

Guardianship and Adult Protective Services Webcast - Part 2

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OQA

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Guardianship and Medications

November 2006

Medication Consent

- Voluntary vs. Involuntary
- Psychotropic vs. Nonpsychotropic



Psychotropic Medication

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



Protest

- means make more than one discernible negative response, other than mere silence, to the offer of, recommendation for, or other proffering of voluntary receipt of psychotropic medication. "Protest" does not mean a discernible negative response to a proposed method of administration of the psychotropic medication.

Wards Best Interest

- the guardian shall consider the invasiveness of the medication or treatment and the likely benefits and side effects of the medication or treatment.



Voluntary

- Law allows guardian to consent to voluntary receipt of all medications, including psychotropic that are in the Ward's best interest.
 - Good faith attempt to discuss receipt of medication with ward and ward does not protest.

Involuntary

- Law allows guardian to consent to involuntary receipt of medications, except psychotropic, that are in the Ward's best interest unless prohibited by the court.
 - Good faith attempt to discuss receipt of medication with ward.

Involuntary

- "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.

Involuntary Psychotropic

- New law transforms to a Chapter 55 protective services requirement.
- Establishes petition standards related to psychotropic medication.
- Rules forthcoming requiring facilities to provide to OQA information indicating compliance with provisions related to involuntary administration of psychotropics

Admissions to CBRFs



November 2006

A Closer Look...

- Act 264
- Admissions to CBRFs licensed for 16 or more
- Admissions to CBRFs licensed for 15 or fewer
- Comparison of language
- Chapter 55 revisions

Act 264

- Chapter 55 Recodification
- Revises protective services & protective placement statutes
- Effective November 1, 2006

Methods of Admission

- Individual
- Power of Attorney for Health Care
- Guardian
- Family Member/Friend
 - Coalition of Wisconsin Aging Groups – Authority to Consent to Admission to Nursing Homes, CBRFs, RCACs and Hospice for Individuals who are not Developmentally Disabled or Mentally Ill

Admissions to CBRFs Licensed For 16 or More Residents

- HFS 83.06(5)(a) Persons found incompetent under s. 880.33 Stats., shall not be admitted to a CBRF licensed for 16 or more residents unless there is a court-ordered protective placement under s. 55.06 Stats., prior to admission.

Admissions to CBRFs Licensed For 15 or Fewer Residents

- 83.06(5)(c) The guardian of a person found incompetent under s. 880.33, Stats., may consent to admission or retention of a non-protesting person in a CBRF licensed for 15 or fewer residents without a court-ordered protective placement under s. 55.06, Stats,...

880 vs. 54

- 880.33 Incompetency: ... a licensed physician or licensed psychologist, or both shall furnish a written statement...based upon examination.
- 54.36(1) Examination of proposed ward: ... a physician or psychologist, or both, shall examine the proposed ward and furnish a written report ...



55.06 vs. 55.06 ANNOT

- 55.06 Protective Placement. ...placement of a ward for the primary purpose of providing care and custody. ...an individual shall have attained the age of 18...
- 55.06 ANNOT Protective services and protective placement; eligibility. ...an individual shall have filed a petition to transfer a foreign guardianship, whether present in the state or not, or shall be a resident of the state; and shall have a need for protective placement... an individual shall have attained the age of 18...

Foreign Guardianship - What it means...

- Permits a guardian of a ward found incompetent in another state to admit ward to a WI CBRF.
- Permits a WI resident who is guardian of a ward found incompetent, and who resides in another state, to admit to a WI CBRF.

Chapter 54 Summary

- Persons found incompetent may be admitted to a CBRF licensed for 15 or fewer residents without a protective placement
- Persons found incompetent shall only be admitted to a CBRF for 16 or more residents if protectively placed

Chapter 55 Summary

- Must have need for protective placement
- Must be 18
- Allows for:
 - Foreign guardianship for placements in CBRFs licensed for 16 or more residents or in CBRFs licensed for 15 or fewer residents

Coalition of Wisconsin Aging Groups

Authority to Consent to Admission to
Nursing Homes, CBRFs, RCACs and Hospice
For Individuals who are not Developmentally
Disabled or Mentally Ill

11/20/06

www.cwag.org/legal

Learn More About Admission Criteria

See www.cwag.org/legal

Under "What's New at the Elder Law Center",
Click on [Wisconsin Guardianship Support
Center](#).

See [Admissions to Nursing Homes, CBRFs, RCACs
and Hospice](#).

Admissions to Nursing Homes



Methods of Admission

- An Individual
- A Power of Attorney for Health Care
- A Guardian of the Person
- An Emergency Protective Placement
- A Family Member/Friend
- Conversion of Chapter 51

Methods of Admission – cont'd

An Individual

- A competent adult who voluntarily admit himself / herself to a nursing home.

Methods of Admission – cont'd

A POAHC

- Executed after April 28, 1990.
- Recuperative care (short-term care)
- Respite care (short-term care)
- Long term care

Methods of Admission – cont'd

A Guardian of the Person

- May admit a resident to a nursing home **for recuperative and other care without a protective placement order from the court** for a period not to exceed 60 days.

Methods of Admission – cont'd

A Guardian of the Person

- May admit a resident to a nursing home **for a temporary stay without a protective placement order from the court** up to 30 days.

Methods of Admission – cont'd

A Guardian of the Person

- May admit a resident to a nursing home **pursuant to a protective placement.**

Methods of Admission – cont'd

Law Enforcement, Guardian or County
APS Representative

- May admit a resident to a nursing home pursuant to a **emergency protective placement**.

Methods of Admission – cont'd

A Family Member/Friend

- May admit an individual if the proposed individual is **transferring from a hospital to a nursing home**, and all of the following requirements of Sec. 50.06 are met.

Methods of Admission – cont'd

Chapter 51 Civil Commitment

- By conversion of a chapter 51 civil commitment proceeding to a protective placement proceeding.

Foreign Guardianship - What it means...

- Permits a guardian of a ward found incompetent in another state to admit ward to a WI nursing home.
- Permits a WI resident who is guardian of a ward found incompetent, and who resides in another state, to admit to a WI nursing home.

Learn More About Admission Criteria

See www.cwag.org/legal

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Adult-at-Risk Reporting Requirements

November 2006

Entity Responsibility

- Act 388 – Effective December 1, 2006
- Reporting Caregiver Misconduct Incidents
- Reporting Adult-at-Risk Incidents
- Response to Reports

Reporting Caregiver Misconduct Incidents

- State Statute 146.40(4r)(am)1 and HFS 13.05(3)
- Abuse, Neglect, Misappropriation by a Caregiver or Nonclient Resident
- No changes to reporting requirements found at <http://dhfs.wisconsin.gov/caregiver/contacts/Complaints.htm>

Reporting Adults-at-Risk

- State statutes 46.90(4)(ab)1 and 55.043(1m)(a)1
- Any employee of any entity must report if:
 - Adult-at-risk requests it
 - Adult-at-risk is at imminent risk
 - Other adults-at-risk are at risk of serious bodily harm, death, sexual assault, or significant property loss



- No reporting required in 2 instances

Immunity Provision

- All reports to OQA/OCQ
- Protections for good-faith reporters of incidents involving adults-at-risk
- \$10,000 penalty for retaliating against a reporter

Response to Reports

OQA Role

- Regulatory program (ALS, HSS, RCRS) for entity's program requirements
- OCQ for noncredentialed caregiver misconduct incidents

APS Role

- Protective service need identification and service provision

Other Agencies

- Local Law Enforcement or DOJ MFCU for criminal issues
- DRL for credentialed caregiver misconduct incidents

Questions

- Issues involving caregiver misconduct or when an (elder) adult-at-risk is a client of an entity and the perpetrator is a caregiver or non-client resident:
 - **Office of Caregiver Quality (OCQ) at caregiver_intake@dhfs.state.wi.us or (608) 243-2019.**
- Questions concerning the appropriate role of an (elder) adult-at-risk agency in responding to reports involving an entity:
 - **Jane Raymond at StopAbuse@dhfs.state.wi.us or 608-266-2568.**
