

1 **AN ACT** *to amend* 55.14 (3) (e) (intro.) and 55.14 (4); and *to create* 55.13 (6), 55.133,
2 55.14 (3) (em) and 55.14 (4m) of the statutes; **relating to:** involuntary
3 administration of psychotropic medication as a protective service to a person with
4 dementia.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill draft was prepared for the Joint Legislative Council's Special Committee on Legal Interventions for Persons With Alzheimer's Disease and Related Dementias.

IAPM as an Emergency Protective Service for Individuals With Dementia

Current Law

Under current law, involuntary administration of psychotropic medication (IAPM) may be ordered as a protective service under s. 55.14, stats. Under that statute, all of the requirements applicable to a petition for protective services must be met, including the filing of a petition for guardianship if the individual does not already have a guardian. In addition, a petition continuing extensive allegations specific to the issue of IAPM must be filed, a guardian ad litem must make a report to the court, the individual's physician must provide a written statement, and the individual has a right to an independent medical or psychological examination. The court must hold a hearing on the petition within 30 days. If the individual does not already have a guardian, a petition for guardianship must be heard, and a guardian appointed, before the hearing on the petition for IAPM. IAPM may not begin until the court has issued the order.

Under current law, emergency protective services may be provided to an individual for up to 72 hours, without a court order, if there is reason to believe that if those services are not provided, the individual, or others, will incur a substantial risk of serious physical harm. The services may not be provided for longer than 72 hours unless a petition for protective services is filed, a hearing is held, and the court finds probable cause to believe the criteria for the provision of protective services exist. If the

individual is not under guardianship, a petition for guardianship must accompany the petition for protective services.

There is some disagreement as to whether, under current law, IAPM may be provided as an emergency protective service under s. 55.135, stats.

The Draft

The draft creates a procedure under which IAPM may be provided as an emergency protective service to an individual with dementia, or a person who, based on observation and currently available information, appears to have dementia. The draft specifies that IAPM may be provided as a protective service to these individuals only by following the procedures created in the draft.

The draft does not specify whether, or by what procedures, IAPM may be provided as an emergency protective service to individuals who do not have, or do not appear to have, dementia.

Under the draft, “involuntary administration of psychotropic medication” means any of the following:

1. Placing psychotropic medication in an individual’s food or drink with knowledge that the individual protests receipt of the psychotropic medication.
2. Forcibly restraining an individual to enable administration of psychotropic medication.
3. Requiring an individual to take psychotropic medication as a condition of receiving privileges or benefits.

Under the draft, IAPM may be provided as an emergency protective service for an individual with dementia only if all of the following are true:

- (a) A physician has prescribed the psychotropic medication for the individual.
- (b) The individual is not competent to refuse psychotropic medication. “Not competent to refuse psychotropic medication” means that, as a result of dementia and after the advantages and disadvantages of and alternatives to accepting the particular psychotropic medication have been explained to an individual, one of the following is true:
 1. The individual is incapable of expressing an understanding of the advantages and disadvantages of accepting treatment and the alternatives to accepting treatment.

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

(c) The individual's condition for which psychotropic medication has been prescribed is likely to be improved by administration of psychotropic medication and the individual is likely to respond positively to psychotropic medication.

(d) Unless psychotropic medication is administered involuntarily, the individual will incur a substantial probability of physical harm, impairment, injury or debilitation or will present a substantial probability of physical harm to others.

(e) Unless psychotropic medication is administered involuntarily, there is a substantial likelihood that the individual may be subject to involuntary admission to an inpatient facility for psychiatric treatment.

If the individual resides in a nursing home, community-based residential facility, adult family home, or residential care apartment complex "facility", all of the following must also be true:

1. The individual has been diagnosed with dementia.
2. A physician who has personal knowledge of the individual has conducted a physical examination of the individual within the past 7 days and, based on that examination, the the physician has determined with reasonable certainty and documented in writing that the behavior is not caused by a physical condition or illness that could be treated successfully by means other than psychotropic medication.
3. The facility has made reasonable efforts to address or accommodate the behavior or condition for which involuntary administration of psychotropic medications is requested and these efforts are documented in the individual's plan of care.
4. The facility has prepared detailed documentation of the behaviors or condition of the individual leading to the request for involuntary administration of psychotropic medications.

If the individual is under guardianship, a good faith effort to obtain the consent of the guardian must be made before involuntary administration of psychiatric medication is provided as an emergency protective service.

A county department or agency with which the county department contracts that provides IAPM as an emergency protective service to an individual must immediately file a petition for IAPM to the individual as

a protective service under s. 55.14, stats. The petition must meet all of the requirements of s. 55.14, stats. (The draft makes changes to the required contents of a petition for IAPM as a protective service for an individual with dementia. Those changes are described below.)

The petition must be served on the individual, the individual's guardian, the individual's legal counsel and guardian ad litem, if any, and the county department.

A preliminary hearing must be held within 72 hours, excluding Saturdays, Sundays, and legal holidays, to establish probable cause that the criteria under s. 55.14, stats., are present.

The county department or agency that provides IAPM as an emergency protective service must provide the individual with written notice and orally inform the individual of the time and place of the preliminary hearing.

If the court finds probable cause to believe that the criteria under s. 55.14, stats., are present and that the medication will not unreasonably impair the ability of the individual to prepare for or participate in subsequent legal proceedings, it may order IAPM to continue to be provided as an emergency protective service for up to 30 days pending the hearing under s. 55.14, stats.

If the individual is not under guardianship, a petition for guardianship must be filed at the same time that the petition for IAPM as a protective service is filed, and the guardianship petition must be heard prior to the petition under s. 55.14, stats., and if IAPM is ordered, the court must appoint a temporary guardian for the individual.

IAPM as a Non-Emergency Protective Service for Individuals With Dementia

Evidence of Harm, Impairment, Injury or Debilitation

Current Law

Under current law, IAPM may not be ordered as a protective service unless, in addition to other requirements, it is shown that unless psychotropic medication is administered involuntarily, the individual will incur a substantial probability of physical harm, impairment, injury, or debilitation or will present a substantial probability of physical harm to others. The substantial probability of physical harm, impairment, injury, or debilitation must be evidenced by one of the following:

1. The individual's history of at least 2 episodes, one of which has occurred within the previous 24 months, that indicate 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, and that resulted in a finding of probable cause for commitment under s. 51.20 (7), stats., a settlement agreement approved by a court under s. 51.20 (8) (bg), stats., or commitment ordered under s. 51.20 (13), stats.

2. Evidence that the individual meets one of the dangerousness criteria set forth in s. 51.20 (1) (a) 2. a. to e., stats.

The Draft

The evidence required under current law is linked to standards and findings under ch. 51, stats. WLC: 0017/5 specifies that individuals with dementia are not subject to ch. 51 detention and involuntary commitment procedures. Accordingly, this draft changes the evidence required to prove a substantial probability of physical harm, impairment, injury, or debilitation in cases in which the individual who is the subject of the petition has dementia. The draft removes specific references to provisions in ch. 51 and replaces them with new provisions which are modeled on the standards of ch. 51 but modified to be more appropriate for cases involving individuals with dementia. Specifically, under the draft, for individuals with dementia, the substantial probability of physical harm, impairment, injury, or debilitation must be shown by evidence of recent acts, attempts, or behavior, a pattern of recent acts or omissions, or 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. This provision is modeled after portions of s. 51.20 (1) (a) 2. a. and b., stats.

Physician Statement

Current Law

Under current law, a petition for IAPM as a protective service must include a written statement signed by a physician who has personal knowledge of the individual that provides general clinical information regarding the appropriate use of psychotropic medication for the individual's condition and specific data that indicates that the individual's current condition necessitates the use of psychotropic medication.

The Draft

Under the draft, if the individual has dementia, the physician statement must also state that the physician has conducted a physical examination of the individual and, based on that examination, has determined with reasonable certainty that the behavior for which treatment with

psychotropic medication is sought is not caused by a physical condition or illness that could be treated safely and appropriately by other means.

Requirement Applicable to Certain Long-Term Care Facilities

Current Law

Current law authorizing IAPM as a protective service does not contain any requirements regarding efforts made by a long-term care facility to address behaviors by means other than psychotropic medication.

The Draft

Under the draft, if the individual who is the subject of a petition for IAPM has dementia and resides in a nursing home, a community-based residential facility, an adult family home, or a residential care apartment complex, the petition must allege that reasonable efforts have been made to address or accommodate the behavior or condition for which treatment with psychotropic medication is sought.

1 **SECTION 1.** 55.13 (6) of the statutes is created to read:

2 55.13 (6) For individuals with dementia, or who, based on observation and
3 currently-available information, appear to have dementia, involuntary administration of
4 psychotropic medications may be provided as an emergency protective service only as
5 provided under s. 55.133.

6 **SECTION 2.** 55.133 of the statutes is created to read:

7 **55.133 Involuntary administration of psychotropic medications as an emergency**
8 **protective service. (1)** In this section:

9 (a) “Involuntary administration of psychotropic medication” means any of the
10 following:

11 1. Placing psychotropic medication in an individual’s food or drink with knowledge that
12 the individual protests receipt of the psychotropic medication.

13 2. Forcibly restraining an individual to enable administration of psychotropic
14 medication.

1 3. Requiring an individual to take psychotropic medication as a condition of receiving
2 privileges or benefits.

3 (b) “Not competent to refuse psychotropic medication” means that, as a result of
4 dementia and after the advantages and disadvantages of and alternatives to accepting the
5 particular psychotropic medication have been explained to an individual, one of the following
6 is true:

7 1. The individual is incapable of expressing an understanding of the advantages and
8 disadvantages of accepting treatment and the alternatives to accepting treatment.

9 2. The individual is substantially incapable of applying an understanding of the
10 advantages, disadvantages, and alternatives to his or her condition in order to make an
11 informed choice as to whether to accept or refuse psychotropic medication.

12 (c) “Protest” means make more than one discernible negative response, other than mere
13 silence, to the offer of, recommendation for, or other proffering of voluntary receipt of
14 psychotropic medication. “Protest” does not mean a discernible negative response to a
15 proposed method of administration of the psychotropic medication.

16 (d) “Psychotropic medication” means a prescription drug, as defined in s. 450.01 (20),
17 that is used to treat or manage a psychiatric symptom or challenging behavior.

18 **(2)** Involuntary administration of psychotropic medication may be provided as an
19 emergency protective service to an individual with dementia, or to an individual who, based
20 on observation and currently available information, appears to have dementia, only if all of
21 the following are true:

22 (a) A physician has prescribed the psychotropic medication for the individual.

23 (b) The individual is not competent to refuse psychotropic medication.

1 (c) The individual's condition for which psychotropic medication has been prescribed
2 is likely to be improved by administration of psychotropic medication and the individual is
3 likely to respond positively to psychotropic medication.

4 (d) Unless psychotropic medication is administered involuntarily, the individual will
5 incur a substantial probability of physical harm, impairment, injury, or debilitation or will
6 present a substantial probability of physical harm to others.

7 (e) Unless psychotropic medication is administered involuntarily, there is a substantial
8 likelihood that the individual will be subject to involuntary admission to a inpatient facility
9 for psychiatric treatment.

10 (f) If the individual resides in a nursing home, as defined in s. 50.01 (3), a
11 community-based residential facility, as defined in s. 50.01 (1g), an adult family home, as
12 defined in s. 50.01 (1), or a residential care apartment complex, as defined in s. 50.01 (6d),
13 all of the following are true:

14 1. The individual has been diagnosed with dementia.

15 2. A physician who has personal knowledge of the individual has conducted a physical
16 examination of the individual within the past 7 days and, based on that examination, the the
17 physician has determined with reasonable certainty and documented in writing that the
18 behavior is not caused by a physical condition or illness that could be treated successfully by
19 means other than psychotropic medication.

20 3. The facility has made reasonable efforts to address or accommodate the behavior or
21 condition for which involuntary administration of psychotropic medications is requested and
22 these efforts are documented in the individual's plan of care.

23 4. The facility has prepared detailed documentation of the behaviors or condition of the
24 individual leading to the request for involuntary administration of psychotropic medications.

1 **(3)** Any county department or agency with which the county department contracts
2 under s. 55.02 (2) that provides involuntary administration of psychotropic medication as an
3 emergency protective service to an individual under sub. (1) shall immediately file a petition
4 for involuntary administration of psychotropic medication to the individual under s. 55.14.
5 In the case of an individual residing in a long-term care facility, the petition shall, in addition
6 to the allegations required under s. 55.14 (3), allege that all of the grounds in sub. (2) (f) are
7 true. The petition shall be served on the individual, the individual's guardian, the individual's
8 legal counsel, and guardian ad litem, if any, and the county department. A preliminary hearing
9 shall be held within 72 hours, excluding Saturdays, Sundays, and legal holidays, to establish
10 probable cause that the criteria under s. 55.14 are present. The county department or agency
11 shall provide the individual with written notice of, and orally inform the individual of, the time
12 and place of the preliminary hearing.

13 **(4)** If the individual is not under guardianship, a petition for guardianship shall
14 accompany the petition for involuntary administration of psychotropic medication under sub.
15 (3). The guardianship petition shall be heard prior to the petition under s. 55.14.

16 **(5)** Upon finding probable cause under sub. (3) and finding that the medication will not
17 unreasonably impair the ability of the individual to prepare for and participate in subsequent
18 legal proceedings, the court may order involuntary administration of psychotropic medication
19 to continue to be provided as an emergency protective service for up to 30 days pending the
20 hearing under s. 55.14. If the individual is not under guardianship, the court shall appoint a
21 temporary guardian.

22 **(6)** If the individual is under guardianship, a good faith effort shall be made to obtain
23 the consent of the guardian before involuntary administration of psychotropic medication is
24 provided as an emergency protective service.

1 **SECTION 3.** 55.14 (3) (e) (intro.) of the statutes is amended to read:

2 55.14 (3) (e) (intro.) Unless psychotropic medication is administered involuntarily, the
3 individual will incur a substantial probability of physical harm, impairment, injury, or
4 debilitation or will present a substantial probability of physical harm to others. The Except
5 as provided in par. (em), the substantial probability of physical harm, impairment, injury, or
6 debilitation shall be evidenced by one of the following:

7 **SECTION 4.** 55.14 (3) (em) of the statutes is created to read:

8 55.14 (3) (em) In the case of an individual who has dementia, the substantial probability
9 of physical harm, impairment, injury, or debilitation under par. (e) shall be shown by evidence
10 of recent acts, attempts, or behavior, a pattern of recent acts or omissions, or by evidence that
11 others are placed in reasonable fear of violent behavior and serious physical harm to them, as
12 evidenced by a recent overt act, attempt, or threat to do serious physical harm.

NOTE: This provision is modeled after s. 51.20 (1) (a) 2. a. and b., stats.,
which specify 2 of the 5 types of evidence which may be offered to
prove that an individual is dangerous for purposes of a petition for
involuntary commitment under ch. 51, stats.

13 **SECTION 5.** 55.14 (4) of the statutes is amended to read:

14 55.14 (4) A petition under this section ~~must~~ shall include a written statement signed by
15 a physician who has personal knowledge of the individual that provides general clinical
16 information regarding the appropriate use of psychotropic medication for the individual's
17 condition and specific data that indicates that the individual's current condition necessitates
18 the use of psychotropic medication. If the individual has dementia, the statement shall state
19 that the physician has conducted a physical examination of the individual and, based on that
20 examination, has determined with reasonable certainty that the behavior for which treatment

1 with psychotropic medication is sought is not caused by a physical condition or illness that
2 could be treated safely and appropriately by other means.

3 **SECTION 6.** 55.14 (4m) of the statutes is created to read:

4 55.14 (**4m**) If the individual who is the subject of a petition under this section has
5 dementia and resides in a nursing home, as defined in s. 50.01 (3), a community-based
6 residential facility, as defined in s. 50.01 (1g), an adult family home, as defined in s. 50.01 (1),
7 or a residential care apartment complex, as defined in s. 50.01 (6d), the petition shall allege
8 that reasonable efforts have been made to address or accommodate the behavior or condition
9 for which treatment with psychotropic medication is sought.

10 (END)