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**Date:** July 1, 2013

DQA Memo 13-017

**To:** [Adult Family Homes](#)  
[Community-Based Residential Facilities](#)  
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[Resident Care Apartment Complexes](#)

AFH 08  
CBRF 09  
NH 08  
RCAC 08

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

**Supreme Court Decision Regarding Chapter 51  
Residents with Dementia or Alzheimer's Disease**

**Background**

On May 18, 2012 the Wisconsin Supreme Court upheld a decision issued by the Court of Appeals finding that persons with only a dementia or Alzheimer's disease cannot be involuntarily committed for treatment under Chapter 51 of the Wisconsin Statutes.

The Supreme Court stated that individuals with only dementia or Alzheimer's disease are more appropriately treated under the protective placement provisions in Chapter 55. Chapter 55 is designed for long-term management of disorders that are unlikely to subside such as Alzheimer's disease and other degenerative brain disorders. Links to both decisions are listed in this memo.

**Impact of the Decision**

In the past, some residents with Alzheimer's disease or other types of dementia had been removed from nursing homes and assisted living facilities when their behaviors have become injurious to themselves or to others and subsequently committed for mental health treatment under Chapter 51. Often these residents were admitted to a psychiatric facility or hospital where inpatient treatment did little to change the course of a progressive disease like dementia. Many residents remained in these facilities for long periods of time because alternate placements were difficult to find.

As a result of this ruling, persons with Alzheimer's disease or other dementia and no mental health diagnosis may no longer be involuntarily committed to a psychiatric facility or hospital under Chapter 51. Residents involuntarily removed from a nursing home or an assisted living facility may be returned to the facility. Wisconsin statute and administrative code require nursing homes and community based residential facilities to only discharge a resident to a facility that will accept the resident. Before a resident can be involuntarily discharged, the

facility must provide the resident or their representative with a proper notice of discharge, inform the resident of their right to appeal the discharge with the Division of Quality Assurance and help the resident find acceptable placement. Relevant statutes and codes are listed at the end of this memo.

### **Wisconsin Statutes, Chapter 55 - Protective Service System**

Persons with Alzheimer's disease and other degenerative brain disorders are eligible for protective placement and services through Chapter 55, Wis. Stats. The statute allows for emergency placement/services in a Chapter 55 designated facility for up to 72 hours when there is reason to believe that, if emergency protective placement and services are not provided, the resident or others will incur a substantial risk of serious physical harm. Every county is required by law to designate at least one protective placement facility as an intake facility for emergency protective placements. Nursing homes and assisted living facilities should contact their county for the name of the Chapter 55 designated facility in their county or if they are interested in developing or expanding a service to include being designated to provide services under Chapter 55.

An individual may only be held for 72 hours and must receive a probable cause hearing before a court to authorize further detention. The maximum length of an emergency protective placement /services is 30 days after the probable cause hearing. If appropriate services can be provided, there may be no need for a permanent placement. If permanent placement is necessary, that hearing process must be completed within the 30 days authorized by the temporary order.

Wisconsin Statutes, Chapter 55, is available at:

<http://docs.legis.wisconsin.gov/statutes/statutes/55.pdf>

### **Provider Responsibilities**

Facilities that self-identify as a treatment facility for dementia or admit persons with dementia are responsible under Wisconsin administrative code to properly care for and manage the resident's needs within the facility. Facilities need to provide the appropriate treatment, including staff training, to respond to the individual's behaviors within the facility. Relevant state codes are listed at the end of this memo.

Multiple resources and training opportunities exist to improve caregiver's skills and abilities to understand and respond to challenging behaviors and reduce the need for emergency commitment. Persons who have a sudden change in behavior are often experiencing a medical change in condition, such as pain due to a urinary tract infection or injury; or change in their environment, such as the admission of a new resident, new caregiver, or a room change, and the individual is unable to adjust. These situations require a comprehensive evaluation by the appropriate health care or service provider and prompt intervention and treatment.

## Resources

There are a variety of resources available to assist facilities and caregivers to address the needs of persons with dementia. Many counties have specially trained staff to help facilities understand and cope with challenging behavioral symptoms. We recommend that facilities contact their county or surrounding counties to locate available resources.

The following organizations provide guidance, education and support and advocacy for persons with Alzheimer's disease and caregivers.

- Alzheimer's Association, Greater Wisconsin Chapter at: <http://www.alz.org/gwwi/>
- Alzheimer's Association, Southeastern Wisconsin Chapter at: <http://www.alz.org/sewi/>
- Alzheimer's Association, South Central Wisconsin Chapter at: <http://www.alz.org/scwisc/>  
The Chapters have a 24 Hour Helpline: 1-800-272-3900
- Alzheimer's & Dementia Alliance of Wisconsin at: <http://www.alzwisc.org/>  
The Alliance has a toll-free number: 1-888-308-6251

The Wisconsin Board on Aging and Long Term Care, Ombudsman Program, provides advocacy services to residents and technical assistance to nursing homes and assisted living facilities. Ombudsmen are available to work with facilities, residents and their families to achieve quality care and quality of life. You can reach your regional Ombudsman by calling 1-800-815-0015 or through their website at <http://longtermcare.state.wi.us>

The Department of Health Services/Division of Quality Assurance website, *Alzheimer's Disease and Dementia Resources*, offers training materials, assessment tools and links to publications on dementia care. The website includes a two-part webcast explaining a person-directed approach to dementia care that creates an environment designed to reduce challenging behaviors from occurring. If these behaviors occur, the program shows how to identify the source and correct the problem to prevent the need to remove the person from the facility. The website is located at: <http://www.dhs.wisconsin.gov/aging/genage/alzfcgsp.htm>

## Contact information of staff in DQA to answer questions

- Questions from nursing homes should be directed to the Regional Field Operations Director for the region in which your facility is located. Regional contact information is located at: [http://www.dhs.wisconsin.gov/rl\\_DSL/Contacts/reglmap.htm](http://www.dhs.wisconsin.gov/rl_DSL/Contacts/reglmap.htm)
- Questions from assisted living facilities should be directed to the Assisted Living Regional Director for the region in which your facility is located. Regional contact information is located at: [http://www.dhs.wisconsin.gov/rl\\_DSL/Contacts/ALSreglmap.htm](http://www.dhs.wisconsin.gov/rl_DSL/Contacts/ALSreglmap.htm)

## Court Decisions

The Supreme Court decision is available at:

<http://www.wicourts.gov/sc/opinion/DisplayDocument.html?content=html&seqNo=82775>

The Court of Appeals decision is available at:

<http://www.wicourts.gov/ca/opinion/DisplayDocument.pdf?content=pdf&seqNo=63051>

## **Wisconsin Statute**

### ***Nursing Homes and Community-Based Residential Facilities***

Chapter 50.09 (1) (j) Be transferred or discharged, and be given reasonable advance notice of any planned transfer or discharge, and an explanation of the need for and alternatives to the transfer or discharge. The facility to which the resident is to be transferred must have accepted the resident for transfer, except in a medical emergency or if the transfer or discharge is for nonpayment of charges following a reasonable opportunity to pay a deficiency. No person may be involuntarily discharged for nonpayment under this paragraph if the person meets all of the following conditions:

1. He or she is in need of ongoing care and treatment and has not been accepted for ongoing care and treatment by another facility or through community support services.
2. The funding of his or her care in the nursing home or community-based residential facility under s. 49.45 (6m) is reduced or terminated because of one of the following:
  - a. He or she requires a level or type of care which is not provided by the nursing home or community-based residential facility.
  - b. The nursing home is found to be an institution for mental diseases, as defined under 42 CFR 435.1009.

## **Administrative Code**

### ***Nursing Homes***

DHS 132.60 (1) Unless it is in conflict with the plan of care, each resident shall receive care based upon individual needs.

DHS 132.53 (2) (b) *Alternate placement.* 1. Except for transfers or discharges under par. (a) 2. and 6., for nonpayment or in a medical emergency, no resident may be involuntarily transferred or discharged unless an alternative placement is arranged for the resident. The resident shall be given reasonable advance notice of any planned transfer or discharge and an explanation of the need for and alternatives to the transfer or discharge except when there is a medical emergency. The facility, agency, program or person to which the resident is transferred shall have accepted the resident for transfer in advance of the transfer, except in a medical emergency.

DHS 132.53 (6) APPEALS ON TRANSFERS AND DISCHARGES.

(a) *Right to appeal.*

1. A resident may appeal an involuntary transfer or discharge decision.
2. Every facility shall post in a prominent place a notice that a resident has a right to appeal a transfer or discharge decision. The notice shall explain how to appeal that decision and shall contain the address and telephone number of the nearest bureau of quality assurance regional office. The notice shall also contain the name, address and telephone number of the state board on aging and long-term care or, if the resident is developmentally disabled or has a mental

illness, the mailing address and telephone number of the protection and advocacy agency designated under s. 51.62 (2) (a), Stats.

3. A copy of the notice of a resident's right to appeal a transfer or discharge decision shall be placed in each resident's admission folder.

4. Every notice of transfer or discharge under sub. (3) (a) to a resident, relative, guardian or other responsible party shall include a notice of the resident's right to appeal that decision.

*(b) Appeal procedures.*

1. If a resident wishes to appeal a transfer or discharge decision, the resident shall send a letter to the nearest regional office of the department's bureau of quality assurance within 7 days after receiving a notice of transfer or discharge from the facility, with a copy to the facility administrator, asking for a review of the decision.

2. The resident's written appeal shall indicate why the transfer or discharge should not take place.

3. Within 5 days after receiving a copy of the resident's written appeal, the facility shall provide written justification to the department's bureau of quality assurance for the transfer or discharge of the resident from the facility.

4. If the resident files a written appeal within 7 days after receiving notice of transfer or of discharge from the facility, the resident may not be transferred or discharged from the facility until the department's bureau of quality assurance has completed its review of the decision and notified both the resident and the facility of its decision.

5. The department's bureau of quality assurance shall complete its review of the facility's decision and notify both the resident and the facility in writing of its decision within 14 days after receiving written justification for the transfer or discharge of the resident from the facility.

6. A resident or a facility may appeal the decision of the department's bureau of quality assurance in writing to the department of administration's division of hearings and appeals within 5 days after receipt of the decision.

7. The appeal procedures in this paragraph do not apply if the continued presence of the resident poses a danger to the health, safety or welfare of the resident or other residents.

DHS 132.44 (2) CONTINUING EDUCATION. (a)*Nursing inservice.* The facility shall require employees who provide direct care to residents to attend educational programs designed to develop and improve the skill and knowledge of the employees with respect to the needs of the facility's residents, including rehabilitative therapy, oral health care, and special programming for developmentally disabled residents if the facility admits developmentally disabled persons. These programs shall be conducted as often as is necessary to enable staff to acquire the skills and techniques necessary to implement the individual program plans for each resident under their care.

### ***Community-Based Residential Facilities***

DHS 83.31(2) EMERGENCY OR TEMPORARY TRANSFERS. If a condition or action of a resident requires the emergency transfer of the resident to a hospital, nursing home or other facility for treatment not available from the CBRF, the CBRF may not involuntarily discharge the resident unless the requirements under sub. (4) are met.

DHS 83.31(4) DISCHARGE OR TRANSFER INITIATED BY CBRF.

(a) *Notice and discharge requirements.*

1. Before a CBRF involuntarily discharges a resident, the licensee shall give the resident or legal representative a 30 day written advance notice. The notice shall explain to the resident or legal representative the need for and possible alternatives to the discharge. Termination of placement initiated by a government correctional agency does not constitute a discharge under this section. DHS 83.31(4)(a)2. The CBRF shall provide assistance in relocating the resident and shall ensure that a living arrangement suitable to meet the needs of the resident is available before discharging the resident.

(b) *Reasons for involuntary discharge.* The CBRF may not involuntarily discharge a resident except for any of the following reasons:

1. Nonpayment of charges, following reasonable opportunity to pay.
2. Care is required that is beyond the CBRF's license classification.
3. Care is required that is inconsistent with the CBRF's program statement and beyond that which the CBRF is required to provide under the terms of the admission agreement and this chapter.
4. Medical care is required that the CBRF cannot provide.
5. There is imminent risk of serious harm to the health or safety of the resident, other residents or employees, as documented in the resident's record.
6. As provided under s. 50.03 (5m), Stats.
7. As otherwise permitted by law.

(c) *Notice requirements.* Every notice of involuntary discharge shall be in writing to the resident or resident's legal representative and shall include all of the following:

1. A statement setting forth the reason and justification for discharge listed under par. (b).
2. A statement that the resident or the resident's legal representative may ask the department to review the involuntary discharge by sending a written request within 10 days of receipt of the discharge statement to the department's regional office with a copy to the CBRF. The notice shall state that the request must provide an explanation why the discharge should not take place.
3. The name, address and telephone number of the department's regional office director.
4. The name, address and telephone number of the regional office of the board on aging and long term care's ombudsman program. For residents with developmental disability or mental illness, the notice shall include the name, address and telephone number of the protection and advocacy agency designated under s. 51.62 (2) (a), Stats.

(d) *Department review of discharge.*

1. A resident may request department review of an involuntary discharge within 10 days of receipt of such notice. If a timely request is sent to the department, the CBRF may not proceed with an involuntary discharge until the department has completed its review and notified the resident or the resident's legal representative and the CBRF of the department's decision.
2. Within 7 days after receiving the copy of the letter requesting the review, the CBRF may provide to the department's regional office, additional information justifying the discharge.
3. The department shall complete its review within 10 days after the CBRF submits additional information under subd. 2., if any, and will notify in writing the resident or the resident's legal representative and the CBRF of the department's decision.

(e) *Coercion and retaliation prohibited.* Any form of coercion to discourage or prevent a resident or legal representative from requesting a department review of any notice of involuntary discharge is prohibited. Any form of retaliation against a resident or legal representative for requesting a department review, or against an employee who assists in submitting a request for department review or otherwise provides assistance with a request for review, is prohibited.

DHS 83.38 (1) (i) *Behavior management.* The CBRF shall provide services to manage resident's behaviors that may be harmful to themselves or others.

DHS 83.21 (2) CLIENT GROUP. (a) Training shall be specific to the client group served and shall include the physical, social and mental health needs of the client group. Specific training topics shall include, as applicable: characteristics of the client group served, activities, safety risks, environmental considerations, disease processes, communication skills, nutritional needs, and vocational abilities. Client group specific training shall be completed within 90 days after starting employment.

### ***Adult Family Homes***

DHS 88.07 (2) (a) The licensee shall provide or arrange for the provision of individualized services specified in a resident's individual service plan that are the licensee's responsibility.

DHS 88.06 (2) (c) 7. A service agreement shall specify all of the following:  
Conditions for transfer or discharge and the assistance a licensee will provide in relocating a resident.

DHS 88.04 (5) TRAINING. (a) The licensee and each service provider shall complete 15 hours of training approved by the licensing agency related to health, safety and welfare of residents, resident rights and treatment appropriate to residents served prior to or within 6 months after starting to provide care. This training shall include training in fire safety and first aid.

DHS 88.08 Termination of placement. A licensee may terminate a resident's placement only after giving the resident, the resident's guardian, if any, the resident's service coordinator, the placing agency, if any, and the designated representative, if any, 30 days written notice. The termination of a placement shall be consistent with the service agreement under s. DHS 88.06 (2) (c) 7. The

30 day notice is not required for an emergency termination necessary to prevent harm to the resident or other household members.

***Residential Care Apartment Complexes***

DHS 89.23 Services (1) GENERAL REQUIREMENT. A residential care apartment complex shall provide or contract for services that are sufficient and qualified to meet the care needs identified in the tenant service agreements, to meet unscheduled care needs of its tenants and to make emergency assistance available 24 hours a day.

DHS 89.29 (3) (c) *Procedures for termination.*

1. a. Except as provided under subd. 2., a residential care apartment complex shall provide 30 days advance notice of termination to the tenant and the tenant's designated representative, if any. If there is no designated representative, the facility shall notify the county department of social or human services under s. 46.21, 46.22 or 46.23, Stats.

b. Notice of termination shall include the grounds for termination and information about how to file a grievance consistent with the termination and grievance policies and procedures contained in the service agreement.

c. The 30-day notice period required for termination may include the period covered by a notice of nonpayment of fees and opportunity to pay any deficiency as required under par. (a) 7., provided that notice of termination is included with the notice of non-payment of fees.

2. No 30-day notice is required in an emergency. In this subdivision, "emergency" means an immediate and documented threat to the health or safety of the tenant or of others in the facility.



Date: September 5, 2014

DQA Memo 14-009

To: [Nursing Homes](#)

From: Juan Flores, Director  
Bureau of Nursing Home Resident Care

Via: Otis Woods, Administrator  
Division of Quality Assurance

### Clarification Concerning Emergency Protective Placement

The purpose of this memo is to clarify issues related to DQA Memo 13-017 on the Supreme Court Decision Regarding Chapter 51 Residents with Dementia or Alzheimer's disease. It is recognized that in an emergency or crisis situation normal operations may not be feasible or practical. Emergency Protective Placement (EPP) is needed to protect the health, safety and welfare of the individual in distress or those others around them.

The following are questions raised after the issuance of DQA memo 13-017:

Can facilities legally accept an EPP without a legal decision maker (Guardian of Person or Activated POA-HC)?

- Yes. In an emergency situation (Ch. 55 protective placement), the person in distress exhibiting behaviors may not have arranged for a legal decision maker (Guardian of Person or Activated POA-HC) at the time of the emergency. However, there should be a GN 4000 Statement of Protective Placement completed by law enforcement officials and available for record keeping by the designated Emergency Protective Placement (EPP) facility.

What if a facility cannot guarantee an available bed 24/7/365?

- Current information indicates that nursing homes on average have an 85% occupancy rate. However, it is possible that the designated EPP facility may not have a bed available for use and it is also possible and likely the designated facility may not have staff members with the needed skills available to allow for the admission of someone under protective placement. It is advisable that an alternate EPP facility is designated by county officials to deal with these kinds of situations. There is no limit to the number of EPP facilities in a given county or the number of EPPs that can be admitted to the designated facility. The facility, in admitting the individual in need of care, is guaranteeing that the facility is able to meet the individual's needs, including sufficient staffing levels, during this crisis period. However, we also recommend that communication between local law enforcement agencies and the EPP facility occur in order to be prepared for whenever an emergent situation occurs.

Is an assessment required prior to admission to determine if the facility can meet the person's needs?

- Normally, resident assessments are required to ensure that the facility has the ability to meet the resident's needs. The EPP facility designation includes an evaluation that the facility can meet the needs of a resident in an emergency or crisis situation. EPP facilities can use information obtained from an emergency room to begin development of the Comprehensive Plan of Care. That same information may not be available if the resident comes from the community. In this situation assessments and care plans need to be developed as soon as feasible and practicable. What is critical at this juncture is meeting the individual's immediate needs. EPP facilities need to know the capabilities of its staff members and the types of emergent residents and behaviors they can handle. Otherwise, it cannot admit anyone for whom it does not have the resources to manage the resident's behaviors as required at DHS 132.51(2)(c)1.

Are admission documents required to be signed prior to admission?

- In an emergency situation normal operations are not always possible or feasible. Facilities that are designated as an EPP Facility should have been evaluated as being able to deal with an emergency placement under Ch. 55. In most cases the GN 4000 signed by law enforcement will serve as the emergency admission documents. DHS 132.52(2)(b) requires receipt of information from a MD, PA, APNP, on day of admission not before admission.

What if the facility is not staffed to respond to emergency (EPP) admission (within a couple hours) but say they need at least two to three days to do their assessment and determine if they can accept and take care of the person?

- If this is the case then perhaps the facility should not seek primary designation as an Emergency Protective Placement facility. If additional staff members with specific skills are needed, advance planning should occur on how to bring those skilled staff members to the facility as soon as possible. It is recognized that there may be a short delay for select staff members to arrive to provide care. As stated earlier the facility needs to know beforehand what types of behaviors they can handle during a crisis situation. A quick assessment can be made to determine if the facility has the ability to care for the person in distress.

Does a facility need a Physician's Plan of Care (Doctors Orders) at the time of admission?

- EPP facilities should work with their Medical Directors to develop standing orders to handle an emergency situation when a Physician's Plan of Care has not been provided by a physician from the community.

Questions related to this memo should be directed to your appropriate Regional Office.

Contact information for the regional offices can be found at the following:

[http://www.dhs.wisconsin.gov/rl\\_dsl/Contacts/reglmap.htm](http://www.dhs.wisconsin.gov/rl_dsl/Contacts/reglmap.htm)



Date: September 5, 2014

DQA Memo 14-010

To: [Adult Family Homes](#)  
[Community-Based Residential Facilities](#)

From: Alfred C. Johnson, Director  
Bureau of Assisted Living

Via: Otis L. Woods, Administrator  
Division of Quality Assurance

### Clarifications Surrounding Emergency Protective Placement

Subsequent to the 2012 Wisconsin Supreme Court Decision stating persons with only dementia or Alzheimer's disease are more appropriately treated under the protective placement provisions in Chapter 55 than involuntary commitment under Chapter 51, the Division of Quality Assurance issued DQA Memo 13-017 to address the impact of that decision. Since then, questions arose as emergency situations resulted in conflicts with administrative rules.

This memo addresses questions from facilities that provide emergency protective services:

Can a facility accept an emergency protectively placed individual who does not have a guardian or activated POA-HC?

- Yes. According to Chapter 55, law enforcement officials provide documentation of court-ordered protective placement. If the individual does not have a guardian, a petition for guardianship will accompany the documented protective placement petition.

Can a person be admitted before the needs assessment is completed?

- Both AFHs and CBRFs are required to assess the needs of individuals in order to determine how those needs will be met. The protective placement process involves an evaluation of the individual, and information obtained from emergency room clinicians can be used to determine needs. The administrative code for CBRFs accommodates the need for delayed assessments due to emergency admissions. DHS 83.35(1)(a) allows a CBRF to conduct the assessment within five days of an emergency admission. A CBRF is required to develop a temporary service plan upon admission, and the crisis plan may serve this purpose. DHS 88.06(3)(a) allows an AFH to complete a written assessment and individual service plan within 30 days after placement.

Can facilities admit an incompetent individual who has not signed the admission documents?

- Both CBRFs and AFHs require the individual *or guardian* to sign and date an admission agreement or service agreement. However, if there is no guardian, the legal protective placement petition will suffice.

How do facilities know an individual's health is stable enough for residence in a CBRF or AFH?

- A facility's preadmission assessment needs to include a review of health conditions to verify the facility's ability to provide or arrange for any needed medical or health care. The need for acute hospitalization or skilled nursing services related to the individual's crisis situation would be determined by emergency room medical professionals.

What if the facility does not have physician's orders at the time of admission?

- Written orders for medications should be received as soon as possible, within two business days. This could also include a copy of a prescription that is faxed, mailed, or hand delivered by the pharmacist. While waiting for a written order, a facility can follow the instructions on the prescription label.

Will facilities be cited by DQA for not following admission requirements?

- The Bureau of Assisted Living will consider the nature of emergency admissions and attempts to comply with administrative codes. Facilities serving persons under emergency protective placement should have policies in place to direct the process.

If you have questions regarding this memo, please contact the appropriate regional office for the county in which your facility is located.

Contact information can be found at the following website:

[http://www.dhs.wisconsin.gov/rl\\_dsl/Contacts/ALSreglmap.htm](http://www.dhs.wisconsin.gov/rl_dsl/Contacts/ALSreglmap.htm)