

1. Order the continuation of the order. The court shall make this order if it finds that the individual continues to meet the standards for involuntary administration of psychotropic medication. The court must include the information relied upon as a basis for the order and make findings based on the factors set forth in s. 55.06 (9) (am) 3. in support of the need for continuation of the order.

2. Terminate the order. The court shall make this order if it determines that the individual no longer meets the standards for involuntary administration of psychotropic medication. If the court terminates an order, it must review the needs of the individual with respect to protective services and order protective services if it determines the individual meets the standards for protective services that are not currently being provided.

The bill requires the court to provide a copy of its order to the individual, the individual's guardian, guardian ad litem and legal counsel, the residential facility in which the individual is protectively placed, if any, and the county department.

Other Provisions

The bill repeals the following statutory provisions in ch. 880, relating to a guardian's authority to consent to administration, including forcible administration, of psychotropic medication to a ward: (1) 880.01 (7m), which defines "not competent to refuse psychotropic medication" for purposes of ch. 880; (2) s. 880.07 (1m), which sets forth required contents of a petition alleging that a person for whom guardianship is sought is not competent to refuse psychotropic medication; and (3) s. 880.33 (4m) and (4r), which set forth procedures under which the guardian may consent to or refuse psychotropic medication on behalf of the ward, including consent to forcible administration of psychotropic medication.

The bill specifies that any orders issued under those provisions remain in effect until modified or terminated by the court. The bill also specifies that orders authorizing involuntary administration of psychotropic medication originally issued under s. 880.33 (4r), which is repealed by the bill, are subject to annual review as described above.

These provisions are replaced by the procedures created by the bill.

The bill specifies that involuntary administration of psychotropic medication may be ordered as an emergency protective service.

The bill requires counties to provide to the department a copy of any order for involuntary administration of psychotropic medications to any protectively placed person in the county.

The bill requires the DHFS to annually submit to the legislature a report regarding orders for involuntary administration of psychotropic medication.

Involuntary Administration of Medication and Involuntary Medical Treatment Other Than Psychotropic Medication

The bill authorizes a guardian to consent, without further court involvement, to involuntary administration of medication, other than psychotropic medication, and involuntary medical treatment that is in the ward's best interest. In determining whether medication or medical treatment is in the ward's 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. A guardian may not consent to involuntary administration of psychotropic medication unless the guardian has been authorized to do so under s. 55.06 (9) (am).

Transfers of Protectively Placed Persons

Under current law, a person who is protectively placed in a facility may be transferred between placement units or from a placement unit to a medical facility (other than a locked unit or a facility providing acute psychiatric treatment) by a guardian or placement facility without approval by a court. When a transfer is made by a placement facility, 24 hours' prior written notice of the transfer shall be provided to the guardian, when feasible. If it is not feasible to notify the guardian in advance, written notice must be provided immediately upon transfer, and notice must also be provided to the court and the board under s. 55.02, or the board's designated agency, within a reasonable period of time not to exceed 48 hours from the time of transfer.

Currently, if a guardian, ward or attorney, or other interested person objects to the transfer by petition, the court must order a hearing within 96 hours after filing of the petition, to determine whether the transfer is consistent with the requirements in s. 55.06 (9) (a) and is necessary for the best interests of the ward.

This bill creates definitions of "placement facility" and "placement unit". A "placement facility" is defined as a facility to which a court may order a person to be protectively placed under s. 55.12 for the primary purpose of residential care and custody. A "placement unit" is defined as a ward, wing, or other designated part of a placement facility.

This bill provides that transfers between placement units, between placement facilities, or from a placement facility to a medical facility (provided that the medical facility is not a psychiatric facility), may be made by a county department that placed the individual or the DHFS, in

addition to a guardian or placement facility. However, if such a transfer is made, 10 days' prior written notice must be given by the transferring entity to the guardian, the county department, the department, and the placement facility.

Further, this bill requires that the county department, the department, or a placement facility making such a transfer must obtain the prior written consent of the guardian. If an emergency precludes providing the required prior written notice, or precludes obtaining the guardian's prior written consent, written notice must be provided immediately upon transfer.

Also, the bill requires an entity who seeks a transfer of a protective placement to obtain the prior written consent of the county department if the transfer is to a facility that is more costly to the county. This requirement does not apply in the case of an emergency transfer.

Under the bill, if an individual under protective placement, the individual's guardian or attorney, or other interested person files a petition specifying objections to a transfer, the court must order a hearing within 10 days after filing the petition.

For transfers, the purpose of the hearing is to determine whether the proposed placement meets the standards of s. 55.12; is in the least restrictive environment consistent with the person's needs and with the factors in s. 55.12 (3), (4), and (5) or, if the transfer is to an intermediate facility or nursing facility, is in the most integrated setting; and is in the best interests of the ward.

The bill also sets forth the options for a court order on a transfer petition.

Modification and Termination of Protective Placements

Current law, under s. 55.06 (10) (b), sets forth limited procedures for modification and termination of a protective placement. That statute allows the department, an agency, a guardian or ward, or any other interested person to petition the court for modification or termination of a protective placement at any time. The petition must be heard if a hearing has not been held within the previous 6 months but a hearing may be held at any time in the discretion of the court. The petition must be heard within 21 days of its receipt by the court.

This bill provides more detailed procedures for modification or termination of a protective placement or an order for protective services.

The bill requires the following:

Modification of Protective Placement

1. A petition for modification of an order for protective placement may be filed by an individual subject to a protective placement; the individual's guardian or guardian ad litem; the DHFS; the county department that placed the individual; a contractual agency; or any interested person.
2. The petition must be served on the individual; the individual's guardian; the individual's legal counsel and guardian ad litem, if any; and the county department.
3. The petition must contain specific allegations, depending on whether the individual is under a protective placement order or court-ordered protective services.
4. A hearing on the petition must be held within 21 days after the filing of the petition, if a hearing on a protective placement petition or transfer has not been held within the previous 6 months.
5. The hearing must comply with the requirements of s. 55.10 (4), which sets forth rights in a protective placement proceeding.
6. The order must contain specific findings regarding whether the person currently meets the standard for protective placement or court-ordered protective services.
7. If the person continues to meet the standard for protective placement or court-ordered protective services, the court must either continue the order or modify the order so that the placement or services are consistent with the person's needs if the person's needs have changed.
8. Orders for continuation or modification of protective services must be consistent with the factors in s. 55.12 (3), (4), and (5).
9. If the person does not meet the standard for protective placement or protective services, the order must require termination of the protective placement or court-ordered protective services.
10. Notice of the order must be provided to the individual; the individual's guardian, guardian ad litem, and legal counsel, if any; and the residential facility, if the person receives services in such a facility.
11. The transfer provisions may be used if the modification sought is a transfer of an individual between placement units, between placement facilities, or from a placement unit to a medical facility, and if the petitioner is an entity authorized to initiate such a transfer under s. 55.15.

Termination of Protective Placement or Court-Ordered Protective Services

The provisions described above pertaining to who may petition, the contents of the petition, service of the petition, and requirement for conducting the hearing for modification of protective placement or court-ordered protective services apply to petitions for termination of placement or services.

The court may make one of the following orders after a hearing on a petition for termination of protective placement or services:

1. If the individual continues to meet the standards under s. 55.08 (1) and the placement is in the least restrictive environment consistent with the person's needs and with the factors under s. 55.12 (3), (4), and (5), order continuation of the person's protective placement in the same facility.
2. If the individual continues to meet the standards under s. 55.08 (1) but the placement is not in an environment consistent with the person's needs and with the factors under s. 55.12 (3), (4), and (5), the court shall transfer the person to a facility that is in the least restrictive environment consistent with the person's needs and with the factors in current s. 55.12 (3), (4), and (5). In addition to this option, the court may also order protective services.
3. If the individual no longer meets the standard in current s. 55.06 (2), the court shall terminate the protective placement. If the placement is terminated, the court must either order protective services or ensure the development of a proper living arrangement for the person if the individual is being transferred or discharged from his or her current residential facility.

If the person who is the subject of the petition is under an order for protective services, the court may order continuation of the protective services order if the person continues to meet the standard under s. 55.08 (2); order that the protective services be provided in a manner more consistent with the person's needs; or terminate the order for protective services if the person no longer meets the standard under s. 55.08 (2).

Annual Reviews of Protective Placements

This bill establishes the requirements and procedures for annual reviews of protective placements as required by *State ex rel. Watts v. Combined Community Services*, 122 Wis. 2d 65, 365 N.W.2d 104 (1985) and *County of Dunn v. Goldie H.*, 245 Wis. 2d 538, 629 N.W.2d 189 (2001).

County Department Review and Report

The bill requires the county department of the county of residence of any individual who is protectively placed to annually review the status of the individual. If, in an annual review, the individual or his or her guardian or guardian ad litem request modification or termination of the placement and the court provides a full due process hearing, or a full due process hearing is provided pursuant to a petition for modification or termination of the protective placement, the county is not required to review the status of the individual until one year after the court issues a final order after the full due process hearing.

The county of residence of an individual whose placement is in a different county may enter into an agreement under which the county of placement performs all or a part of the county duties specified in the bill.

The county review must include a written evaluation of the physical, mental, and social condition of the individual and the service needs of the individual. The review must be made part of the individual's permanent record. The county department must inform the individual's guardian of the review and invite the individual and his or her guardian to submit comments concerning the individual's need for protective placement or protective services. In performing the review, the county department or contractual agency staff member performing the review must visit the individual and must contact the individual's guardian. The review may not be conducted by a person who is an employee of the facility in which the individual resides.

By the first day of the 11th month after the initial order is made for protective placement for an individual, and annually thereafter, the county must do all of the following:

1. File a report of the review with the court that ordered the protective placement.
2. File with the court a petition for annual review of the protective placement.
3. Provide the report to the individual and the individual's guardian.

The report must contain information on all of the following:

1. The functional abilities and disabilities of the individual at the time the review is made including the needs of the individual for health, social, or rehabilitation services, and the level of supervision needed.
2. The ability of community services to provide adequate support for the individual's needs.
3. The ability of the individual to live in a less restrictive setting.

4. Whether sufficient services are available to support the individual and meet the individual's needs in the community and if so, an estimate of the cost of such services, including the use of county funds.
5. Whether the protective placement order should be terminated or the individual should be placed in another residential facility with adequate support services that places fewer restrictions on the individual's personal freedom, is closer to the individual's home community or more adequately meets the individual's needs, including any recommendation that is made during the reporting period by the department with respect to termination of the protective placement or placement of the individual in another residential facility.
6. A summary of the comments of the individual and the individual's guardian and the county's response to those comments.
7. The comments, if any, of any staff member at the facility in which the individual is placed which are relevant to the review of the individual's placement.

Responsibilities of the Guardian Ad Litem

The court is required to appoint a guardian ad litem after it receives the report from the county described above. The guardian ad litem is required to do all of the following:

1. Review the report filed by the county, the annual report of the guardian, and any other relevant reports on the individual's condition and placement.
2. Meet with the individual and contact the individual's guardian and explain to the individual and guardian all of the following:
 - a. The procedure for review of protective placement.
 - b. The right to appointment of legal counsel.
 - c. The right to request performance of an independent evaluation.
 - d. The contents of the report submitted to the court by the county.
 - e. That a change in or termination of protective placement may be ordered by the court.
 - f. That a full due process hearing may be requested by the individual or individual's guardian.

The guardian ad litem must provide all of the information described above to the individual in writing.

3. Review the individual's condition, placement, and rights with the individual's guardian.
4. Ascertain whether the individual wishes to exercise any of his or her rights (the right to appointment of legal counsel, to request an independent evaluation, and to request a full due process hearing).
5. File a written report with the court within 30 days after appointment, which includes a discussion of whether the individual appears to continue to meet the standards for protective placement and whether the protective placement is in the least restrictive environment that is consistent with the individual's needs. The report must also state whether any of the following applies:
 - a. The guardian ad litem, the individual, or the individual's guardian request an independent evaluation.
 - b. The individual or the individual's guardian requests modification or termination of the protective placement.
 - c. The individual requests, or his or her guardian or the guardian ad litem recommends, that legal counsel be appointed for the individual.
 - d. The individual or his or her guardian or guardian ad litem requests a full due process hearing.
6. Certify to the court that he or she has complied with the requirements described under items 2., 3., and 4., above.

Court Review of Reports, Hearing, and Order

The bill requires the court that orders protective placement for an individual to, not more than 12 months after the initial order for protective placement and annually thereafter, review the reports of the county and the guardian ad litem, described above, and the annual report filed by the guardian under s. 880.38 (3). In its review, the court must determine whether any of the following is necessary:

1. Performance of an independent evaluation of the physical, mental, and social condition of the individual, and the individual's service needs. If the court determines that an independent evaluation is necessary, the evaluation shall be performed at the expense of the individual unless the individual is indigent. If the individual is indigent, the evaluation is performed at the expense of the responsible county department. The court must order the performance of an independent evaluation if any of the following applies:
 - a. The report submitted by the county is not timely filed or the court determines that the report fails to meet the statutory requirements.

- b. Following review of the guardian ad litem's report, the court determines that independent evaluation is necessary.
 - c. The individual or the individual's guardian or guardian ad litem requests an independent evaluation.
2. Obtaining any other information with respect to the individual.
 3. Appointment of legal counsel. If the court appoints legal counsel and it appears that the individual is indigent, the court shall refer the individual to the authority for indigency determinations under s. 977.07 (1). The court must order legal counsel for an individual if any of the following applies:
 - a. Following review of the guardian ad litem's report, the court determines that legal counsel for the individual is necessary.
 - b. The individual or the individual's guardian or guardian ad litem requests appointment of legal counsel.
 4. Holding of a full due process hearing.

Upon completion of its review, the court must order either a summary hearing or a full due process hearing. A summary hearing may be held in court or may be held by other means such as by telephone or by a videoconference. The court must hold a full due process hearing if any of the following applies:

- a. The individual or the individual's guardian or guardian ad litem requests a full due process hearing.
- b. The report of the guardian ad litem indicates that the individual no longer meet standards for protective placement.
- c. The report of the guardian ad litem indicates that the current placement is not in the least restrictive environment consistent with the individual's needs.
- d. The report of the guardian ad litem indicates that the individual objects to the current placement.

Following the summary hearing or the full due process hearing, the court must do one of the following:

1. Order the continuation of the individual's protective placement in the facility in which he or she resides at the time of the hearing. The court shall make this order if it finds that the individual continues to meet the standards for protective placement, and the individual's protective placement is in the least restrictive environment that is consistent with his or her needs and with factors under current s. 55.06 (9) (a). The

court must include the information relied upon as a basis for the order and make findings based on the factors set forth in s. 55.06 (2) in support of the need for continuation of protective placement.

2. Order transfer of protective placement to a less restrictive residential facility or order the county department of residency to develop or recommend a less restrictive protective placement. If the court makes such an order, it shall order the county department of residency to arrange for the individual's transfer to the new protective placement within 60 days after the court's order unless the court extends the period to permit development of a protective placement. The court shall make this order if it finds that the individual continues to meet the standards for protective placement and the protective placement of the individual is not in the least restrictive environment that is consistent with the individual's needs and with the factors under current s. 55.06 (9) (a). The court may order protective services along with transfer of placement.

3. Terminate the protective placement. The court shall make this order if it determines that the individual no longer meets the standards for protective placement. If the court terminates a protective placement, it must review the needs of the individual with respect to protective services and order protective services if it determines the individual meets the standards for protective services. If the court determines that the individual does not meet the standards for protective services, and the individual is being transferred or discharged from his or her current residential facility, the county department must assist the residential facility with discharge planning for the individual, including planning for a proper residential living arrangement and the necessary support services for the individual.

The bill provides that any individual whose protective placement is terminated pursuant to an annual review may reside in his or her current residential facility for up to 60 days after the termination in order to arrange for alternative living. If the residential facility has fewer than 16 beds, the individual may remain in the residential facility as long as the requirements of current s. 55.05 (5) are met. The bill specifies that admission of the individual, if an adult, to another residential facility, must be under s. 55.05 (5).

The bill requires the court to provide a copy of its order to the individual, the individual's guardian, guardian ad litem and legal counsel, the residential facility in which the individual is protectively placed, and the county department.

Establishment of County Policy

This bill requires each county protective services agency to ensure that no later than December 31, 2004, the county establishes a written policy that specifies procedures to be followed in the county which are designed to ensure that reviews of all protectively placed persons residing in the county are conducted annually. The county protective services agency must maintain a copy of the written policy and must make the policy available for public inspection.

Statement Required

The bill also requires the register in probate to file with the chief judge of the judicial administrative district a statement indicating whether the county has filed a petition and a report for each annual review required to be undertaken for protectively placed persons in the county that year. The statement must include an explanation of the reasons that any required report or petition has not been filed.

Appointment of Legal Counsel in Protective Placement Proceedings

Under current law, s. 55.06 (6), relating to procedures in protective placement proceedings, provides that s. 880.33 (2) applies to all hearings under ch. 55 except for transfers of protective placements. Section 880.33 (2) (a) 1. provides that the proposed ward has the right to counsel in incompetency proceedings. Section 880.33 (2) (a) 2. further provides that if the person requests, but is unable to obtain legal counsel, the court shall appoint legal counsel. The statutes also provide that if the person is represented by counsel appointed under s. 977.08 in a proceeding for a protective placement under s. 55.06, the court shall order the counsel appointed under s. 977.08 to represent the person.

Although ch. 55 does not explicitly provide for counsel appointed under s. 977.08 in case of an indigent subject, the language in s. 880.33 (2) (a) 2. implies that counsel should be appointed. Further, s. 55.06 (11), relating to emergency protective placements, clearly provides for counsel appointed under s. 977.08 in the case of an indigent subject. Finally, it is the practice in this state to appoint counsel under s. 977.08 in the case of an indigent subject of a ch. 55 petition.

This bill amends the public defender statute that sets forth to whom the state public defender must provide legal services by clearly setting forth the requirement that the state public defender provide legal services in cases involving persons who are subject to petitions for protective placement under ch. 55. This codifies current practice.

The remainder of this note consists of a table of contents for reorganized ch. 55:

55.001	Declaration of policy.
55.01	Definitions.
55.02	Protective services and placement: duties.
55.03	Status of guardian.
55.043	County protective services agency.
55.045	Funding.
55.05	Voluntary protective services.
55.055	Admissions without court involvement.
55.06	Protective services and placement; eligibility.
55.07	Protective services or placement; petition.
55.08	Protective services or placement: standards and allegations.
55.09	Notice of petition and hearing for protective services or placement.
55.10	Hearing on petition for protective services or placement.
55.11	Comprehensive evaluation; recommendations; statements.
55.12	Order for protective services or placement.
55.13	Emergency protective services.
55.135	Emergency protective placement.
55.14	Involuntary administration of psychotropic medication.
55.15	Transfer of an individual under a protective placement order.
55.16	Modification of an order for protective placement or services.
55.17	Termination of an order for protective placement or services.
55.18	Annual review of protective placement.
55.19	Annual review of order authorizing involuntary administration of psychotropic medication.
55.20	Appeals.
55.21	Centers for developmentally disabled.
55.22	Records.

1 **SECTION 1.** 20.435 (2) (gk) of the statutes, as affected by 2003 Wisconsin Act 33, is
2 amended to read:

3 20.435 (2) (gk) *Institutional operations and charges.* The amounts in the schedule for
4 care, other than under s. 51.06 (1r), provided by the centers for the developmentally disabled

1 to reimburse the cost of providing the services and to remit any credit balances to county
2 departments that occur on and after July 1, 1978, in accordance with s. 51.437 (4rm) (c); for
3 care, other than under s. 46.043, provided by the mental health institutes, to reimburse the cost
4 of providing the services and to remit any credit balances to county departments that occur on
5 and after January 1, 1979, in accordance with s. 51.42 (3) (as) 2.; for maintenance of
6 state-owned housing at centers for the developmentally disabled and mental health institutes;
7 for repair or replacement of property damaged at the mental health institutes or at centers for
8 the developmentally disabled; and for reimbursing the total cost of using, producing and
9 providing services, products and care. All moneys received as payments from medical
10 assistance on and after August 1, 1978; as payments from all other sources including other
11 payments under s. 46.10 and payments under s. 51.437 (4rm) (c) received on and after
12 July 1, 1978; as medical assistance payments, other payments under s. 46.10 and payments
13 under s. 51.42 (3) (as) 2. received on and after January 1, 1979; as payments for the rental of
14 state-owned housing and other institutional facilities at centers for the developmentally
15 disabled and mental health institutes; for the sale of electricity, steam or chilled water; as
16 payments in restitution of property damaged at the mental health institutes or at centers for the
17 developmentally disabled; for the sale of surplus property, including vehicles, at the mental
18 health institutes or at centers for the developmentally disabled; and for other services, products
19 and care shall be credited to this appropriation, except that any payment under s. 46.10
20 received for the care or treatment of patients admitted under s. 51.10, 51.15 or 51.20 for which
21 the state is liable under s. 51.05 (3), ~~of patients admitted under s. 55.06 (9) (d) or (e) for which~~
22 ~~the state is liable under s. 55.05 (1),~~ of forensic patients committed under chapter 971 or 975,
23 admitted under chapter 975 or transferred under s. 51.35 (3) or of patients transferred from a

1 state prison under s. 51.37 (5), to Mendota mental health institute or Winnebago mental health
2 institute shall be treated as general purpose revenue — earned, as defined under s. 20.001 (4).

NOTE: Deletes cross-references to s. 55.06 (9) (d) and (e), which are repealed by the bill.

3 **SECTION 2.** 46.27 (11) (b) of the statutes is amended to read:

4 46.27 (11) (b) The department shall include all assurances required under 42 USC
5 1396n (c) in the implementation of the waiver. The department shall ensure, pursuant to 42
6 CFR 441.302(d), that the recipient or his or her legal representative is informed of the
7 alternatives available under the waiver and is given a choice whether to participate in the
8 wavier program. The legal representative may be the person's parent, guardian, legal
9 custodian, or a court if the person is under age 18 or the person's guardian, activated power
10 of attorney for health care, or the court if the person is age 18 or over. If the person is under
11 guardianship and subject to protective placement under ss. 55.07 to 55.12 but the guardian
12 does not consent to participation, the determination to participate in the program shall be made
13 under ss. 55.07 to 55.12 by the court that ordered protective placement. If the person is under
14 age 18 and is not subject to ss. 55.07 to 55.12 but the person's parent or guardian does not
15 consent to participation, the determination to participate in the program shall be made under
16 subch. VI of ch. 48 or subch. VI of ch. 938.

NOTE: Specifies, for the community options MA waiver program, that one of the assurances that must be provided by the DHFS in the waiver is that the recipient or his or her legal representative must be informed of the alternatives under the waiver are given the choice as to whether to participate. Also, describes who may act as a legal representative.

17 **SECTION 3.** 46.275 (4) (b) 1. of the statutes is repealed and recreated to read:

18 46.275 (4) (b) 1. Pursuant to 42 CFR 441.302 (d), that the recipient or his or her legal
19 representative is informed of the alternatives available under the waiver, and is given a choice

1 whether to participate in the waiver program. The legal representative may be the person's
2 parent, guardian, legal custodian, or the court if the person is under age 18 or the person's
3 guardian, activated power of attorney for health care, or a court if the person is age 18 or over.
4 If the person is under guardianship and subject to protective placement under ss. 55.07 to 55.12
5 but the guardian does not consent to participation, the determination to participate in the
6 program shall be made under ss. 55.07 to 55.12 by the court that ordered protective placement.
7 If the person is under age 18 and is not subject to ss. 55.07 to 55.12 but the person's parent or
8 guardian does not consent to participation, the determination to participate in the program
9 shall be made under subch. VI of ch. 48 or subch. VI of ch. 938.

NOTE: Specifies, for the community integration program for residents of state centers, that one of the assurances that must be provided by the DHFS in the waiver is that the recipient or his or her legal representative must be informed of the alternatives under the waiver are given the choice as to whether to participate. Also, describes who may act as a legal representative.

10 **SECTION 4.** 46.277 (2) (intro.) of the statutes is amended to read:

11 46.277 (2) DEPARTMENTAL POWERS AND DUTIES. (intro.) The department may request
12 a waiver from the secretary of the federal department of health and human services, under 42
13 USC 1396n (c), authorizing the department to serve medical assistance recipients, who meet
14 the level of care requirements for medical assistance reimbursement in a skilled nursing
15 facility or an intermediate care facility, in their communities by providing home or
16 community-based services as part of medical assistance. The number of persons for whom
17 the waiver is requested may not exceed the number of nursing home beds that are delicensed
18 as part of a plan submitted by the facility and approved by the department. If the department
19 requests a waiver, it shall include all assurances required under 42 USC 1396n (c) (2) in its
20 request. The department shall ensure, pursuant to 42 CFR 441.302 (d), that the recipient or

1 his or her legal representative is informed of the alternatives available under the waiver and
2 is given a choice whether to participate in the waiver program. The legal representative may
3 be the person's parent, guardian, legal custodian, or a court if the person is under age 18 or the
4 person's guardian, activated power of attorney for health care, or a court if the person is age
5 18 or over. If the person is under guardianship and subject to protective placement under ss.
6 55.07 to 55.12 but the guardian does not consent to participation, the determination to
7 participate in the program shall be made under ss. 55.07 to 55.12 by the court that ordered
8 protective placement. If the person is under age 18 and is not subject to ss. 55.07 to 55.12 but
9 the person's parent or guardian does not consent to participation, the determination to
10 participate in the program shall be made under subch. VI of ch. 48 or subch. VI of ch. 938.

11 If the department receives this waiver, it may request one or more 3-year extensions of the
12 waiver under 42 USC 1396n (c) and shall perform the following duties:

NOTE: Specifies, for the community integration program for persons meeting reimbursable levels of care, that one of the assurances that must be provided by the DHFS in the waiver is that the recipient or his or her legal representative must be informed of the alternatives under the waiver are given the choice as to whether to participate. Also, describes who may act as a legal representative.

13 **SECTION 5.** 46.278 (2) (a) of the statutes is amended to read:

14 46.278 (2) (a) The department may request one or more waivers from the secretary of
15 the federal department of health and human services, under 42 USC 1396n (c), authorizing
16 the department to serve medical assistance recipients, who meet the level of care requirements
17 for medical assistance reimbursement in an intermediate care facility for the mentally retarded
18 or in a brain injury rehabilitation facility, in their communities by providing home or
19 community-based services as part of medical assistance. If the department requests a waiver,
20 it shall include all assurances required under 42 USC 1396n (c) (2) in its request. The

1 department shall ensure, pursuant to 42 CFR 441.302 (d), that the recipient or his or her legal
2 representative is informed of the alternatives available under the wavier and is given a choice
3 whether to participate in the waiver program. The legal representative may be the person's
4 parent, guardian, legal custodian, or a court if the person is under age 18 or the person's
5 guardian, activated power of attorney for health care, or a court if the person is age 18 or over.
6 If the person is under guardianship and subject to protective placement under ss. 55.07 to 55.12
7 but the guardian does not consent to participation, the determination to participate in the
8 program shall be made under ss. 55.07 to 55.12 by the court that ordered protective placement.
9 If the person is under age 18 and is not subject to ss. 55.07 to 55.12 but the person's parent or
10 guardian does not consent to participation, the determination to participate in the program
11 shall be made under subch. VI of ch. 48 or subch. VI of ch. 938.

NOTE: Specifies, for the community integration program and brain injury waiver program for persons with developmental disabilities, that one of the assurances that must be provided by the DHFS in the waiver is that the recipient or his or her legal representative must be informed of the alternatives under the waiver are given the choice as to whether to participate. Also, describes who may act as a legal representative.

12 **SECTION 6.** 49.001 (8) of the statutes is amended to read:

13 49.001 (8) "Voluntary" means according to a person's free choice, if competent, or by
14 choice of a guardian if incompetent, when the person is not subject to a court-ordered
15 placement under ch. 55, is not placed by an agency having a court-ordered involuntary
16 commitment of the person under ch. 51, and is not involuntarily committed to the department
17 of corrections or to the department under ch. 971 or 980.

18 **SECTION 7.** 50.01 (2) (ad) of the statutes is created to read:

1 50.01 (2) (ad) The department shall promulgate rules that require each facility licensed
2 under this subchapter to provide information necessary for the department to assess the
3 facility's compliance with s. 55.14.

NOTE: Requires the DHFS to promulgate rules that require community-based residential facilities, nursing homes, and adult family homes to provide DHFS information necessary for DHFS to determine if those facilities are in compliance with the provisions relating to involuntary administration of psychotropic medication created by the bill.

4 **SECTION 8.** 50.06 (2) (d) (intro.) of the statutes is created to read:

5 50.06 (2) (d) (intro.) The person admitted under this subsection does not verbally object
6 to or otherwise actively protest such an admission. If such an objection or protest is made, the
7 person in charge of the facility shall immediately notify the agency designated under s. 55.02
8 (2) for the county in which the person is living. Representatives of that agency shall visit the
9 person as soon as possible, but no later than 72 hours after notification, and do the following:

10 1. Determine whether the protest persists or has been voluntarily withdrawn and consult
11 with the individual who consented to the admission regarding the reasons for the admission.

12 2. Attempt to have the person released within 72 hours if the protest is not withdrawn
13 and necessary elements of s. 55.08 (1) or 55.135 are not present and provide assistance in
14 identifying appropriate alternative living arrangements.

15 3. Comply with s. 55.135 if all elements are present and emergency placement in that
16 facility or another facility is necessary or file a petition for protective placement under s. 55.07.

17 The court, with the permission of the facility, may order the person to remain in the facility
18 pending the outcome of the protective placement proceedings.

19 **SECTION 9.** 51.01 (3g) of the statutes is amended to read:

1 51.01 (3g) "~~Chronic~~ Serious and persistent mental illness" means a mental illness which
2 is severe in degree and persistent in duration, which causes a substantially diminished level
3 of functioning in the primary aspects of daily living and an inability to cope with the ordinary
4 demands of life, which may lead to an inability to maintain stable adjustment and independent
5 functioning without long-term treatment and support and which may be of lifelong duration.
6 "~~Chronic~~ Serious and persistent mental illness" includes schizophrenia as well as a wide
7 spectrum of psychotic and other severely disabling psychiatric diagnostic categories, but does
8 not include ~~infirmities of aging~~ degenerative brain disorder or a primary diagnosis of ~~mental~~
9 ~~retardation~~ a developmental disability or of alcohol or drug dependence.

10 **SECTION 10.** 51.10 (4m) (a) (intro.) of the statutes is amended to read:

11 51.10 (4m) (a) (intro.) ~~An~~ In addition to the admissions under subs. (1) and (2), an adult
12 who meets the criteria for voluntary admission under sub. (4) ~~and whose admission is~~
13 ~~approved under sub. (1) or (2)~~ may also be admitted to an inpatient treatment facility if:

NOTE: Deletes the requirement that the voluntary admission of an adult to an inpatient treatment facility and who does not indicate a desire to leave the facility be approved by the treatment director of the treatment facility or the director of a center for the developmentally disabled and the county department.

14 **SECTION 11.** 51.10 (8) of the statutes is amended to read:

15 51.10 (8) An adult for whom a guardian of the person has been appointed under ch. 880
16 because of the subject's incompetency may be voluntarily admitted to an inpatient treatment
17 facility under this section ~~only~~ if the guardian and the ward consent to such the admission or
18 if the guardian consents and the procedures under sub. (4m) are followed.

NOTE: Provides that the guardian of an incompetent adult may provide consent to the voluntary admission of the ward to an inpatient treatment facility, in cases where the ward does not indicate a desire to leave the facility, if the procedures for voluntary admission in ch. 51 are followed.

1 **SECTION 12.** 51.20 (13) (g) 4. of the statutes is created to read:

2 51.20 (13) (g) 4. The county department under s. 51.42 or 51.437 to which the individual
3 is committed under par. (a) 3. retains responsibility for the person when the person voluntarily
4 moves to another county until venue for the person is transferred to the county where the
5 person is residing or until the person is no longer a proper subject of continued commitment.

6 **SECTION 13.** 51.22 (4) of the statutes is amended to read:

7 51.22 (4) If a patient is placed in a facility authorized by a county department under s.
8 51.42 or s. 51.437 and such placement is outside the jurisdiction of that county department
9 under s. 51.42 or s. 51.437, the placement does not transfer the patient's legal residence to the
10 county of the facility's location while such patient is under commitment.

11 **SECTION 14.** 51.40 (title) of the statutes is repealed and recreated to read:

12 **51.40 Determination of the residence of certain adults for purposes of determining**
13 **county of responsibility.**

14 **SECTION 15.** 51.40 (1) (em) of the statutes is created to read:

15 51.40 (1) (em) "Facility" means any facility licensed or registered under ch. 50.

16 **SECTION 16.** 51.40 (1) (k) of the statutes is created to read:

17 51.40 (1) (k) "Relative" has the meaning under s. 48.02 (15) and includes the spouse
18 of a person.

19 **SECTION 17.** 51.40 (1) (l) and (m) of the statutes are created to read:

20 51.40 (1) (l) "Residence" has the meaning specified under s. 49.001 (6).

21 (m) "Voluntary" has the meaning specified under s. 49.001 (8).

22 **SECTION 18.** 51.40 (2) (intro.) of the statutes is amended to read:

23 51.40 (2) DETERMINATION OF RESIDENCE. (intro.) ~~For purposes of determining~~
24 ~~responsibility for funding the provision of services under chs. 46, 51 and 55, the~~ The county

1 of residence of ~~individuals~~ an individual aged 18 or older with a developmental disability or
2 chronic, serious and persistent mental illness ~~in state facilities or nursing homes,~~ degenerative
3 brain disorder, or another like incapacity in a facility shall be responsible for funding the
4 provision of services under chs. 46, 51, and 55, and such residency shall be determined as
5 follows:

6 **SECTION 19.** 51.40 (2) (a) of the statutes is amended to read:

7 51.40 (2) (a) *Directed placement.* 1. 'Commitment or ~~protection~~ protective placement
8 or services.' If an individual is under a court order of commitment under this chapter or
9 protective placement or services under ~~s. 55.06~~ ch. 55, the individual remains a resident of the
10 county in which he or she has residence at the time the initial commitment or initial order for
11 protective placement or services is made. If the court makes no specific finding of a county
12 of residence, the individual is a resident of the county in which the court is located. The court
13 may make a specific finding of a county of residence, after notice and opportunity to be heard
14 has been provided to all affected counties and parties, if there is no objection. Notice shall be
15 sent to the corporation counsel of each affected county by certified mail. If any affected county
16 or party objects to the proposed finding of a county of residence, the county or party may
17 request the department to make a determination under par. (g) and any transfer of venue shall
18 be suspended until the determination is final.

19 2. 'Placement by a county.' Except for the provision of emergency services under s.
20 51.15, 51.42 (1) (b), 51.437 (4) (c), 51.45 (11) and (12) ~~or 55.06 (11), 55.13, or 55.135~~, if a
21 county department or an agency of a county department arranges or makes placement of the
22 individual into a state facility ~~or nursing home~~, the individual is a resident of the county of that
23 county department. Placement of an individual by a county department or an agency of a
24 county department into a facility outside the jurisdiction of the county department or agency

1 does not transfer the individual's legal residency to the county of the facility's location. If a
2 person is present in a county while being a resident of another county and is in need of
3 immediate care, a county of appropriate venue may provide for the immediate needs of a
4 person under ss. 51.15, 51.20, 51.42 (1) (b), 51.437 (4) (c), 51.45 (11) and (12), and 880.07,
5 and ch. 55, without being declared the person's county of residence. Any agency of the county
6 department is deemed to be acting on behalf of the county department in arranging or making
7 placement.

8 **SECTION 20.** 51.40 (2) (b) of the statutes is amended to read:

9 51.40 (2) (b) *Other admissions.* If par. (a) does not apply, ~~one of the following shall~~
10 apply the county of residence shall be determined as follows:

11 **SECTION 21.** 51.40 (2) (b) 2. of the statutes is amended to read:

12 51.40 (2) (b) 2. 'Individuals in nursing homes.' The following are presumptions
13 regarding the residence of a person in a nursing home. The presumption of residence may be
14 overcome by substantial evidence that clearly establishes residence in another county.

15 a. An individual in a nursing home who was admitted to the nursing home on or after
16 August 1, 1987, is a resident of the county which approved the admission under s. 50.04 (2r).

17 b. An individual in a nursing home on August 1, 1987, is presumed to be a resident of
18 the county in which the individual is physically present unless another county accepts the
19 individual as a resident. ~~The presumption of residence may be overcome by substantial~~
20 ~~evidence which clearly establishes residence in another county in one of the following ways:~~

21 **SECTION 22.** 51.40 (2) (b) 2. a., b., c., and d. of the statutes are renumbered 51.40 (2)

22 (b) 2. c., d., e., and f.

23 **SECTION 23.** 51.40 (2) (c) of the statutes is created to read:

1 51.40(2) (c) If pars. (a) and (b) do not apply, an individual who is incapable of indicating
2 intent residing in a facility is a resident of the county in which the person resided prior to
3 entering the facility.

4 **SECTION 24.** 51.40 (2) (f) (title) of the statutes is repealed and recreated to read:

5 51.40 (2) (f) *Guardian's authority to declare county of residence.*

6 **SECTION 25.** 51.40 (2) (f) of the statutes is renumbered 51.40 (2) (f) 1. and amended to
7 read:

8 51.40 (2) (f) 1. ~~Exception; county of guardian's residence. Notwithstanding~~ If pars. (a)
9 ~~and, (b), and (c) do not apply, a guardian may declare that a ward an individual~~ in a nursing
10 ~~home or state~~ facility who is incapable of indicating intent ~~and whose parent or sibling serves~~
11 ~~as his or her guardian~~ is a resident of the guardian's county of residence if the state guardian
12 is a resident of the county where the facility or nursing home is located in that county or if the
13 guardian states in writing that the individual is expected to return to the guardian's county of
14 residence when the purpose of entering the state facility ~~or nursing home~~ has been
15 accomplished or when needed care and services can be obtained in ~~that~~ the guardian's county
16 of residence.

17 **SECTION 26.** 51.40 (2) (f) 2. and 3. of the statutes are created to read:

18 51.40 (2) (f) 2. If pars. (a), (b), and (c) do not apply, a guardian may declare a ward's
19 county of residence to be the county where the ward is physically present if all of the following
20 apply:

21 a. The ward's presence in the county is voluntary.

22 b. There is no current order under ch. 55 in effect with respect to the ward, and the ward
23 is not under an involuntary commitment order to a county other than the county where the ward
24 is physically present, or to the department of corrections.

1 c. The ward is living in a place of fixed habitation.

2 d. The guardian states in writing that it is the ward's intent to remain in the county for
3 the foreseeable future.

4 3. Notwithstanding pars. (a) to (d) for good cause shown, a guardian may, if in the
5 ward's best interest, clarify or change a ward's county of residence by filing with the probate
6 court having jurisdiction of the guardianship and protective placement, a written statement
7 declaring the ward's domiciliary intent, subject to court approval, if notice and opportunity
8 to be heard are provided to all affected counties and parties. Notice shall be sent to the
9 corporation counsel of each affected county by certified mail.

10 **SECTION 27.** 51.40 (2) (g) 1. of the statutes is amended to read:

11 51.40 (2) (g) 1. An individual, an interested person on behalf of the individual, or any
12 county may request that the department make a determination of the county of responsibility
13 of the individual. Any motion for change of venue pending before the court of jurisdiction
14 shall be stayed until the determination under this paragraph is final. Within 10 days after
15 receiving the request, the department shall provide written notice to the individual, to the
16 individual's guardian, guardian ad litem and counsel, if any, to the individual's immediate
17 family, if they can be located and to all potentially responsible counties that a determination
18 of county of responsibility shall be made and that written information and comments may be
19 submitted within 30 days after the date on which the notice is sent.

20 **SECTION 28.** 51.40 (2) (g) 6. of the statutes is created to read:

21 51.40 (2) (g) 6. The county determined to be responsible for providing care, treatment,
22 and services ordered under ch. 46, 51, or 55 to an individual shall reimburse any other county
23 for all care, treatment, and services that county provided to the individual under ch. 46, 51,
24 or 55. Full reimbursement by the county determined to be responsible for the person shall be

1 made within 120 days following the date of the department's determination of the county of
2 responsibility, or of the outcome of any appeal of the department's determination that is
3 brought under ch. 227, or on a date or schedule of two or more payments agreed to by both
4 parties.

5 **SECTION 29.** 55.001 of the statutes, as affected by 2003 Wisconsin Act 33, is amended
6 to read:

7 **55.001 Declaration of policy.** The legislature recognizes that many citizens of the
8 state, because of ~~the infirmities of aging, chronic~~ serious and persistent mental illness, ~~mental~~
9 ~~retardation, other~~ degenerative brain disorders, developmental disabilities or other like
10 incapacities ~~incurred at any age~~, are in need of protective services or protective placement.
11 Except as provided in s. 49.45 (30m) (a), these protective services or protective placement
12 should, to the maximum degree of feasibility under programs, services and resources that the
13 county board of supervisors is reasonably able to provide within the limits of available state
14 and federal funds and of county funds required to be appropriated to match state funds, allow
15 the individual the same rights as other citizens, and at the same time protect the individual from
16 exploitation, abuse and degrading treatment. This chapter is designed to establish those
17 protective services and protective placements and assure their availability to all ~~persons~~
18 individuals when in need of them, and to place the least possible restriction on personal liberty
19 and exercise of constitutional rights consistent with due process and protection from abuse,
20 exploitation and neglect.

NOTE: Insert references to both protective services and protective placements. Also, revises terminology to delete the terms "infirmities of aging" and "mental retardation"; to insert a new term, "degenerative brain disorder" to replace "infirmities of aging"; and to replace the word "chronic" with the term "serious and persistent".

21 **SECTION 30.** 55.01 (1d) of the statutes is created to read:

1 55.01 (1d) “Activated power of attorney for health care” means a power of attorney for
2 health care that has taken effect in the manner specified in s. 155.05 (2).

3 **SECTION 31.** 55.01 (1v) of the statutes is created to read:

4 55.01 (1v) “Degenerative brain disorder” means the loss or dysfunction of brain cells
5 to the extent that the individual is substantially impaired in his or her ability to adequately
6 provide for his or her own care or custody.

7 **SECTION 32.** 55.01 (3) of the statutes is repealed.

NOTE: SECTION 1 creates a new definition of “degenerative brain
disorder”, which is created to replace the repealed definition “infirmities
of aging”.

8 **SECTION 33.** 55.01 (4) of the statutes is amended to read:

9 55.01 (4) “Interested person” means any adult relative or friend of a person to be
10 protected under this ~~subchapter~~ chapter; a health care agent under s. 155.01 (4); or any official
11 or representative of a public or private agency, corporation or association concerned with the
12 person’s welfare.

13 **SECTION 34.** 55.01 (5m) of the statutes is created to read:

14 55.01 (5m) “Treatment facility” has the meaning given in s. 51.01 (19).

NOTE: Provides that in ch. 55, “treatment facility” has the same
definition as in ch. 51: “any publicly or privately operated facility or
unit thereof providing treatment of alcoholic, drug dependent, mentally
ill or developmentally disabled persons, including but not limited to
inpatient and outpatient treatment programs, community support
programs and rehabilitation programs”.

15 **SECTION 35.** 55.01 (6) and (6m) of the statutes are created to read:

16 55.01 (6) “Placement facility” means a facility to which a court may order a person to
17 be protectively placed under s. 55.12 for the primary purpose of residential care and custody.

1 **(6m)** "Placement unit" means a ward, wing, or other designated part of a placement
2 facility.

3 **SECTION 36.** 55.01 (6p) and (6r) of the statutes are created to read:

4 **55.01 (6p)** "Protective placement" means a process by which an individual who has
5 been determined incompetent under ch. 880 is ordered by a court to be provided care and
6 custody.

NOTE: Creates a definition of protective placement. This definition is
 derived from the first sentence of s. 55.06 (1).

7 **(6r)** "Protective services" includes any of the following:

- 8 1. Outreach.
- 9 2. Identification of persons in need of services.
- 10 3. Counseling and referral for services.
- 11 4. Coordination of services for individuals.
- 12 5. Tracking and follow-up.
- 13 6. Provision of social services.
- 14 7. Case management.
- 15 8. Legal counseling or referral.
- 16 9. Guardianship referral.
- 17 10. Diagnostic evaluation.
- 18 11. Any services which, when provided to an individual with developmental
19 disabilities, degenerative brain disorder, serious and persistent mental illness, or other like
20 incapacity, keep the individual safe from abuse, neglect, or misappropriation of property, or
21 prevent the individual from experiencing deterioration or from inflicting harm on him or
22 herself or on another person.

NOTE: Creates a definition of protective services. This definition incorporates the noninclusive list of possible services from current s. 55.04 (1) (a), and specifies that "protective services" includes any services that are intended to keep specified individuals safe from abuse, neglect, or misappropriation of property, or prevent the individual from inflicting harm on him or herself or another person.

1 **SECTION 37.** 55.01 (6v) of the statutes is created to read:

2 55.01 (6v) "Serious and persistent mental illness" has the meaning given in s. 51.01
3 (3g).

4 **SECTION 38.** 55.02 of the statutes is repealed and recreated to read:

5 **55.02 Protective services and placement: duties. (1) DEPARTMENT DUTIES.** (a) The
6 department shall do all of the following:

7 1. Cooperate with county departments to develop and operate a coordinated, statewide
8 system for protective services and protective placement.

9 2. Monitor and supervise the implementation and operation of the protective services
10 and protective placement system.

11 3. Provide technical assistance to county departments providing protective services and
12 protective placement.

13 4. Evaluate the protective services and protective placement system.

14 (b) The department may do any of the following:

15 1. Provide protective services and protective placement directly or contract for the
16 provision of protective services or protective placement.

17 2. Promulgate rules governing protective services, protective placement, or both.

18 **(2) COUNTY DEPARTMENT DUTIES.** (a) The chairperson of the county board of supervisors
19 in a county with a single-county department under s. 46.215, 46.22, 46.232, 51.42, or 51.437
20 or the chairpersons of the county boards of supervisors of counties with a multicounty

1 department under s. 46.22, 46.23, 51.42, or 51.437 shall designate a county department or
2 county departments providing services in the county or counties to have the responsibility for
3 planning for the provision of protective services and protective placement and providing
4 direct protective services or protective placement, or entering into contracts under s. 46.036
5 with a responsible agency for the provision of protective services or protective placement.

6 (b) In addition to the duties specified in par. (a), the county department shall:

7 1. Monitor and evaluate protective services and protective placements.

8 2. Prepare and submit reports required by the department, or by a court if protective
9 services or protective placement are ordered by a court.

10 3. Develop reporting requirements for guardians of the person who are required to
11 submit reports to the county department under s. 880.38 (3).

12 4. Designate at least one appropriate medical facility, hospital, or other protective
13 placement facility as an intake facility for the purpose of emergency placements under s.
14 55.135.

15 (3) CORPORATION COUNSEL. The corporation counsel may assist in conducting
16 proceedings under this chapter, and shall assist in conducting proceedings under this chapter
17 if requested by the court.

NOTE: Creates a new requirement that each county department must
designate an appropriate intake facility for emergency protective
placements.

18 SECTION 39. 55.03 of the statutes is renumbered 55.03 (1) and (2) and amended to read:

19 **55.03 Status of guardian. (1) AGENCY AS GUARDIAN.** No agency acting as a guardian
20 appointed under ch. 880 shall may be a provider of protective services or placement for its
21 ward under this chapter.

1 **(2) TRANSFER OF GUARDIANSHIP AND LEGAL CUSTODY.** Nothing in this chapter shall ~~shall~~ may
2 be construed to prohibit the transfer of guardianship and legal custody under s. 48.427 or s.
3 48.43.

4 **SECTION 40.** 55.04 (1) to (3) of the statutes are repealed.

5 **SECTION 41.** 55.04 (4) of the statutes is renumbered 55.03 (3) and amended to read:

6 **55.03 (3) GUARDIAN AUTHORITY AND RESPONSIBILITY APPLICABLE TO PARENT OF MINOR.**

7 Where any responsibility or authority is created under this chapter upon or in relation to a
8 guardian, such responsibility or authority is deemed to apply to a parent or person in the place
9 of a parent in the case of a minor who is or who is alleged to be developmentally disabled.

NOTE: The program responsibilities formerly specified in s. 55.04 have been incorporated into newly created definitions of protective services and protective placement in s. 55.01 (6r) and (6m), respectively, and into the amended version of s. 55.02.

The bill incorporates the provisions of current ss. 55.02 and 55.04 into ss. 55.02 and 55.03. Also, the bill revises the duties of the DHFS and the county departments to more accurately reflect the actual role of each in the protective services and protective placement system.

10 **SECTION 42.** 55.043 (1) (a) of the statutes is amended to read:

11 **55.043 (1) (a)** If a county protective services agency has probable cause to believe that
12 there is misappropriation of property or neglect or abuse of a vulnerable adult, the county
13 protective services agency may conduct an investigation ~~in Milwaukee County~~ to determine
14 if the vulnerable adult in question is in need of protective services. The county protective
15 services agency shall conduct the investigation in accordance with standards established by
16 the department for conducting the investigations. The investigation shall include at least one
17 of the following:

18 **SECTION 43.** 55.043 (1) (a) 1. and 3. of the statutes are amended to read:

1 55.043 (1) (a) 1. Observation of or an interview with the vulnerable adult, in private to
2 the extent practicable, and with or without consent of his or her guardian or agent under an
3 activated power of attorney for health care, if any.

4 3. An interview with the guardian or agent under an activated power of attorney for
5 health care, if any, and with the caretaker, if any, of the vulnerable adult.

6 **SECTION 44.** 55.043 (1) (b) 1. and 2. a. and b. of the statutes are amended to read:

7 55.043 (1) (b) 1. The vulnerable adult or his or her guardian or agent under an activated
8 power of attorney for health care, if any, consents to the examination.

9 2. a. The vulnerable adult has no guardian or agent under an activated power of attorney
10 for health care.

11 b. The vulnerable adult's guardian or agent under an activated power of attorney for
12 health care refuses to consent to the examination, but the examination is authorized by order
13 of a court.

14 **SECTION 45.** 55.05 (title) of the statutes is amended to read:

15 **55.05 (title) ~~Protective services~~ Voluntary protective services.**

16 **SECTION 46.** 55.05 (2) (b) of the statutes is amended to read:

17 55.05 (2) (b) Any interested person may request protective services on behalf of a
18 person in need of services. A guardian may request and consent to protective services on
19 behalf of the guardian's ward. An agent under an activated power of attorney for health care
20 may request and consent to protective services on behalf of the principal.

21 **SECTION 47.** 55.05 (2) (d) of the statutes is repealed.

22 **SECTION 48.** 55.05 (3) of the statutes is amended to read:

23 55.05 (3) **VOLUNTARY SERVICES PREFERRED.** An individual shall receive protective
24 services voluntarily unless ordered by the court under s. 55.12, requested by a guardian or

1 agent under an activated power of attorney for health care or provided on an emergency basis
2 in accordance with ~~sub. (4) s.~~ 55.13.

3 **SECTION 49.** 55.05 (4) (title) and (a) of the statutes are renumbered 55.13 (title) and (1)
4 and amended to read:

5 **55.13 Emergency protective services.** (1) Emergency protective services may be
6 provided for not more than 72 hours where there is reason to believe that if the emergency
7 protective services are not provided, the ~~person~~ individual entitled to the services or others will
8 incur a substantial risk of serious physical harm.

9 **SECTION 50.** 55.05 (4) (b) and (c) of the statutes are renumbered 55.13 (4) and (5) and
10 amended to read:

11 **55.13 (4)** ~~Where~~ If it is necessary to forcibly enter a premises to provide or investigate
12 the need for emergency protective services, the ~~representative of an agency staff member of~~
13 a county department or of a county protective services agency shall obtain a court order
14 authorizing entry and shall make the entry accompanied by a sheriff, police officer or member
15 of a fire department. When it appears probable that substantial physical harm, irreparable
16 injury or death may occur to an individual, the police officer, fire fighter or sheriff may enter
17 a premises without a court order if the time required to obtain such an order would result in
18 greater risk of physical harm to the individual.

19 **(5)** ~~Where~~ If a forcible entry is made under ~~par. (b)~~ sub. (4), a report of the exact
20 circumstances including the date, time, place, factual basis for the need of ~~such~~ the entry and
21 the exact services rendered shall be made and forwarded to the court within 14 days ~~of~~ after
22 entry by the person making ~~such~~ the entry.

23 **SECTION 51.** 55.05 (5) (title) and (a) of the statutes are renumbered 55.055 (title) and
24 (1).

1 **SECTION 52.** 55.05 (5) (b) 1. of the statutes is renumbered 55.055 (2) (a).

2 **SECTION 53.** 55.05 (5) (b) 2. of the statutes is renumbered 55.055 (2) (b) and amended
3 to read:

4 55.055 (2) (b) Guardians of persons who have been found incompetent under s. 880.33
5 may consent to admission to a nursing home ~~if the person is admitted directly from a hospital~~
6 ~~inpatient unit for recuperative care or other facility not listed in sub. (2) for which protective~~
7 ~~placement is required~~ for a period not to exceed ~~3 months~~ 60 days, ~~unless the hospital~~
8 ~~admission was for psychiatric care.~~ In order to be admitted under this paragraph, the person
9 must be in need of recuperative care or be unable to provide for his or her own care or safety
10 so as to create a serious risk of substantial harm to him or herself or others. Prior to providing
11 that consent, the guardian shall review the ward's right to the least restrictive residential
12 environment and consent only to admission to a ~~nursing home~~ facility that implements those
13 rights. Following the ~~3-month~~ 60-day period, the placement may be extended for an
14 additional 60 days if a placement proceeding under s. 55.06 is required. 55.07 has been
15 commenced, or, if no placement proceeding under s. 55.07 has been commenced, for an
16 additional 30 days for the purpose of allowing the initiation of discharge planning for the
17 person. Placement under this paragraph is not permitted for a person with a primary diagnosis
18 of mental illness or developmental disability.

19 **SECTION 54.** 55.05 (5) (c) of the statutes is renumbered 55.055 (5) (intro.) and amended
20 to read:

21 55.055 (5) (intro.) If a person admitted under ~~par. (b)~~ sub. (2) verbally objects to or
22 otherwise actively protests such an admission, the person in charge of the home or facility shall
23 immediately notify the ~~agency~~ county department designated under s. 55.02 (2) for the county

1 in which the person is living. Representatives of that agency shall visit the person as soon as
2 possible, but no later than 72 hours after notification, and do the following:

3 **SECTION 55.** 55.05 (5) (c) 1. of the statutes is renumbered 55.055 (5) (a).

4 **SECTION 56.** 55.05 (5) (c) 2. of the statutes is renumbered 55.055 (5) (b) and amended
5 to read:

6 55.055 (5) (b) Attempt to have the person released within 72 hours if the protest is not
7 withdrawn and necessary elements of s. ~~55.06 (2) or (11)~~ 55.08 (1) or 55.135 are not present
8 and provide assistance in identifying appropriate alternative living arrangements.

9 **SECTION 57.** 55.05 (5) (c) 3. of the statutes is renumbered 55.055 (5) (c) and amended
10 to read:

11 55.055 (5) (c) Comply with s. ~~55.06 (11)~~ 55.135 if all elements are present and
12 emergency placement in that facility or another facility is necessary or file a petition for
13 protective placement under s. 55.07. The court, with the permission of the facility, may order
14 the person to remain in the facility pending the outcome of the protective placement
15 proceedings.

16 **SECTION 58.** 55.05 (5) (d) of the statutes is renumbered 55.055 (6).

17 **SECTION 59.** 55.055 (2) (c) of the statutes is created to read:

18 55.055 (2) (c) The guardians of a ward who has been found incompetent in a state other
19 than Wisconsin may consent to admission of the ward under subds. 1. and 2. if the ward is
20 currently a resident of the state of Wisconsin. A petition for guardianship and protective
21 placement must be filed in this state within 60 days of the ward's admission under this
22 subdivision.

23 **SECTION 60.** 55.055 (3) of the statutes is created to read:

1 55.055 (3) Whenever a petition for guardianship on the ground of incompetency is filed
2 with respect to a person who resides in a facility licensed for 16 or more beds, a petition for
3 protective placement of the person shall also be filed. The person may continue to reside in
4 the facility until the court issues a decision on the petition for guardianship and protective
5 placement of the person. The person may continue to reside in the facility licensed for 16 or
6 more beds if an order for placement of the person in the facility licensed for 16 or more beds
7 is made under s. 55.12.

NOTE: Specifies that a guardian may not consent to the continued residence of a person in a facility licensed for 16 or more beds. Specifies that whenever a petition for guardianship on the ground of incompetency is filed with respect to a person who resides in a facility licensed for 16 or more beds, a petition for protective placement of the person shall also be filed. Specifies that the person may continue to reside in the facility if the court orders placement of the person in a facility licensed for 16 or more beds and may continue to reside in the facility pending the court's decision on the placement petition.

8 **SECTION 61.** 55.055 (4) of the statutes is created to read:

9 55.055 (4) Guardians of wards who have been found incompetent in, and reside in, a
10 state other than Wisconsin may consent to admissions under sub. (2) if the guardian intends
11 to move the ward to the state of Wisconsin within 30 days of the consent to the admission.
12 A petition for guardianship and protective placement must be filed in this state within 60 days
13 of the ward's admission under this paragraph.

14 **SECTION 62.** 55.06 of the statutes is repealed and recreated to read:

15 **55.06 Protective services and placement; eligibility.** To be eligible for protective
16 placement or court-ordered protective services, the person shall be a resident of the state, or
17 shall be present in the state having a need for protective placement or services until such time
18 as appropriate protective services can be established in the person's place of residence. The
19 person shall have attained the age of 18, but a person who is alleged to be developmentally

1 disabled may receive placement or services upon attaining the age of 14. No protective
2 placement or protective services under this chapter may be ordered unless the person has been
3 determined to be incompetent in accordance with ch. 880, except in the case of a minor who
4 is alleged to be developmentally disabled, and there is a finding of a need for protective
5 placement or protective services in accordance with s. 55.12, except as provided in ss. 55.055
6 (7) and 55.135. A procedure for adult protective placement or court-ordered protective
7 services may be initiated 6 months prior to a person's birthday at which he or she first becomes
8 eligible for placement or services.

9 **SECTION 63.** 55.06 (10) (a) 2. of the statutes, as affected by 2003 Wisconsin Act 33, is
10 renumbered 55.065 (1g).

11 **SECTION 64.** 55.06 (12) of the statutes is renumbered 55.055 (7).

12 **SECTION 65.** 55.06 (16) of the statutes is renumbered 55.21.

13 **SECTION 66.** 55.06 (17) of the statutes is renumbered 55.22.

14 **SECTION 67.** 55.06 (18) of the statutes is renumbered 55.20 and amended to read:

15 **55.20 Appeals.** An appeal may be taken to the court of appeals from a final judgment
16 or final order under this section within the time period specified in s. 808.04 (3) and in
17 accordance with s. 809.40 by the subject of the petition or the individual's guardian, by any
18 petitioner or by the representative of the public.

19 **SECTION 68.** 55.07 of the statutes is renumbered 55.23.

20 **SECTION 69.** 55.07 of the statutes is repealed and recreated to read:

21 **55.07 Protective services or placement; petition. (1) WHO MAY PETITION.** (a) The
22 department, the board designated under s. 55.02 (2) or an agency designated by it, a guardian
23 or any interested person may petition for appointment of a guardian and for protective services

1 or placement. The department shall provide for a schedule of reimbursement for the cost of
2 such proceedings based upon the ability to pay of the proposed ward or person to be protected.

3 (b) No guardian or temporary guardian may make a permanent protective placement
4 of his or her ward unless ordered by a court under s. 55.12 but may admit a ward to certain
5 residential facilities under s. 55.055 or make an emergency protective placement under s.
6 55.135.

7 (2) CONTENTS OF PETITION. (a) The petition shall state with particularity the factual basis
8 for the allegations specified in s. 55.08 (1) or (2).

9 (b) The petition shall be based on personal knowledge of the individual alleged to need
10 protective placement or services.

11 (3) PETITION FOR GUARDIANSHIP REQUIRED. A petition for guardianship if required under
12 s. 55.08 (1) (b) or (2) (a) must be heard prior to ordering protective placement or services. If
13 incompetency has been determined under s. 880.33 more than one year preceding the filing
14 of an application for protective placement or services, the court shall review the finding of
15 incompetency.

16 (4) FEES AND COSTS OF PETITION. (a) Except as provided in par. (b), the court shall award,
17 from the estate of the person sought to be placed or served, payment of the petitioner's
18 reasonable attorney fees and costs, unless the court finds, after considering all of the following,
19 that it would be inequitable to do so:

20 1. The petitioner's interest in the matter, including any conflict of interest that the
21 petitioner may have had in pursuing the guardianship or protective placement or services.

22 2. The ability of the ward's estate to pay the petitioner's reasonable attorney fees and
23 costs.

24 3. Whether the petition was contested and, if so, the nature of the contest.

1 4. Whether the person sought to be placed or served had executed a durable power of
2 attorney under s. 243.07 or a power of attorney for health care under s. 155.05 or had provided
3 advance consent to nursing home admission or engaged in other advance planning to avoid
4 protective placement or services.

5 5. Any other factors that the court considers to be relevant.

6 (b) If a person seeking to be the guardian of a proposed ward requests the assistance of
7 a county department designated under s. 55.02 (2) or an agency designated by it in petitioning
8 for guardianship or for protective services or placement, such assistance may be considered
9 a service and may be charged for based upon the ability of such person to pay for the service.

10 (5) VENUE. (a) The petition shall be filed in the county of residence of the person to
11 be protected or under extraordinary circumstances requiring medical and or the prevention of
12 harm to the person or others, in the county in which the person to be protected is physically
13 present.

14 (b) The court in which a petition is filed shall determine venue. The court shall direct
15 that proper notice be given to any potentially responsible or affected county. After all
16 potentially responsible or affected counties and parties have been given an opportunity to be
17 heard, if it is determined that venue lies in another county, the court shall order the entire record
18 certified to the proper court. A court in which a subsequent petition is filed shall, upon being
19 satisfied of an earlier filing in another court, summarily dismiss such petition. If any county
20 or party objects to the court's finding of venue, the issue shall be referred to the department
21 pursuant to s. 51.40 (2) (g). The court shall suspend ruling on the motion for change of venue
22 until the determination under s. 51.40 (2) (g) is final.

23 **SECTION 70.** 55.08 of the statutes is created to read:

1 **55.08 Protective services or placement: standards and allegations. (1) PROTECTIVE**
2 **PLACEMENT.** A court may protectively place an individual who meets the standards set forth
3 in this subsection. A petition for protective placement of an individual shall allege that the
4 individual satisfies all of the following criteria:

5 (a) Has a primary need for residential care and custody.

6 (b) Except in the case of a minor who is alleged to be developmentally disabled, has
7 either been determined to be incompetent by a circuit court or has had submitted on the minor's
8 behalf a petition for a guardianship.

9 (c) As a result of developmental disabilities, degenerative brain disorder, serious and
10 persistent mental illness or other like incapacities, is so totally incapable of providing for his
11 or her own care or custody as to create a substantial risk of serious harm to him or herself or
12 others. Serious harm may be occasioned by overt acts or acts of omission.

13 (d) Has a disability which is permanent or likely to be permanent.

14 **(2) PROTECTIVE SERVICES.** A court may order protective services for a person who meets
15 the standards in this subsection. A petition for protective services for an individual shall allege
16 that the individual satisfies both of the following criteria:

17 (a) Has been determined to be incompetent by a circuit court or is a minor who is alleged
18 to be developmentally disabled and on whose behalf a petition for a guardianship has been
19 submitted.

20 (b) As a result of developmental disabilities, degenerative brain disorder, serious and
21 persistent mental illness, or other like incapacities, will incur a substantial risk of physical
22 harm or deterioration or will present a substantial risk of physical harm to others if protective
23 services are not provided.

24 **SECTION 71.** 55.09 of the statutes is created to read: