuntary use of psychotropic medication, the concept of which may run contrary to the concept of agency. This means that a person who had engaged in pre-planning through health care power of attorney, cannot rely on his or her substitute decision maker to consent to involuntary administration of psychotropic medication. Instead someone must commence a protective service action, and therefore a guardianship and likely also a protective placement action, undoing the purpose of the power of attorney to avoid court involvement.

Medication Guardianship Procedure

The medication guardianship post *Helen E.F.*, 2011 WI App 72, is the remaining alternative to obtaining an order to treat under an involuntary commitment. While the proofs required to establish a medication guardianship are numerous and cumbersome, the procedure for establishing the medication guardianship is equally cumbersome. While stand-alone medication guardianship actions are filed in Dane County, medication guardianships for dementia residents typically arise from emergency situations resulting from some sort of behavior problem that the assisted living facility staff believes they cannot safely handle or calm.

The person may be taken into custody under section 51.15, Wis. Stats., and detained at geriatric psychiatry units at either the Stoughton Hospital or at Mendota Mental Health Institute. At the probable cause hearing under section 51.20(7), Wis. Stats., the case is likely converted to guardianship and protective placement and services under section 51.20(7)(d), Wis. Stats., and the parties have 30 days from the time of the conversion order to complete the medication guardianship. If a medication guardianship is filed not in response to an emergency detention, the court system has 30 days from the time of filing to complete the action.[13] Within that 30 days the following described actions must be completed.

If there is no prior guardianship, in addition to a protective services petition, a guardianship petition must be prepared. If the person is living in a facility of 16 beds or greater, a protective placement petition must also be prepared. The Adult Protective Services unit of the Dane County Department of Human Services does the preparation work.

A guardianship petition requires proof of all of the following:

- For guardian of the person, the person must be unable to effectively receive and evaluate information or to make or communicate decisions to such an extent that the person is unable to meet the essential requirements for his or her physical health and safety.[14]

- The individual's need for assistance in decision making or communication cannot be met effectively and less restrictively through appropriate and reasonably available training, education, support services, health care, assistive devices, or other means that the person will accept.[15]
- The rights proposed to be denied to the person and those powers proposed to be transferred to the guardian are appropriate and necessary to the person's needs and in a manner that constitutes the least restrictive form of intervention.[16]

A protective placement petition requires the following additional proofs:[17]

- The person has a primary need for residential care and custody.
- As a result of developmental disability, degenerative brain disorder, serious and persistent mental illness, or other like incapacities, the person is so totally incapable of providing for his or her own care or custody as to create a substantial risk of serious harm to himself or herself or others.
- The person has a disability that is permanent or likely to be permanent.

Prior to filing a medication guardianship, all the following information must be gathered:

- The adult protective service worker must gather "with particularity" the factual basis for the allegations, and "personal knowledge" of those facts.[18]
- If a guardianship is not already in place, one must be prepared. If a guardianship is already in place but is more than twelve months old, a doctor's report must be procured on the issue of the general areas of incompetency so that the circuit court can review the finding of incompetency pursuant to section 55.075(3), Wis. Stats.
- A doctor's report must be procured on the issues related to the medication guardianship.
- Other interested parties must be identified and located, including any guardian already appointed, physical custodians, any governmental or private body or groups from whom the person is receiving aid, and all presumptive adult heirs.[19]
- The documentary evidence regarding medication compliance must be obtained.
- A medication plan must be prepared.[20]
- A physician must have prescribed a psychotropic medication and attempted to explain the advantages, disadvantages and alternatives of that medication to the person.
- If a guardian is not already appointed, a suitable guardian must be found, and a document called the Statement of Acts and Consent to Serve must be obtained from the guardian.[21]

The petition must be filed in time to provide proper service. The respondent is entitled to at least 10 days notice prior to the hearing.[22] Since the time period falls within the statutory ten-day rule, weekends and holidays are excluded, which means two to four, (or more days if a holiday falls within the period), could be added to the service period depending on the date the conversion order is signed or petition is filed. Thus, twelve to fourteen days of the precious thirty days for completing the action are taken up in providing legal service, reducing the time adult protective service workers have to gather the significant quantity of specific information needed for filing, and the time the court has to schedule the case for trial, if contested.

After filing, the court will appoint a guardian ad litem and defense counsel. The court will also order a multi-disciplinary evaluation pursuant to section 55.11, Wis. Stats. which must be completed and filed 96 hours prior to the hearing, excluding weekends and holidays.[23]

In Dane County, the first hearing in a guardianship or protective placement or services case is before a court commissioner. The guardian ad litem speaks with the person, advises the person of his or her rights, then advises the court if the matter is contested. If the matter is contested, it is taken off the court commissioner's schedule and drawn to a judge for trial. Rarely, a jury trial may be requested.

If the matter looks to be contested from the outset, given the short deadline to hear the case and with the permission of the Probate Office, the case is drawn immediately to a judge.

It is often difficult to get onto a court's tight schedule in short fashion. If the time remaining is too short, the case may be put on the duty judge's calendar and fit into the court's civil commitment calendar and is then usually allotted less than an hour before the judge.

Medication Orders Under Chapter 51

Given the amount of information that must be gathered before filing a petition for a medication guardianship, the Chapter 51 involuntary commitment process, now disapproved by the appellate courts in *Helen E.F.*, would generally be more expedient in providing assistance to the person in immediate need. Under Chapter 51, police are authorized to take custody of a person if the officer believes the person is mentally ill, drug dependent, or developmentally disabled and evidences some act of dangerousness under section 51.15(1)(a)1. through 4., Wis. Stats.

In Dane County, law enforcement officers are provided around-the-clock services by Journey Mental Health, a mental health service with whom Dane County contracts. At the time of the emergency detention, Journey Mental Health assists police officers with assessment and process requirements. Journey Mental Health directs the officers and person in custody to an available psychiatric facility.

When a person is emergently detained under section 51.15, Wis. Stats., the officer must take the person to an emergency room for medical clearance. The officer then takes the person to the psychiatric facility. Law enforcement prepares and files a Statement of Emergency Detention, which serves as a petition for the purposes of involuntary commitment. No other petitions need be filed.

The court schedules a probable cause hearing to be held within 72 hours of detention to determine whether the person probably meets the criteria for involuntary commitment.[24] Notice is provided to the person being detained, not to family and heirs.[25]

The probable cause hearing is held by a court commissioner at the facility where the person is in custody. If probable cause is found, the person can be held at the psychiatric facility until trial before a judge, who also travels to the facility to hold the hearing. When the person asks for a

jury trial, it is held at the courthouse. Between the probable cause hearing and the trial, the court appoints one psychiatrist and one psychologist to evaluate the person and opine as to whether the person meets the standards for commitment.[26]

The prosecuting corporation counsel must prove by clear and convincing evidence that the person is drug dependent, developmentally disabled or mentally ill as defined for the purposes of involuntary commitment, and is a proper subject for treatment. The person must meet the dangerousness standards in section 51.20(1)(a)2., Wis. Stats., listed above. If successful, disposition results in an order for involuntary treatment. A commitment permits the person to be held at a psychiatric ward until ready for discharge, as soon as possible after psychiatric stability is achieved. If the person is unwilling to take medications necessary to alleviate the person's symptoms, the prosecuting corporation counsel must request the court issue an 'Order to Treat,' which permits medicating the person with psychotropic medication against his or her will.[27]

The case of *Helen E.F.*

The Supreme Court in *Fond du Lac County v. Helen E.F.*, 2012 WI 50, determined that Helen should not have been involuntarily committed under Chapter 51, Wis. Stats., because she would have been more appropriately treated under the provisions of Chapter 55. One question is whether dementia residents would be benefitted if the statutes were amended to allow people like Helen to be treated under Chapter 51.

Helen is an 85-year-old woman residing in a nursing home who suffers from progressive dementia. She exhibited aggressive behavior, striking out at her caregivers and refusing medications, care, and meals. Helen's behavior led to an emergency detention under Chapter 51.

At the time of the commitment hearing, doctors testified that while Helen's cognitive deterioration was not treatable, her behavioral disturbances were controllable with medications. In interpreting Chapters 51 and 55, the Supreme Court ruled that the legislature intended to create two separate and distinct procedures for those needing care; and that the legislature intended that only Chapter 55 could be used to address the needs of dementia patients like Helen because Chapter 51 was designed only to "facilitate the treatment of mental illnesses suffered by those capable of rehabilitation." *Helen E.F.*, 2012 WI 20, ¶13. Without clearly describing how, the court determined that Chapter 55 permits the full treatment of people with Alzheimer's while restricting their liberty only as strictly necessary. The court essentially ruled that as a matter of law people with Alzheimer's dementia are not capable of rehabilitation and therefore Chapter 51 commitments are not appropriate.

Chapter 55, Wis. Stats., Insufficiently Addresses Emergency Situations

There is no comparable procedure in Chapter 55 to the Chapter 51 procedure allowing for an emergency detention. If the answer to combative dementia residents needing psychotropic care must lie in Chapter 55, the procedures provided therein are too cumbersome to serve the interests of many dementia residents.

Chapter 55 provides for transfers between protective placements, but does not address the needs of a person in need of acute psychiatric care who must be immediately, but hopefully temporarily, removed from his or her surroundings. Chapter 55 makes no provision for transferring a person to a psychiatric hospital for acute short-term care. In fact a person may not be protectively placed to a psychiatric unit of a hospital. Section 55.12(2), Wis. Stats., provides in part, "[a]n individual who is subject to an order for protective placement or services may be detained on an emergency basis under s. 51.15 or involuntarily committed under s. 51.20 or may be voluntarily admitted to a treatment facility for inpatient care under 51.10(8). No individual who is subject to an order for protective placement or services may be involuntarily transferred to, detained in or committed to a treatment facility for care except under s. 51.15 or 51.20." Unfortunately, *Helen E.F.* closes the door of Chapter 51 proceedings to persons suffering from dementia.

Statutory Issues

The Supreme Court in *Helen E.F.* held that "the legislature has created two separate and distinct avenues by which counties may provide medical placement and services to those persons who, because of some disability, are 'impaired' in their daily lives and unable to obtain such services for themselves."[28] The court ruled that Chapter 51 was designed to provide treatment for those suffering from mental illness capable of rehabilitation and Chapter 55 was intended to provide long-term care for individuals with incurable disorders. Justice Abrahamson in her concurring opinion suggested that the lack of clarity between Chapters 51 and 55 and whether a person may be subject to Chapter 51, Chapter 55, or both is cause for the legislature to reassess the goals and intended scope of the two chapters.

Chapter 51 provides for acute care for persons with developmental disabilities, mental illnesses, and drug or alcohol dependencies. Even though a person with dementia may be suffering from psychiatric symptoms that can be treated with medication, the Supreme Court has interpreted "mental illness" to exclude dementia.

Chapters 54 and 55 define a "degenerative brain disorder" as "the loss or dysfunction of an individual's brain cells to the extent that he or she is substantially impaired in his or her ability to provide adequately for his or her own care or custody or to manage adequately his or her property or financial affairs."[29] Regardless of whether non-medication techniques that can be used to manage some dementia residents' behavior, there remains a need for a significant number of dementia residents to receive acute psychiatric care. The legislature should amend the statutes to permit persons with degenerative brain disorders to be involuntarily committed under sections 51.15 and 51.20, Wis. Stats., create a separate process permitting dementia residents to receive needed psychiatric care, or both.

The legislature should consider drafting legislation permitting the involuntary commitment process to be used for those with degenerative brain disorders, including the following suggested provisions:

- Define "mental illness" in section 51.01(13)(b), Wis. Stats., to clarify that, other than alcoholism, there is no condition, including any form of dementia, that would disqualify an individual from being deemed mentally ill who otherwise meets the criteria under the subsection.
- Define "degenerative brain disorder" in section 51.01 and define the term "proper subject for treatment" in section 51.20(1)(a)1., Wis. Stats., to include a person with a degenerative brain disorder suffering from symptoms that are psychiatrically treatable.
- "Treatment" is defined in section 51.01(17), Wis. Stats., as "those psychological, educational, social, chemical, medical or somatic techniques designed to bring about rehabilitation of a mentally ill, alcoholic, drug dependent or developmentally disabled person." The term "rehabilitation" is not a useful concept. The Wisconsin appellate courts have grappled with the meaning of rehabilitation to distinguish the treatment provided under Chapter 51 from the ongoing care provided under Chapter 55. In reality, a person may need both. Instead, define "treatment" to include the psychiatric interventions used to ameliorate psychiatric symptoms suffered by dementia residents so that they may function at their highest possible level. If the term "rehabilitation" is continued in use, define it as those techniques or means designed to improve or control the person's condition who is receiving treatment as defined in sub. 51.01(17), Wis. Stats., and clarify that "rehabilitation" does not require that the person's condition be cured or that the person be returned to his or her former state or condition.
- Eliminate the disqualifying requirements in sections 51.20(1)(a)2.c., d., and e., Wis. Stats., that the person is not a proper subject for commitment if he or she may be provided protective placement or services under chapter 55. It is not rare for a person to need psychiatric treatment in order to be protectively placed in the least restrictive environment consistent with the person's needs.

For those residents cared for under Chapter 55, Wis. Stats., there needs to be created a way to provide them with acute psychiatric care and crisis intervention. Section 55.14, Wis. Stats., authorizing psychotropic medications, does not provide for emergency admission to a psychiatric ward, except as authorized in sections 51.15 and 51.20. The following are offered for consideration:

- Reduce the dangerousness standards for obtaining a medication guardianship to be lower than the crisis standard for involuntary commitment in order to authorize the appropriate use of psychotropic medications prior to the person reaching a crisis stage of behavior management.
- Increase the number of days to complete a medication guardianship from 30 days to 60 days, adopt the time frame for providing protective services found in section 55.10(1), Wis. Stats., or permit the court to make a good cause finding extending the time to hear a case if necessary.
- Create an option for short-term admission of a dementia patient to a psychiatric ward in a planned manner prior to the eruption of a crisis.
- Create provisions for long term care in a psychiatric setting for those few individuals whose behavior is not controllable in a nursing home, CBRF or AFH setting and for whom psychotropic medication does not ameliorate unmanageable symptoms of dementia within a short time.

- Rethink critically section 55.13, Wis. Stats., authorizing emergency protective services. In general, emergency protective services are impractical to implement. The Supreme Court in *Helen E.F.* suggested that section 55.13, Wis. Stats., was intended to be used to provide emergency protective services for the use of psychotropic medication. The section is not designed well to be applied to medication guardianships. For example, the time frame provided for adjudication is 60 days while medication guardianship petitions must be completed in 30 days. It is also unlikely that the legislature intended to permit the use of involuntary psychotropic medication as an emergency protective service for 72 hours without court authorization. Further, the involuntary administration of psychotropic medication is not specifically listed as a protective service under section 55.02(6r), Wis. Stats.
- Create a standard similar to the standard found in section 51.20(am), Wis. Stats., for annual reviews of medication guardianships under section 55.19, Wis. Stats., such that the person would be a proper subject for a medication guardianship if the treatment or protective services were withdrawn.
- Amend section 155.30, Wis. Stats. to permit a health care power of attorney document, should the person executing the document so choose, to authorize the health care agent to admit a person to a psychiatric ward for short periods of time if needed for the person's care.

Summary

There is no one design of the protective services system that will meet the needs of all persons requiring protection or services unless services are tailored appropriately on a case by case basis. While there are legitimate concerns regarding the proper use of psychotropic medications with dementia patients, there are also concerns regarding a legal system so rigidly prohibitive that dementia patients whose functioning could be vastly improved by the use of psychotropic medications cannot obtain them, and for those whose least restrictive placement requires that problematic psychiatric symptoms be controlled. The protective services system must serve all groups having cognitive disorders. There is a danger that changes to the system designed to address the problems of one user group will have unintentional negative effects on other groups. The protective service system needs to be flexible and functional for all people who may be in need of services specific to their situations.

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[1] Wisconsin Department of Health website:
http://www.dhs.wisconsin.gov/bqaconsumer/AssistedLiving/AsLivDirs.htm.

[2] Dane County does own and operate its own nursing home, Badger Prairie Health Care Center in Verona.

[3] s. 55.055(1)(a), Wis. Stats.: "A guardian of an individual who has been adjudicated incompetent may consent to the individual's admission to a foster home, group home, or community-based residential facility, as defined under s. 50.01(1g), without a protective placement order under 55.12 if the home or facility is licensed for fewer than 16 beds. . . ."

[4] DHS 132.51(1)(b)1.: "No person who requires care greater than that which the facility is licensed to provide may be admitted to or retained in the facility."
DHS 132.51(1)(b)2.: No resident whose condition changes to require care greater than that which the facility is licensed to provide shall be retained."

DHS 132.51(2)(c)2.: "Residents who are known to be destructive of property, self-destructive, disturbing or abusive to other residents, or suicidal, shall not be admitted or retained, unless the facility has and uses sufficient resources to appropriately manage and care for them."
DHS 83.27(2)(b): A CBRF may not admit or retain any of the following persons: . . . (b) A person who is destructive of property or self, or who is physically or mentally abusive to others, unless the CBFR has sufficient resources to care for such an individual and is able to protect the resident and others. . ."
[5] Sec. 55.14(1)(d), Wis. Stats.
[6] Sec. 55.14(1)(c), Wis. Stats.
[7] Section 55.14(1)(a), Wis. Stats.
[8] The nursing home must demonstrate yearly that it is compliance with s. 55.14, Stats. regarding the involuntary administration of psychotropic medication to residents. Section DHS 132.14(9), Wis. Admin. Code.
[9] Sec. 55.14, Wis. Stats.
[10] Sec. 51.02(13)(a), Wis. Stats.
[11] Sec. 51.02(13)(b), Wis. Stats.
[12] Sec. 55.075(3), Wis. Stats.
[13] Sec. 55.14(7), Wis. Stats.
[14] Sec. 54.10(3)(a)2., Wis. Stats. In addition, for guardian of the estate, the petitioner must prove that because of an impairment, the person is unable to effectively receive and evaluate information or to make or communicate decisions related to management of his or her property or financial affairs, to the extent that the person's property will be dissipated, that the person cannot provider for his or her support, or that the person is unable to prevent financial exploitation. Sec. 54.10(3)(a)3., Wis. Stats.
[15] Sec. 54.10(3)(a)4., Wis. Stats.
[16] Sec. 54.10(3)(c), (d) and (e), Wis. Stats.
[17] Sec. 55.08(1), Wis. Stats.
[18] Sec. 55.075(2), Wis. Stats.
[19] Sec. 55.09, Wis. Stats. See also sections 851.09, 851.11 and 852.01, Wis. Stats.
[20] Sec. 55.14(8)(a), Wis. Stats. It should be noted that the only workable medication plan is to hide the medication in the resident's food. Most facilities are not able to do injections and are prohibited from restraining the person to force medication. Where the person is not cooperative with eating or is paranoid that his or her food is poisoned, hiding medication in the person's food is not a good plan.
[21] Section 54.15(8), Wis. Stats.
[22] Sec. 55.09(1), Wis. Stats.
[23] Section 55.11, Wis. Stats.
[24] Sec. 51.20(7), Wis. Stats.
[25] Sec. 51.20(2), Wis. Stats.
[26] Sec. 51.20(9), Wis. Stats.
[27] Sec. 51.61(g)3., Wis. Stats.
[28] *Helen E.F.*, 2012 WI 50, ¶*11*
[29] Sec. 54.01(6) and 55.01(1v), Wis. Stats.