



DIVISION OF QUALITY ASSURANCE  
 1 WEST WILSON STREET  
 P O BOX 2969  
 MADISON WI 53701-2969

Jim Doyle  
 Governor

Kevin R. Hayden  
 Secretary

**State of Wisconsin**

**Department of Health and Family Services**

Telephone: 608-266-8481  
 FAX: 608-267-0352  
 TTY: 888-241-9432  
 dhfs.wisconsin.gov

**Date:** July 27, 2007

DQA Memo 07-012

<b>To:</b>	Adult Family Homes	AFH 09
	Community Based Residential Facilities	CBRF 09
	Facilities for the Developmentally Disabled (FDD)	FDD 09
	Nursing Homes	NH 09
	Residential Care Apartment Complexes	RCAC 09

**From:** Otis Woods, Administrator  
 Division of Quality Assurance

**Administration of Psychotropic Medication:  
 Statutory Requirements, Rules, and Reporting**

Section 55.14 of the Wisconsin Statutes, relating to the involuntary administration of psychotropic medications, became law in November of 2006. The law requires facilities to comply with procedures to assure that the involuntary administration of psychotropic medication, with consent of a guardian, is ordered as a protective service by a court. The Department of Health and Family Services (Department) is required to evaluate facility compliance with the requirements for involuntary administration of psychotropic medication.

This memorandum is intended to provide facilities with an overview of the new law and how the Department plans to evaluate facility compliance.

It is essential that facilities understand what a “psychotropic medication” is, and what “involuntary administration of psychotropic medication” means. The following definitions are provided in the new sections of the Wisconsin Statutes.

- Section 55.01(6s) of the statutes, defines “Psychotropic medication” as a prescription drug..., that is used to treat or manage a psychiatric symptom or challenging behavior.
- Section 55.14(1)(a) of the statutes defines “Involuntary administration of psychotropic medication” as 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; or
- 3) Requiring an individual to take psychotropic medication as a condition of receiving privileges or benefits.

### **What Does a Facility Need to Know When Administering Psychotropic Medications?**

#### **A) Voluntary administration of psychotropic medication.**

\*A guardian may give informed consent to the voluntary administration of psychotropic medication if the guardian has first made a good-faith attempt to discuss with the ward the voluntary receipt of the medication, and the ward does not protest. (Paragraphs 54.25(2)(d)2.a. and 54.25(4), Wis. Stats.)

\*“Protest” means the person makes more than one discernable negative response, other than silence, to the offer of, recommendation for, or other proffering of voluntary receipt of psychotropic medication. It does not include a negative response to the proposed method of administration of the medication. (Paragraphs 54.25(2)(d)2.a. and 55.14(1)(c), Wis. Stats.)

**Psychotropic medications may be placed in the incompetent person’s food only if the person does not protest, after the guardian has made a good faith attempt to discuss the medication with the ward (as mentioned above).**

#### **What does this mean?**

If a psychotropic medication is prescribed for an individual and that individual is willing to take the medication, the guardian can give informed consent to allow the medication to be administered. For example: You inform an individual that you are administering the psychotropic medication in the individual’s pudding and the individual accepts it. This might be done because the medication is easier to swallow or tastes better if administered in the pudding. In this scenario, the guardian can provide consent without getting a court order (after attempting to talk with the ward as mentioned above).

#### **B) Involuntary administration of psychotropic medication.**

A guardian may NOT give informed consent to the involuntary administration of psychotropic medication unless the facility and guardian follow section 55.14, which specifies the procedures under which a court may authorize a guardian to consent to the involuntary administration of psychotropic medication to an individual.

Scenarios that define involuntary administration of a psychotropic medication that require the facility and guardian to obtain a court order include:

- 1) Putting medication in food to make sure the individual takes the medication, because the facility knows the individual would refuse to take the medication knowingly;
- 2) Implementing a behavior plan where the resident receives soda or a daily allowance if the resident takes the medication (even if the resident accepts this behavior plan); or
- 3) Holding down an individual in order to administer an injection of a psychotropic (except in medical emergencies.) Please see below.

Facilities **cannot administer psychotropic medications involuntarily (that is, without the resident's knowledge and the guardian's consent) unless involuntary administration is authorized by a court order.** Court orders authorizing a person's guardian to consent to involuntary administration of psychotropic medications by facilities will:

- Direct the development of a treatment plan for the individual, including psychotropic medication as ordered by the treating physician.
- Provide that if the individual fails to comply with provisions of the treatment plan that require the individual to take psychotropic medications, the medications may be administered involuntarily with the consent of the guardian.
- Specify the methods of involuntary administration of psychotropic medication to which the guardian may consent.
- Specify that the restraint and administration of the psychotropic medication must be done under supervision of a registered nurse, licensed practical nurse, a physician, or a respiratory therapist. **If a restraint is used, the facility must maintain records of the date of each administration, the name of the medication administered, and the method of forcible restraint that was utilized.**
- Specify that if the person protests (as defined above) the receipt of psychotropic medication, that medication may not be placed in the person's food unless a court order specifically authorizes it, and the guardian provides consent. The food may not be used to "hide" the psychotropic medication, because the person must be informed about it, and have the opportunity to protest.
- Specify that behavior modification plan cannot make the receipt of benefits contingent on administration of psychotropic medications unless the court order allows this practice.

The court order must be reviewed annually.

If the person protests the receipt of psychotropic medication, that medication may not be placed in the person's food unless a court order specifically authorizes it, and the guardian provides consent. The food may not be used to "hide" the psychotropic medication, because the person must be informed about it, and have the opportunity to protest.

The procedures and standards for the court order can be accessed by scrolling to section 55.14 of the copy of Chapter 55 at [www.legis.state.wi.us/statutes/stat0055.pdf](http://www.legis.state.wi.us/statutes/stat0055.pdf).

### C. Emergency use of psychotropic medications.

**Section 55.14(10) of the statutes states that nothing in chapter 55 prohibits the involuntary administration of psychotropic medication as an emergency protective service under section 55.13. Section 51.13 says that emergency protective services may be provided "for not more than 72 hours when there is reason to believe that, if the emergency protective services are not provided, the individual...or others will incur a substantial risk of serious physical harm."**

**If the person is admitted to the facility under the provisions of Chapter 51 of the Statutes, psychotropic medications may be administered under the standards in section 51.61(1)(g), Stats., and section HFS 94.09 of the Wisconsin Administrative Code.**

#### **D. Review by the DHS Division of Quality Assurance**

The Department will review administration of psychotropic medications during surveys to determine compliance with section 55.14. In accordance with section 50.02(2)(ad) of the statutes, the Department is in the process of promulgating a general rule for facilities to provide information to the Department annually relating to compliance with section 55.14. The Department intends to consult with facilities on their ability to provide this information in a reasonable way. The Department anticipates that the required, reportable information is information that facilities are already required to document by statute or administrative rule. **As an example, section HFS 132.45(5)(k) already requires a resident's medical record to include a copy of court orders and informed consent forms.**

#### **E. Copies of Court Orders for Psychotropic Medication**

The law now requires that each county's department of adult protective services (designated under section 55.02, Stats.) must send to the state Department of Health and Family Services a copy of each court order for involuntary administration of psychotropic medication issued under: 55.14(11):

"(11) The county department, or an agency with which it contracts under s. 55.02 (2), shall provide to the Department a copy of any order issued under this section that applies to any protectively placed individual in the county."

Those copies should be sent to: Supervisor, Client Rights Office, Division of Mental Health & Substance Abuse Services, PO Box 7851, 1 W. Wilson, Madison, 53707-7851.

If there are further questions please contact:

Doug Englebert, R.Ph.  
Pharmacy Practice Consultant  
Bureau of Technology, Licensing and Education  
608-266-5388  
Fax: 608-267-7119  
[Douglas.Englebert@dhs.wisconsin.gov](mailto:Douglas.Englebert@dhs.wisconsin.gov)