



Chapter 55 Emergency Protective Placements for Persons with Dementia in Crisis

Findings from a Department of Health Services Survey

In February 2015, the Wisconsin Department of Health Services' Bureau of Aging and Disability Resources performed a survey of county adult protective services (APS) units in order to understand how emergency protective placements are used for people with dementia. This report describes the results of the survey and how the Department will use the results to identify what is working well and where to focus efforts to improve the dementia-capability of Wisconsin's crisis systems.

Background: Chapter 55

The primary purpose of Chapter 55 of the Wisconsin Statutes, the Protective Service System, is to provide for the long-term care and custody of individuals who are at risk of harm due to a condition that is, or is likely to be, permanent. Chapter 55 provides protective services and protective placement, including emergency protective placement, for persons with degenerative brain disorders, severe and persistent mental illness, developmental disabilities, and other like incapacities. Persons who are the subject of an emergency protective placement proceeding under Chapter 55 are presumed to be incompetent.

The Emergency Protective Placement process under Chapter 55

Emergency protective placements are a means of intervening in an emergency situation if it is probable that a person, as a result of an incapacity defined in Chapter 55, is unable to provide for his or her own care or custody. The situation must create a substantial risk of physical harm to the person, or to others, if protective action is not immediately taken.

A person who requires emergency protective placement may be taken into custody and transported to a medical facility, or to a facility or home, for the primary purpose of residential care and custody. Such facilities include nursing homes, public medical institutions, centers for the developmentally disabled under the requirements of s. 51.06 (3), Wis. Stats., foster care services or other home placements, or to other appropriate facilities. An appropriate facility does not include units for the acutely mentally ill. A person could also remain in a home or facility where he or she currently resides if appropriate services and supports can be provided.

An emergency protective placement can only be made by a sheriff or police officer, fire fighter, guardian of the individual, or authorized county representative, such as a representative of the county APS unit or crisis system.

The person making the emergency protective placement must prepare a Statement of Emergency Protective Placement (Form GN-4000), which includes specific factual information concerning the person's personal observations of the individual and/or reports made to that person by others. The completed form must be "filed" with the facility director where the individual is placed. The document may be given to the director or left with a staff person or director designee authorized to accept the document on the director's behalf. Additional information about emergency protective placements is found in the textbox below.

Adult Protective Services

In Wisconsin, counties are responsible for implementing the Chapter 55 APS system for individuals-at-risk. Chapter 55 requires that each county identify a lead elder-adults-at-risk (EAAR) agency for adults age 60 and over and an adults-at-risk (AAR) agency for adults ages 18-59 to take primary responsibility for receiving and responding to allegations of abuse. Although a county is permitted to put these functions in separate agencies, most combine them in the same agency. Each county is also required to designate an APS agency responsible for providing protective services and protective placements to all adults-at-risk, regardless of age. The EAAR, AAR, and APS agencies are often referred to as the county APS unit. By law, the designated agency must prepare and submit reports as required by the Department, or by the courts in cases involving protective services or protective placement.

Challenges of Responding to Persons with Dementia in Crisis

Crises involving dementia present unique challenges for county human services systems and, in particular, for APS. A significant percentage of persons with dementia, experience some type of behavioral change as their disease progresses. Even though only a small number of individuals exhibit self-injurious, aggressive or violent behaviors, when they do occur, these behaviors often require APS to intervene because of the immediacy and intensity of the need. The difficulty of addressing these behaviors increases when the episodes are frequent, acute, and long-term. Other behaviors such as wandering, sexual inappropriateness, and refusal to bathe or accept care, coupled with a need for constant supervision, can also be challenging for care providers and may require APS intervention. These situations may not rise to the level of an emergency protective placement.

Emergency Protective Placements

The person who is the subject of an emergency protective placement is entitled to be informed of his or her rights to contact an attorney, to have an attorney provided at public expense if he or she is indigent, and to contact a member of his or her family. This information must be provided both orally and in writing by the provision of the Notice of Rights on Emergency Protective Placement (Form GN-4010).

Unless the person is already under guardianship, a Petition for Protective Placement/Protective Services (Form GN-4040) and a Petition for Guardianship Due to Incompetency (Form GN-3100) must be filed with the court along with the Statement of Emergency Protective Placement and the Notice of Rights on Emergency Protective Placement. There is no requirement for a prior court finding of incompetence and need for guardianship to make an emergency protective placement.

The preliminary hearing to establish that there is probable cause for protective placement must be held within 72 hours of the time the placement is made, excluding weekends and legal holidays. Upon finding probable cause, the court may order temporary protective placement for up to 30 days pending final hearing on permanent protective placement or the court may order protective services as may be required.

Responding to challenging behaviors by removing a person with dementia from his or her current living environment to another setting can further exacerbate confusion and agitation, cause unnecessary stress, and produce negative health outcomes for the person. Transfer trauma is common in persons with dementia. The goal is always to respond to the behavior in a manner that causes the least disruption to the person. Therefore, emergency protective placements should be an intervention of last resort.

In many cases involving a person with dementia in crisis who can no longer remain in his or her current residence, APS is responsible for finding a facility willing to accept the person for stabilization and, if that person cannot return to his or her original residence, locating a facility placement for long-term care. Counties are charged under state law with designating an intake facility for emergency protective placements. However, many counties have been unable to do so because facilities are either unwilling or unable to care for persons with dementia who are exhibiting challenging behaviors.

Historically, when persons with dementia in crisis exhibited behaviors deemed to be a threat to their safety, or the safety of others around them, they were commonly admitted to an inpatient mental health unit or facility for treatment to “manage” the behavior. The legal mechanism for admitting persons to these care facilities was the Chapter 51 emergency detention process. However, after the Wisconsin Supreme Court’s decision in *Helen E. F.*, counties have struggled to find facilities other than inpatient mental health units and treatment facilities for persons in crisis who have a dementia diagnosis.

The Dementia Care System Redesign is premised on the belief that the difficulty of providing care for persons with dementia who exhibit challenging behaviors is best addressed within the larger context of the dementia care delivery system as a whole. Addressing the needs of persons with dementia by providing for early detection and intervention, quality care services, and crisis stabilization in home, community, and long-term care settings has the potential to significantly reduce the numbers of serious challenging behaviors that result in emergency protective placements and the removal of individuals from their residences.

Even if, as a general rule, a facility is willing to accept emergency protective placements, there are still obstacles that preclude acceptance in particular cases involving persons with dementia. Anecdotal reports of obstacles often include aggressive or violent challenging behaviors, need for placement “off hours,” regulatory requirements for medical evaluations, physician’s orders, and communicable disease clearance prior to placement in a facility. The lack of a surrogate decision-maker to authorize treatment during the 72-hour period prior to the probable cause hearing is also a barrier. However, until now, we have lacked reliable information about the extent of these circumstances and their significance.

Emergency Protective Placement Survey

In February 2015, the Wisconsin Department of Health Services’ Bureau of Aging and Disability Resources (BADR) administered the *Survey on Emergency Protective Placement for People with Dementia* to county APS units. The survey asked 35 questions about counties’ emergency protective placement practices with a particular focus on the placement of persons with dementia exhibiting challenging behaviors. Counties were instructed to limit their answers to the 72-hour period prior to the probable cause hearing. The goal of the survey was to ascertain best practices for placing individuals with dementia in crisis in an emergency situation.

Bureau staff followed up with counties to encourage survey completion. Staff contacted counties who indicated a hospital was one type of facility used for emergency protective placements in order to determine the specific purpose the hospital was used for persons with dementia in crisis.

The Bureau received responses from all 72 counties in the state and one tribe. The Oneida Tribe was surveyed because it has its own APS Unit, whereas other tribes in Wisconsin have a memorandum of understanding with their respective counties' APS Units. For purposes of simplicity, the Tribe's results are included with the counties.

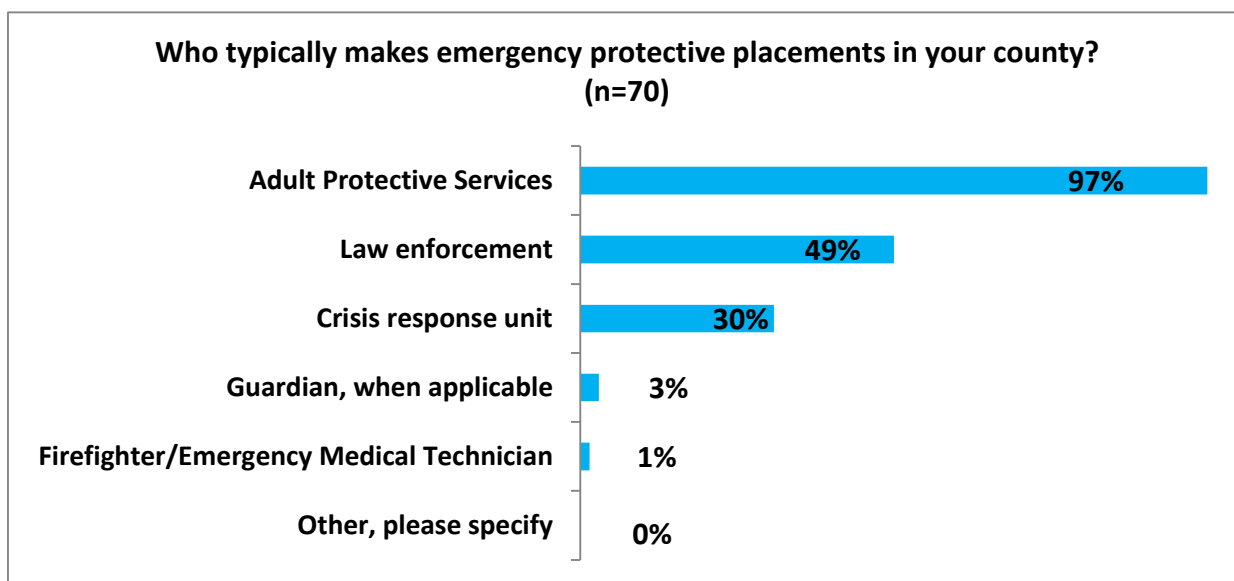
Survey Results

Policies and Procedures for Emergency Protective Placements

Ninety percent of counties reported they have an established policy or procedure for handling emergency protective placements. Of these, almost 60 percent have written policies or procedures, and 40 percent have unwritten, "informal" policies or procedures for emergency protective placements.

Who Makes Emergency Protective Placements

APS makes almost twice as many emergency protective placements as any other member of the county crisis system, with law enforcement and crisis response units also heavily involved.



In many counties, more than one member of the crisis system plays a role in the emergency protective placement process: County corporation counsel (84 percent), guardians where applicable (72 percent), hospital emergency rooms (72 percent), family members (70 percent), and facilities (61 percent) reported as being "typically involved" in emergency protective placements. However, law enforcement, APS, crisis teams, and firefighters/EMTs were reported as being "typically involved" in counties where another member of the crisis system typically makes emergency protective placements.

Number of Emergency Protective Placements

The number of emergency protective placements varies widely from county to county.

Sixty-two counties reported making at least one emergency protective placement in a typical year. The majority (n=45) reported making fewer than 10 emergency protective placements, while 17 counties reported 10 or more emergency protective placements in a typical year.

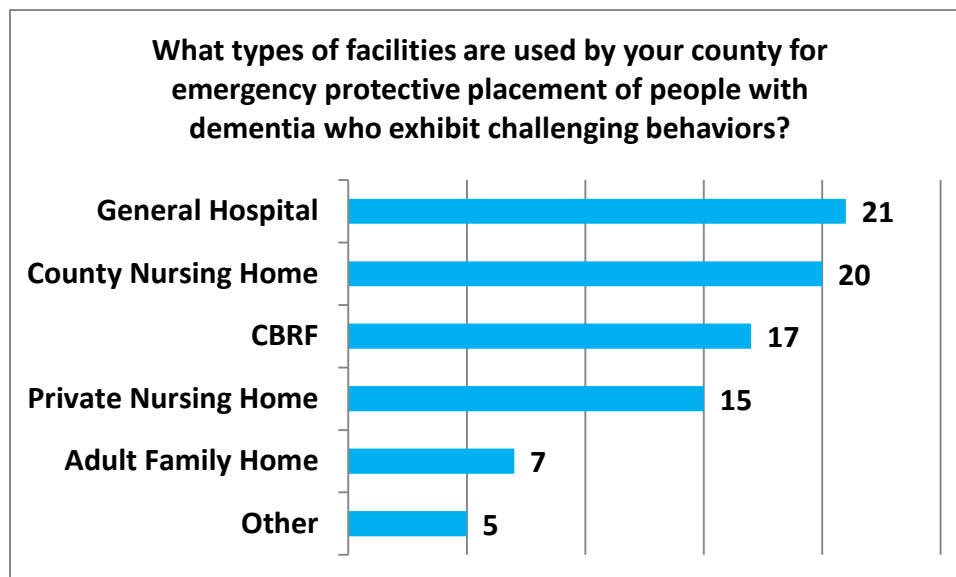
The median number of placements was five and the average mean was seven.

The majority of these emergency protective placements involved persons with dementia who were also exhibiting challenging behaviors.

Facilities Designated or Regularly Used for Emergency Protective Placements

One-half, or 50 percent, of counties reported having one or more facilities designated or regularly used for emergency protective placements for people with dementia exhibiting challenging behaviors.

General hospitals, county nursing homes, and community based residential facilities (CBRF) were the types of facilities most often used for emergency protective placement. Several counties reported using more than one type of facility. The facilities are not necessarily located within the county making the placement.



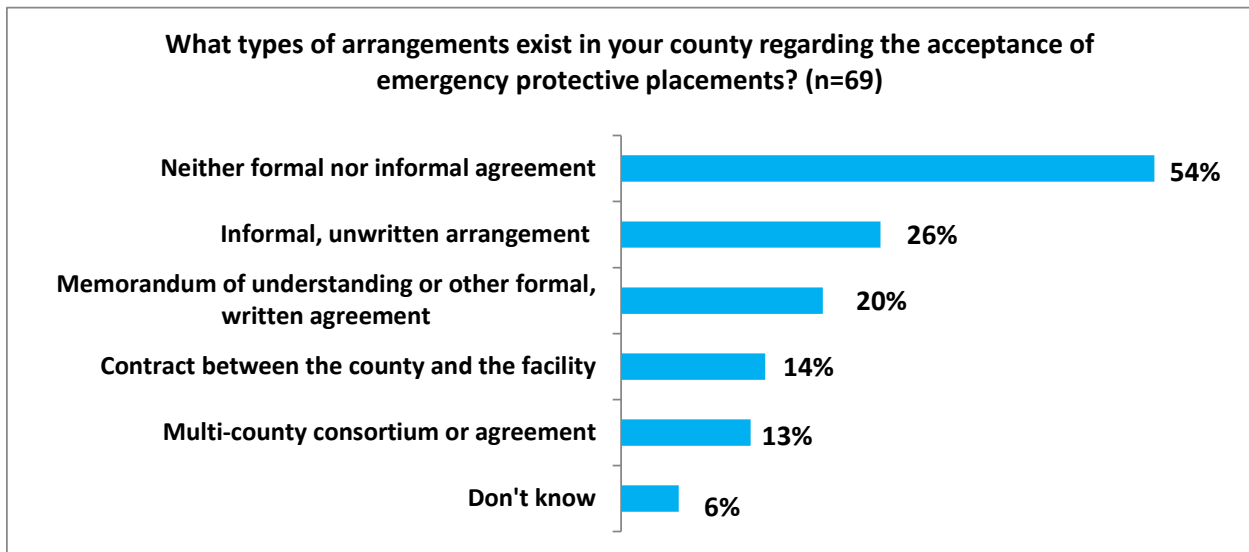
Bureau staff followed up with counties that indicated hospitals are used for emergency protective placements to determine the purpose of using the hospital. The three purposes that were reported were: medical clearance prior to placement in a facility, medical treatment prior to placement in a facility, and actual emergency protective placement or other protective placement. All three were reported in equal frequency, and, in many cases, all three purposes were reported by the same county.

In analyzing these results, we suspect that if the survey questions had been worded differently to ask counties about facilities that are used in the emergency protective placement process, it is possible that almost every county, if not all, would have reported using a hospital for one or more of the purposes inquired about in our follow up. Instead, the questions were limited to

asking about facilities used for emergency protective placements. Those counties that indicated they used a hospital for emergency protective placements probably interpreted the question more broadly than those who did not. Further research is needed to determine whether counties accurately interpreted the question; some under reporting of hospital use is possible.

Arrangements between Counties and Facilities

For the most part, arrangements between counties and facilities are informal. Only 34 percent of counties reported they have a memorandum of understanding, or other formal written agreement or contract with the facilities they regularly use for emergency protective placement. Fourteen percent of counties are members of a multi-county consortium or have an agreement regarding shared access to protective placement facilities. Counties may have agreements, either formal or informal, with more than one facility.



Location of Facilities Used for Emergency Protective Placements

Thirty-one counties (43 percent) reported having a facility in their respective county that accepts the emergency protective placements of people with dementia. Approximately 70 percent of the facilities regularly used for emergency protective placements for persons with dementia are located in the same county in which the person with dementia resides.

Adequacy of Care for Persons with Dementia

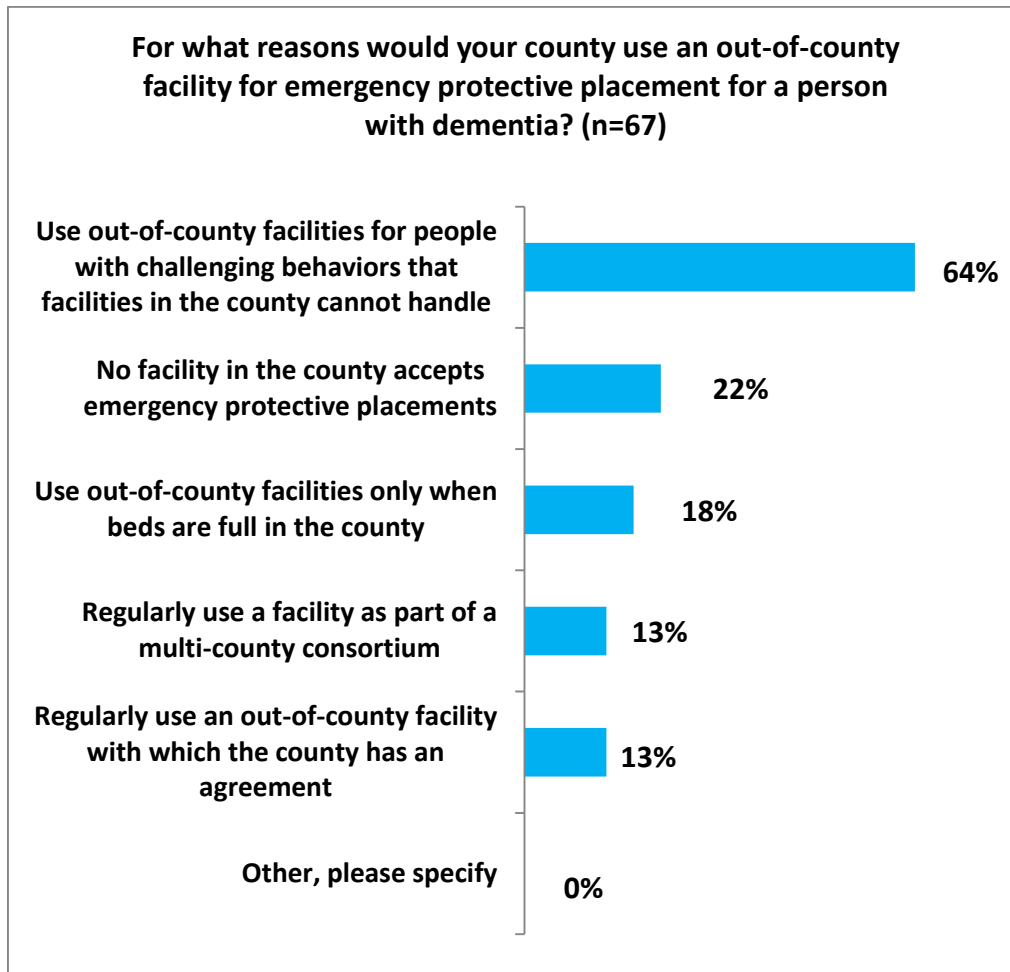
Counties reported that 60 percent of the facilities used for emergency protective placements specialize in dementia care. Ninety-three percent felt some or all of these facilities provide adequate care for people with dementia exhibiting challenging behaviors. Seven percent said none of the facilities they use are equipped to provide adequate care for this population.

Facilities Accepting Emergency Protective Placements of People with Dementia, Exhibiting Challenging Behaviors

Only 10 percent of counties reported having access to a sufficient number of facilities that accept emergency protective placements of persons with dementia who exhibit challenging behaviors. This response confirms a shortage of facilities willing and able to care for this population.

Use of Out-of-County Facilities

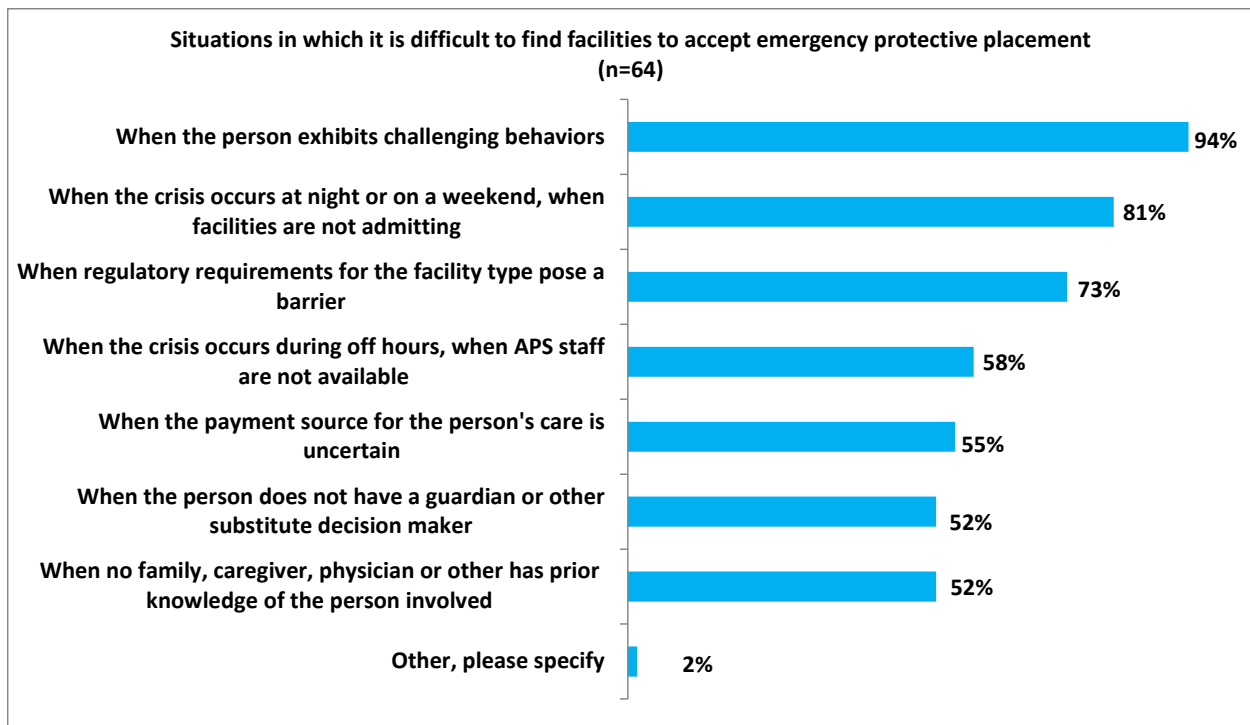
When counties use an out-of-county facility for emergency protective placement, it is usually because either in-county facilities cannot adequately address the behaviors being exhibited by the person with dementia, or there is no facility in the county that accepts emergency protective placements. Lack of an available bed within the county when needed, having an agreement for the regular use of an out-of-county facility, and participation in a multi-county consortium were other reasons given for out-of-county placement.



Situations Which Make It Difficult to Find a Facility to Accept Emergency Protective Placement for Persons with Dementia

All but one county (97 percent) reported there are particular types of situations in which it is difficult to locate a facility to accept emergency protective placements for people with dementia.

These situations range from when a person with dementia is exhibiting challenging behavior or the crisis occurs at night or on weekends. Respondents indicate that regulatory requirements for the type of facility also pose barriers.



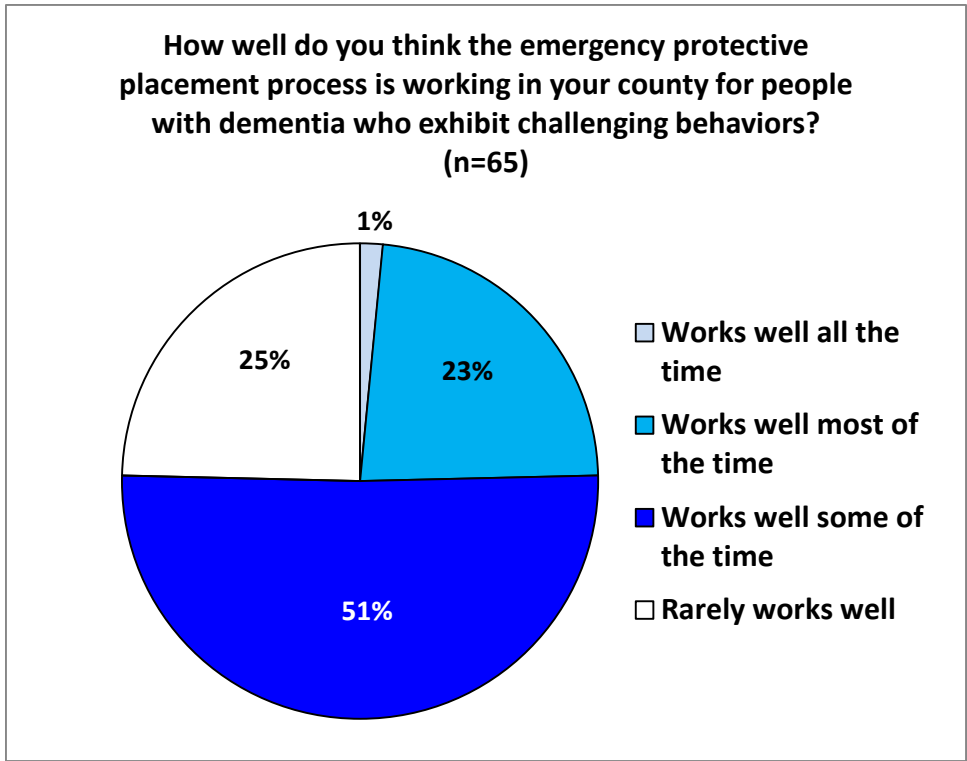
Behaviors that Most Often Make Emergency Protective Placement Difficult

Physical aggression is by far the most challenging behavior resulting in an emergency protective placement. The top five behaviors reported as “often” making it difficult for care providers to find a facility for emergency protective placement are:

- Physical aggression toward others (for example: hitting, kicking, biting, throwing things, scratching, spitting) (75 percent);
- Aggression against other residents in a facility (69 percent);
- Aggression against staff in a facility (59 percent);
- Wandering or elopement (57 percent);
- Sexual aggression, coercion, or assault (57 percent).

Adequacy of Emergency Protective Placement Process for Persons with Dementia Exhibiting Challenging Behaviors

When asked, “How well do you think the emergency protective placement process is working in your county for people with dementia who exhibit challenging behaviors?” almost 50 percent of counties indicated it works well some of the time. Twenty-five percent indicated it rarely works well and only one county indicated it works well all the time.



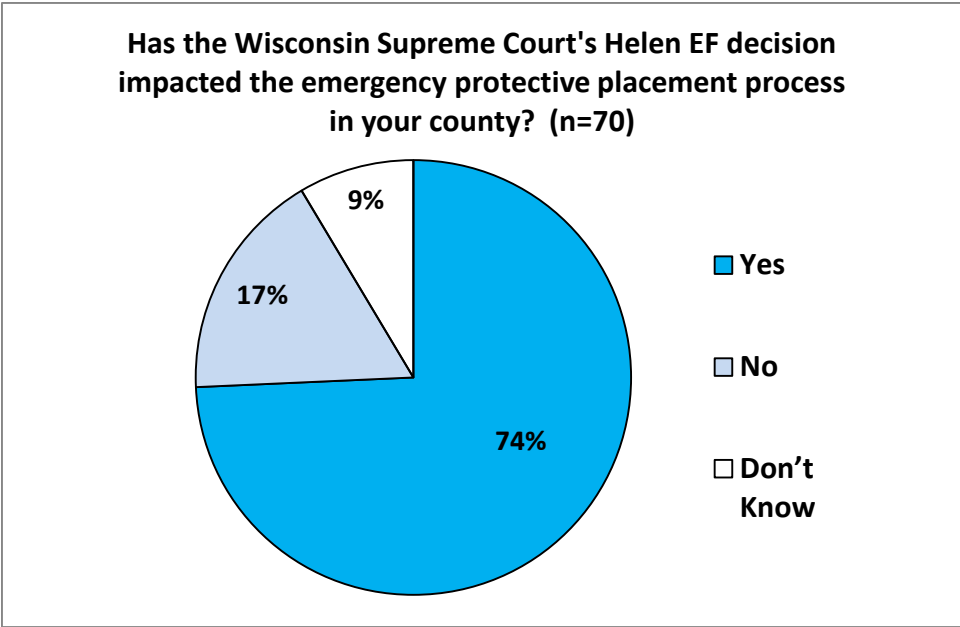
Services Used to Avoid Emergency Protective Placements

Three of every four counties, or 76 percent, reported using services other than facilities to avoid having to make emergency protective placements. When asked what these services were, the majority of respondents identified in-home care and family support.

Nineteen percent reported they do not use services for this purpose and four percent did not know.

Effect of the *Helen E.F.* Decision

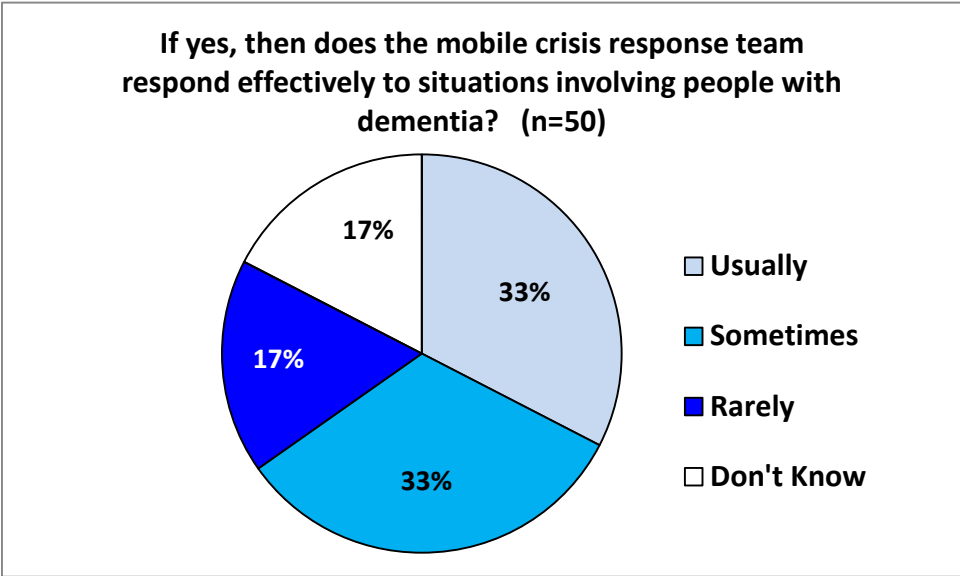
Seventy-four percent of counties reported the Wisconsin Supreme Court’s *Helen E.F.* decision has impacted the Chapter 55 emergency protective placement process, while 17 percent said it has had no effect.



County Crisis Systems and Dementia

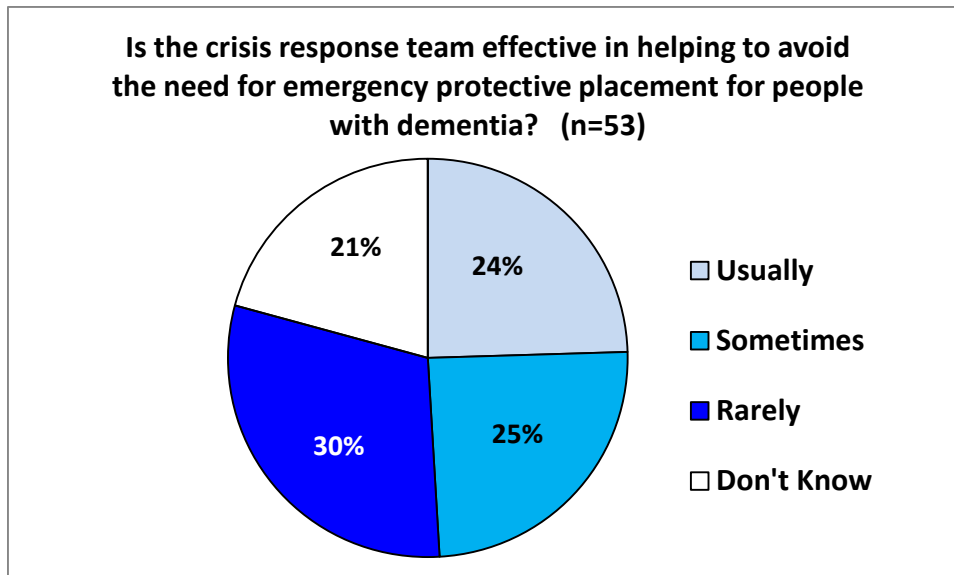
Two-thirds of counties reported they have a 24/7 mobile crisis unit.

Of these counties, 66 percent reported the mobile crisis unit responds effectively to situations involving people with dementia either “usually” or “sometimes.” Seventeen percent reported “rarely” and another 17 percent reported “don’t know.”



Effectiveness of Crisis Unit in Avoiding Need for Emergency Protective Placement for People with Dementia

Fifty percent of counties reported either “usually” or “sometimes” when asked if the crisis response team was effective in helping to avoid the need for emergency protective placement for people with dementia. Thirty percent reported “rarely” and the remaining 21 percent reported “don’t know.”



Key Takeaways

Survey results describe a county-based APS system with varying capabilities for dealing with people with dementia who exhibit challenging behaviors. The survey identified several areas where improvement in the capacity for dementia-capable emergency protective placements is needed, and where systems and procedures are in place that provide a foundation on which to build.

- In many counties, the emergency protective placement process is not working well much of the time for persons with dementia exhibiting challenging behaviors, primarily due to a lack of facilities that will accept emergency protective placements for this population. One-fourth of respondents reported the emergency protective placement process in their county “rarely” works well for persons with dementia exhibiting challenging behaviors. Half of the respondents said the emergency protective placement process works well only “some of the time” for this population.
- It appears to APS agencies that many county crisis response teams are not as effective as they could be in addressing the needs of persons with dementia in crisis. Only 33 percent of respondents from counties with a 24/7 mobile crisis team reported that the mobile crisis response team “usually” responds effectively to situations involving people with dementia. The remainder said the response is “sometimes” or “rarely” effective or they “don’t know.” Similarly, when asked “is the crisis response team effective in helping to avoid the need for emergency protective placement for people with dementia,” only 25 percent of respondents reported “usually.” The remainder reported “sometimes,” “rarely,” or “don’t know.”
- Almost all counties (90 percent) reported they do not have access to a sufficient number of facilities that will accept emergency protective placements of persons with dementia exhibiting challenging behaviors.
- Out-of-county facilities are used for emergency protective placements primarily because in-county facilities cannot adequately address the challenging behavior(s) exhibited by the individual with dementia (64 percent).

- Respondents report that physical aggression is the behavior that “most often” makes emergency protective placement difficult (75 percent).
- The *Helen E.F.* decision has had a widespread impact on emergency protective placements. Almost 75 percent of the respondents reported that the *Helen E.F.* decision impacted the emergency protective placement process, while 17 percent reported it had not, and nine percent reported they didn’t know.
- Although 90 percent of counties have an established policy or procedure for emergency protective placements, 40 percent of those policies or procedures are “informal” (i.e., not written). This could be viewed as problematic, considering the profound effect that placement can have on an individual’s right to self-determination.