WISCONSIN HOSPITAL ASSOCIATION, INC.

Questions Regarding the Drafts

Draft #1 – WLC: 0015/p1 – Involuntary administration of psychotropic medication

Under the draft, when may involuntary administration of psychotropic medication occur? 1) Before a county department or agency files a petition for involuntary administration, 2) after the petition is filed but before the preliminary hearing, or 3) only after a court order after finding probable cause during the preliminary hearing?

Is the definition of "psychotropic medication" on page 5 too broad? Is that commonly understood to mean all "psychiatric medications" as the draft provides?

Is the definition of "protest" on page 5 reasonable and workable?

Is the definition of "involuntary administration of psychotropic medication" overly broad?

Are the 6 prerequisites for providing involuntary administration of psychotropic medication on page 2 (and beginning on line 10 of page 5) sufficiently clear and provable in a court hearing? For example, how would one prove that unless psychotropic medication is administered involuntarily, the individual will incur a substantial probability of physical harm.

On page 2 as well as on lines 1-3 of page 7, the draft provides that involuntary administration of "psychiatric" medication may not be provided as an emergency service without the consent of the individual's guardian, if the individual is under guardianship. If there is an emergency and the individual's guardian cannot be reasonably found or is unavailable, should involuntary administration of "psychiatric" always be withheld?

What is the rationale for not permitting a petition to be withdrawn?

Would the proposed requirement that a petition for guardianship be submitted before the 72 hour probable cause hearing cause unintended or unreasonable administrative difficulties? What is the rationale for that proposed requirement?

While the intent of providing greater flexibility by removing the requirement of showing evidence of probability of harm in a very specific way is appreciated (see bottom of page 3 and lines 7-14 of page 7), is there a danger that the "any evidence acceptable to the court" is too undefined and may invite substantially different interpretations across Wisconsin of the standard?

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Draft #2 – WLC: 0017/1 – Inpatient psychiatric treatment

Is the definition of "irreversible dementia" too broad or not broad enough?

Similar to a question posed in Draft #1, are the prerequisites for permitting emergency placement in an "inpatient facility" sufficiently clear and provable in a court hearing? For example, how would one prove that unless an individual is admitted to an inpatient facility, the individual will incur a substantial probability of physical harm?

Also similar to a question posed in Draft #1, would the proposed requirement that a petition for guardianship be submitted before the 72 hour probable cause hearing cause unintended or unreasonable administrative difficulties? What is the rationale for that proposed requirement?

The draft requires the county department to designate at least one inpatient facility for the purpose of protective placements. May a county "designate" a facility without the consent of the facility? Only persons with privileges in a hospital may admit a patient to an inpatient unit.

Does the 2nd bullet point on page 4 mean that the 72 hours start from the time of admission to a psychiatric unit or from the time an individual comes to an emergency department if under "detention?"

Does the 4th bullet point on page 4 and the rights provisions discussed on page 5 make sense given the definition of "irreversible dementia?" Can an individual give informed consent if they have irreversible dementia?

Some of the same liability and EMTALA issues raised in the Ch 51 Emergency Detention Study Committee arise in the context of the provisions being borrowed from ch 51 for this new proposal. Borrowing that language may "port over" some ch 51 problems into ch 55.

If the individual has a guardian, why should consent of the county department be required as proposed on page 6?

The new transfer provisions on pages 6-8 could have significant EMTALA implications for hospitals. A much closer look needs to be given to these provisions.

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Draft #3 – WLC: 0018/1 – Power of Attorney

How "specific" must the authorization be to allow an agent to consent to the principal's admission to an inpatient facility?

What would be the impact of limiting an agent's ability to consent to the involuntary administration of psychotropic medication to only 45 days?