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From: Otis Woods, Administrator
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**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
- 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

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.