



State of Wisconsin
2003 - 2004 LEGISLATURE

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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Not for use;
committee approved
WCS 0220/2;
this version
is based on
WCS 0220/1

1 AN ACT *to repeal* 55.01 (3), 55.04 (1) to (3), 55.05 (2) (d), 880.01 (7m), 880.07 (1m),
2 880.33 (4m), 880.33 (4r) and 880.34 (6); *to renumber* 51.40 (2) (b) 2. a., b., c.,
3 and d., 55.05 (5) (title) and (a), 55.05 (5) (b) 1., 55.05 (5) (c) 1., 55.05 (5) (d), 55.06
4 (10) (a) 2., 55.06 (12), 55.06 (16), 55.06 (17), 55.07 and 880.24 (3) (a) 4.; *to*
5 *renumber and amend* 51.40 (2) (f), 55.03, 55.04 (4), 55.05 (4) (title) and (a),
6 55.05 (4) (b) and (c), 55.05 (5) (b) 2., 55.05 (5) (c), 55.05 (5) (c) 2., 55.05 (5) (c) 3.,
7 55.06 (18) and 880.24 (3) (b); *to amend* 20.435 (2) (gk), 46.27 (11) (b), 46.277 (2)
8 (intro.), 46.278 (2) (a), 49.001 (8), 51.01 (3g), 51.10 (4m) (a) (intro.), 51.10 (8),
9 51.22 (4), 51.40 (2) (intro.), 51.40 (2) (a), 51.40 (2) (b), 51.40 (2) (b) 2., 51.40 (2)
10 (g) 1., 55.001, 55.01 (4), 55.043 (1) (a), 55.043 (1) (a) 1. and 3., 55.043 (1) (b) 1.
11 and 2. a. and b., 55.05 (title), 55.05 (2) (b), 55.05 (3), 880.06 (1), 880.08 (1), 880.24
12 (3) (a) (intro.), 880.331 (4) (a), (b), (d) and (e) and 880.38 (2); *to repeal and*
13 *recreate* 46.275 (4) (b) 1., 51.40 (title), 51.40 (2) (f) (title), 55.02, 55.06, 55.07
14 and 880.06 (2); and *to create* 50.01 (2) (ad), 50.06 (2) (d) (intro.), 51.20 (13) (g)
15 4., 51.40 (1) (em), 51.40 (1) (k), 51.40 (1) (l) and (m), 51.40 (2) (c), 51.40 (2) (f) 2.

1 and 3., 51.40 (2) (g) 6., 55.01 (1d), 55.01 (1v), 55.01 (5m), 55.01 (6) and (6m),
2 55.01 (6p) and (6r), 55.01 (6v), 55.055 (2) (c), 55.055 (3), 55.055 (4), 55.08, 55.09,
3 55.10, 55.11, 55.12, 55.13 (2) and (3), 55.135, 55.14, 55.15, 55.16, 55.17, 55.175,
4 55.18, 55.19, 55.21 (title), 55.22 (title), 851.72 (11), 880.01 (8m), 880.07 (2m),
5 880.33 (2) (f), 880.331 (4) (am), (ar) and (as), 880.331 (4) (dm), (dr) and (ds),
6 880.38 (4) and 977.05 (4) (i) 8. of the statutes; **relating to:** requiring a court to
7 hold a hearing on a petition for protective placement or services within 60 days;
8 responsibility for certain costs related to a petition for protective services or
9 placement; requiring a protective placement petition to be filed when a
10 guardian is appointed for a person residing in a facility licensed for 16 or more
11 beds; certain procedural rights in a hearing for protective placement; the
12 attendance of the person sought to be placed at a hearing on protective
13 placement; specifying the duties of the department of health and family
14 services and county departments in the protective services and protective
15 placement system; specifying the procedures for ordering protective services
16 and emergency protective services; specifying the duties of a guardian ad litem
17 in a proceeding to order protective placement or protective services; transfers
18 from a locked unit to a less restrictive environment; participation of an
19 interested person in a guardianship and protective placement proceeding;
20 permitting the subject of a protective placement proceeding to secure an
21 independent evaluation; involvement of certain health care agents in
22 protective placement proceedings; creating definitions of degenerative brain
23 disorder, protective services, and protective placement; revising the declaration
24 of policy in ch. 55 of the statutes; admissions without court involvement;
25 objections to short-term nursing home admissions; emergency protective

1 placements; annual reviews of protective placements; providing notice of
2 transfers of protective placements; involuntary transfers of protectively placed
3 individuals to treatment facilities, voluntary admissions to treatment
4 facilities, and voluntary receipt of medication by persons who are adjudicated
5 incompetent; authorizing a guardian to consent to involuntary administration
6 of psychotropic medication; ordering involuntary administration of
7 psychotropic medication as a protective service; and authority of a guardian to
8 consent to involuntary administration of other medications and involuntary
9 medical treatment; transfers of protectively placed persons and modification
10 and termination of protective placements and court-ordered protective
11 services; changing the term chronic mental illness to serious and persistent
12 mental illness; requiring counties to establish a policy and requiring a register
13 in probate to file annual statements regarding annual reviews of protective
14 placements; public defender representation in cases involving persons subject
15 to petitions for protective placement or services under ch. 55; consent by a legal
16 representative for participation in the community integration program for
17 residents of state centers; venue, residency, and county of responsibility for
18 certain proceedings under chs. 51, 55, and 880; and annual review of an order
19 authorizing involuntary administration of psychotropic medication

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint Legislative Council's Special Committee on Recodification of Chapter 55.

*Track
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Legal Representative in Medical Assistance Waiver Programs

Current law creates the following medical assistance (MA) waiver programs: s. 46.27 (11), the long-term support community options waiver program; s. 46.275, the community integration program for residents of state centers for the developmentally disabled, also known as the "CIP IA" program; s. 46.277, the community integration program for persons relocated or meeting reimbursable levels of care; and s. 46.278, the community integration program and brain injury waiver program for persons with developmental disabilities, also known as the "CIP IB" program. The department of health and family services (DHFS) is required, pursuant to 42 CFR 441.302 (d), in its waiver application to the federal department of health and human services, to provide assurances that persons served under these waiver programs are given the choice of either institutional or community-based services. If the individual cannot make that choice, it must be made by the person's legal representative. The legal representative is designated in accordance with the laws of the state that is granted the waiver.

Under current law, a guardian must be appointed for an individual who is protectively placed. Although the guardian has authority to make many legal decisions on behalf of the ward, under Wisconsin law the guardian may not make a decision to permanently place a ward in a state center for the developmentally disabled. Under s. 55.06 (9) (a), the circuit court that conducts the hearing on the protective placement decision must make the determination regarding where the ward is placed.

Currently, one of the waiver statutes, s. 46.275 (4) (b) 1., provides that consent for participation in the CIP IA program must be given by the person or the person's guardian, if the person is age 18 or over. That statute also provides, however, that this provision does not limit the authority of the circuit court to order a placement under s. 55.06.

This bill clarifies that, pursuant to 42 CFR 441.302 (d), the person or his or her legal representative must be informed of the alternatives available under the waiver and given a choice whether to participate in the waiver program. For persons over age 18, the legal representative may be the person, the person's guardian or activated power of attorney for health care, or a court. For persons under age 18, the legal representative may be the person's parent, guardian, legal custodian, or a court. If the person is under guardianship and protective placement but the guardian does not consent to participation, the determination to participate is made under ss. 55.07 to 55.12 by the court that ordered protective placement.

Voluntary Admission of an Incompetent Person to an Inpatient Treatment Facility

Under current law, an evaluation that a person is mentally ill, developmentally disabled, alcoholic, or drug dependent and has the potential to benefit from inpatient care, treatment, or therapy is a criterion for voluntary admission to an inpatient treatment facility. An adult who desires admission to an inpatient treatment facility and whose admission is made through the DHFS or through a county department of community programs or developmental disabilities services may be admitted after applying, if the treatment director of the facility (or, if appropriate, the director of a center for the developmentally disabled) and the county department approve. An adult who desires admission to a state inpatient treatment facility may be admitted with the approval of the treatment facility director and the director of the appropriate county department. If the admission is approved in either of these ways, an adult may also be admitted to an inpatient treatment facility if he or she applies in writing or if the facility physician advises the person of certain rights, responsibilities, benefits, and risks of admission. If an admitted person does not sign a voluntary admission application within seven days after admission, a hearing is held to determine whether the patient must remain as a voluntary patient.

Under current law, an adult for whom a guardian of the person has been appointed after an adjudication of incompetence may be voluntarily admitted to an inpatient treatment facility only if the guardian and the ward consent.

This bill also authorizes the voluntary admission to an inpatient treatment facility of an adult who has been adjudicated incompetent if his or her guardian consents to the admission and if the procedures requiring an explanation by a physician of the rights, responsibilities, risks, and benefits of admission and requiring a hearing after seven days are followed. Further, the bill authorizes voluntary admission of any adult under the procedures described above without also requiring admission through DHFS or a county department or approval of the county department or the treatment facility director.

Involuntary Transfer of a Protectively Placed Individual to an Acute Psychiatric Treatment Facility

Under current mental health laws, an individual who meets one of a number of standards may be detained on an emergency basis and transported for detention of up to 72 hours in a detention facility, an approved public treatment facility, a center for the developmentally disabled, a state treatment facility, or an approved private treatment facility.

If a petition is brought before a court, an individual who is found to meet one of several standards may be involuntarily committed for up to six months and may be subject to subsequent successive orders of commitment of up to one year each. For the involuntary commitment, a detained individual may automatically be appointed an attorney; receives notice of hearings and a copy of the petition and detention order; receives a written statement of his or her right to an attorney, and, if requested more than 48 hours prior to the final hearing, a jury trial; receives written notice of the standard under which he or she may be committed; and receives written notice of the right to a probable cause hearing within 72 hours after arrival at the detaining facility. An individual who is not detained receives written service of the documents and an oral explanation of his or her rights.

Involuntary commitment may not be made unless the court finds, after a hearing, that there is clear and convincing evidence that the individual is mentally ill, a proper subject for treatment, and dangerous. Procedures under the hearing must include the right to an open hearing, the right to request a closed hearing, the right to counsel, the right to present and cross-examine witnesses, and the right to remain silent.

By contrast, under the current protective placement laws, an individual who has been adjudicated incompetent and has been protectively placed may be involuntarily transferred for up to 10 days, by his or her guardian or by court order, to a facility that provides acute psychiatric treatment for the purpose of psychiatric diagnostic procedures under s. 55.06 (9) (d) or may be temporarily transferred for up to 15 days to such a facility for emergency acute psychiatric inpatient treatment under s. 55.06 (9) (e). If the individual's guardian is not notified in advance of this transfer, the facility must provide written notice to the guardian immediately upon transfer and to the court, a county department, or a designated agency within 48 hours. If the guardian, ward, ward's attorney, or another interested person files a petition objecting to this emergency transfer, the court must order a hearing within 96 hours after the filing. The court must notify the ward, guardian, and petitioner of the time and place of the hearing, and a guardian ad litem must be appointed to represent the ward; the petitioner, ward, and guardian have the right to attend and to present and cross-examine witnesses. For both the involuntary and the temporary transfers, any hearing held must consider, among other factors, the best interests of the individual.

Under *State ex rel. Watts v. Combined Community Services*, 122 Wis. 2d 65 (1985), the court found that no rational basis existed for the difference between procedural

protections that are afforded to persons who are involuntarily committed for mental health treatment under the mental health laws and the lack of any procedural protections (other than those that are self-requested) for involuntary transfers for psychiatric diagnostic procedures or acute psychiatric inpatient treatment under the protective placement laws. The court held that the constitutional guarantee of equal protection requires that the procedural requirements for emergency detention and involuntary commitment under the mental health laws must be provided to a protectively placed individual for involuntary transfer of that individual to a mental health facility for treatment.

This bill amends ch. 55 to comply with the court's ruling. The bill eliminates provisions in ch. 55 concerning transfer or temporary transfer of an individual who is protectively placed to a facility providing acute psychiatric treatment and specifies that procedures currently applied to such a transfer are inapplicable. Instead, the bill authorizes applying the mental health laws concerning emergency detention and involuntary commitment to protectively placed persons in appropriate cases. The bill prohibits the involuntary transfer of protectively placed persons to a mental health treatment facility unless standards and procedures under the mental health laws concerning emergency detention or involuntary commitment are applied.

Touch out

Residency, Venue, and County of Responsibility

Current law sets forth criteria to determine which county is responsible for the costs of services provided to an individual under chs. 46, 51, and 55.

The current criteria apply only to persons with a developmental disability or chronic mental illness. The bill replaces the term "chronic mental illness" with "serious and persistent mental illness", to correspond to similar changes elsewhere in the bill. The bill also expands applicability of the criteria to individuals with "degenerative brain disorder" or "another like incapacity".

The current criteria apply only to individuals in state facilities or nursing homes. The bill expands applicability of the criteria to individuals in any facility licensed or registered under ch. 50 of the statutes.

The bill specifies that the criteria apply to individuals receiving court-ordered protective services as well as placement; current law refers only to protective placement.

The bill specifies that for purposes of s. 51.40, "residence" has the meaning specified in s. 49.001 (6): "the voluntary concurrence of physical presence with intent to remain in a place of fixed habitation. Physical presence is prima facie evidence of intent to remain".

The bill further specifies that for purposes of s. 51.40, "voluntary" has the meaning specified in s. 49.001 (8), and amends that definition to be: "according to a person's free choice, if competent, or by choice of a guardian if incompetent, when the person is not subject to a court-ordered placement under ch. 55, or is not placed by an agency having a court-ordered involuntary commitment of the person under ch. 51 and is not involuntarily committed to the department of corrections or the department under ch. 971 or 980".

The bill authorizes the court to make a specific finding of county of residence of a person who is under a court order of commitment under ch. 51 or an order for protective placement or services after notice and an opportunity to be heard has been given to all affected counties and parties, if there is no objection. Notice must be sent to the corporation counsel of each affected county by certified mail. If there is an objection to the proposed finding of a county of residence, the county or a party may request the department to make a determination of county of responsibility. Any transfer of revenue must be suspended until the determination of county of responsibility is final.

Current law sets forth criteria to determine the residency of a person living in a nursing home. The bill specifies that determinations made pursuant to those criteria are presumptions that may be overcome by substantial evidence that clearly establishes residence in another county.

The bill specifies that placement of an individual by a county department or an agency of a county department into a facility outside the jurisdiction of the county does not transfer the individual's legal residency to the county of the facility's location. If a person is present in a county while being a resident of another county and is in need of immediate care, a county of appropriate venue may provide for the immediate needs of a person without being declared the person's county of residence.

The bill specifies that if it is not contrary to the other statutory criteria concerning residency, an individual residing in a facility who is incapable of indicating intent is a resident of the county in which he or she last resided before entering the facility.

Current law provides that a ward in a state facility or nursing home whose parent or sibling serves as his or her guardian is a resident of the guardian's county of residence if the state facility or nursing home is located in that county or if the guardian states in writing that the ward is expected to return to the guardian's county of residence when the purpose of entering the state facility or nursing home has been accomplished or when needed care and services can be obtained in that county.

The bill substantially amends this provision as follows:

1. Amends the title of the provision to "Guardian's authority to declare county of residence".
2. Makes the provisions applicable to all guardians (not just guardians who are a parent or sibling of a ward) of wards in any facility (not just a state facility or nursing home).
3. Provides that if other criteria to determine residency do not apply, a guardian may declare a ward's county of residence to be the county where the ward is physically present if all of the following apply:

The ward's presence in the county is voluntary.

There is no ch. 55 order in effect and the ward is not under an involuntary commitment to the county, other than the county where the ward is physically present, or to the department of corrections.

The ward is living in a place of fixed habitation.

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

The bill also provides that a guardian may, for good cause shown, if in the ward's best interests, clarify or change a ward's county of residence by filing with the probate court having jurisdiction of the guardianship and protective placement a written statement declaring the ward's domiciliary intent, subject to court approval, with notice and opportunity to appear by potentially affected counties and parties.

Current law provides a procedure for the department to make a determination of county of responsibility of an individual upon request. The bill specifies that any pending motion for change of venue shall be stayed until the department's determination is final. The bill also expands notice requirements pertaining to the residency determination procedure.

The bill provides that the county found to be responsible for providing services ordered under ch. 46, 51, or 55 to an individual must reimburse any other county that

provided services to the individual for all services provided to the individual beginning on the date of the initial order under ch. 46, 51, or 55. Full reimbursement by the responsible county must be made within 120 days of the department's responsibility determination, or of the outcome of any appeal by the department's determination that is brought under ch. 227, or on a date or pursuant to a schedule of two or more payments agreed to by both counties.

The bill specifies that to be eligible for protective placement or services, a person must be a resident of Wisconsin or be present in Wisconsin having a need for protective placement or services until such time as appropriate protective services can be established in the person's place of residence.

Current law specifies that a petition under ch. 55 must be filed in the county of residence of the person sought to be protected. The bill provides that the petition may be filed in the county in which the person sought to be protected is physically present under extraordinary circumstances requiring medical aid or the prevention of harm to the person or others.

The bill provides that the court in which a petition under ch. 55 or 880 is filed must determine venue. The court must direct that proper notice be given to any potentially responsible or affected county. After all potentially responsible or affected counties and parties have been given an opportunity to be heard, if it is determined that venue lies in another county, the court must order the entire record certified to the proper court. A court in which a subsequent petition is filed must, upon being satisfied of an earlier filing in another court, summarily dismiss such petition. If any county or party objects to the court's finding of venue, the issue must be referred to the department and the department must make a determination of county of responsibility pursuant to the procedure under current law. The court must suspend ruling on the motion for change of venue until the department's determination is final.

The bill provides that the county department under s. 51.42 or 51.437 to which an individual is involuntarily committed for treatment under ch. 51 retains responsibility for the person when the person voluntarily moves to another county until venue for the person is transferred to the county where the person is residing or until the person is no longer a proper subject of continued commitment.

The bill specifies that the residence of a person who is committed under ch. 51 and who is placed in a facility in another county by a county developmental disabilities board does not transfer to the county of the facility's location while the person is under commitment.

Definition and Terminology Changes

Current law, under s. 55.01 (3), defines "infirmities of aging" as "organic brain damage caused by advanced age or other physical degeneration in connection therewith to the extent that the person so afflicted is substantially impaired in his or her ability to adequately provide for his or her care or custody". This bill replaces the definition of "infirmities of aging" with a definition of "degenerative brain disorder". This definition is considered to be a more accurate reference to the types of organic brain disorders such as Alzheimer's disease and Parkinson's disease, which are not necessarily caused by the aging process.

Current law does not define "protective services" or "protective placement". This bill creates definitions of "protective services" and "protective placement".

Under current law, certain persons with chronic mental illness may be eligible for protective placement or services under ch. 55. The term "chronic mental illness" is defined in s. 51.01 (3g) as a mental illness which is severe in degree and persistent in duration, which causes a substantially diminished level of functioning in the primary

aspects of daily living and an inability to cope with the ordinary demands of life, which may lead to an inability to maintain stable adjustment and independent functioning without long-term treatment and support and which may be of lifelong duration. Under current law, "chronic mental illness" includes schizophrenia as well as a wide spectrum of psychotic and other severely disabling psychiatric diagnostic categories, but does not include infirmities of aging or a primary diagnosis of mental retardation or of alcohol or drug dependence. The term is not defined in ch. 55, although it is used in that chapter.

This bill changes the term "chronic mental illness" in ch. 51 to "serious and persistent mental illness" to reflect updated terminology. It also creates a definition of the term in ch. 55 by cross-referencing the definition in s. 51.01 (3g).

Under current law, s. 55.001, the declaration of policy to ch. 55, refers to persons with "infirmities of aging, chronic mental illness, mental retardation, other developmental disabilities, or like incapacities incurred at any age" who are in need of protective services.

This bill revises some of the terminology in s. 55.001 by doing the following:

1. Deleting the term "infirmities of aging" and replacing it with the newly created term "degenerative brain disorders".
2. Deleting the outdated term "mental retardation". Persons who have cognitive disabilities are encompassed in the term "developmental disabilities".
3. Inserting references to protective placement, in addition to the current references to protective services.
4. Deleting the term "chronic mental retardation" and replacing it with "serious and persistent mental illness".

DHFS and County Responsibilities in Ch. 55 System

Current law (s. 55.02) requires the DHFS to establish a statewide system of protective services, in accordance with rules promulgated by the department. This statutory section refers to the department cooperating with the various types of county departments to develop a coordinated system of services.

Current law (s. 55.04) also requires the DHFS to administer specifically enumerated protective services, as well as evaluate, monitor, and provide protective placements.

This bill repeals and recreates s. 55.02 and repeals s. 55.04. The newly created s. 55.02 revises and combines the 2 statutes, ss. 55.02 and 55.04, to more accurately portray the department's role in cooperating with county departments in operating the protective services and placement system, and the department's role in monitoring and supervising the system. This new section also more accurately portrays the county department's primary role in providing protective services and protective placement in Wisconsin. The bill also repeals the specific listing of types of protective services and creates a new definition of "protective services".

Admissions Without Court Involvement

Current law provides for certain admissions of persons who are under guardianship to certain facilities without court involvement. One type of admission without court involvement that is currently permitted is the admission of a person to a nursing home, if the person is admitted directly from a hospital inpatient unit for recuperative care for a period not to exceed 3 months, unless the hospital admission was for psychiatric care. Prior to providing consent to the admission, the guardian of the person to be admitted must review the ward's right to the least restrictive residential

environment and consent only to admission to a nursing home that implements those rights. Following the 3-month period, a placement proceeding under s. 55.06 is required.

This bill does the following:

1. Amends current law to permit a guardian to consent to a ward's admission to a nursing home, or other facility for which protective placement is required, for a period not to exceed 60 days. This change permits a ward to be admitted for a short-term nursing home stay without having to be admitted from a hospital setting. However, the person must be in need of recuperative care or be unable to provide for his or her own care or safety so as to create a serious risk of substantial harm to oneself or others. The placement may be extended for an additional 60 days if a placement proceeding under ch. 55 has been commenced, or for an additional 30 days for the purpose of allowing the initiation of discharge planning for the person if no placement proceeding under ch. 55 has been commenced. Placement under this amended provision is not permitted for a person with a primary diagnosis of mental illness or developmental disability.

2. Creates a new provision that allows a guardian of a person under a guardianship that was imposed in another state to consent to admissions under current s. 55.05 (5) (b) (which is renumbered to s. 55.055 (2) in the bill) if the ward is currently a resident of Wisconsin, and if a petition for guardianship and protective placement is filed in Wisconsin within 60 days of the person's admission.

3. Creates a new provision that allows a guardian of a person who has been found incompetent in, and resides in, another state to consent to admissions under current s. 55.05 (5) (b) (which is renumbered to s. 55.055 (2) in the bill) if the guardian intends to move the ward to Wisconsin within 30 days of the consent to the admission. A petition for guardianship and protective placement must be filed in Wisconsin within 60 days of the person's admission to the Wisconsin facility.

Under current law, s. 50.06 of the statutes creates a procedure for a short-term admission of an incapacitated person to a nursing home from a hospital without having a guardianship or protective placement in place. Admissions are authorized based on the consent of a statutorily specified person, for a time period not to exceed 60 days. The admission may be extended once for up to 30 days for the purpose of allowing discharge planning for the person to take place.

This bill creates a new provision in s. 50.06 that addresses a situation where the incapacitated person admitted to the nursing home protests the admission. In that situation, the person in charge of the facility must immediately notify the designated protective placement agency for the county in which the person is living. Representatives of that agency must visit the person as soon as possible, but not later than 72 hours after notification, and do the following:

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

2. Attempt to have the person released within 72 hours if the protest is not withdrawn and necessary elements of s. 55.06 (2) or (11) (renumbered to s. 55.07 in the bill) are not present and provide assistance in identifying appropriate alternative living arrangements.

3. Comply with s. 55.06 (11) (renumbered to s. 55.135), relating to emergency protective placement, if all elements are present and emergency placement in that facility or another facility is necessary or file a petition for protective placement under s. 55.06 (2) (renumbered to s. 55.07). The court, with the permission of the facility, may order the person to remain in the facility pending the outcome of the protective placement proceedings.

Protective Placement Petition Required When Guardianship Petition Filed for Resident of a Nursing Home

The bill codifies the decision of the Wisconsin Supreme Court in *Agnes T. v. Milwaukee County*, 189 Wis. 2d 520, 525 N.W.2d 268 (1995). In that case, the court stated that a guardian may not consent to the continued residence of a person in a nursing home licensed for 16 or more beds without a protective placement order and that upon appointing a guardian for an incompetent person in a nursing home licensed for 16 or more beds, the court must hold a protective placement hearing. The court specified that, when making a placement determination for such a person, a court may consider whether moving the person would create a serious risk of harm to that person.

This bill codifies the *Agnes T.* decision as follows:

1. Requiring, in newly created s. 880.07 (2m), that whenever a petition for guardianship on the ground of incompetency is filed with respect to a person residing in a facility licensed for 16 or more beds, a petition for protective placement of the person must also be filed.
2. Specifying that the person may continue to reside in the facility until the court issues a decision on the petition for protective placement of the person.
3. Authorizing a court, when protectively placing a person residing in a facility licensed for 16 or more beds, to consider whether moving the person would create a serious risk of harm to that person.

Fees and Costs of Petition Under Ch. 55

Chapter 55 does not currently specify who is responsible for the attorney fees and costs of a person who files a petition for protective services or placement under s. 55.06 (2). However, s. 880.24 (3) specifies that under certain circumstances, the court must award payment of reasonable attorney fees and costs to a person who petitions for appointment of a guardian and protective placement of the ward if a guardian is appointed.

The bill adds to ch. 55 similar provisions requiring the court to award payment of reasonable attorney fees and costs to a person who petitions for protective services or placement. These provisions apply when a petition for protective placement or services is brought independently of or at the same time as a petition for guardianship.

The bill creates a new provision which specifies that the court must award, from the estate of the person sought to be placed, the reasonable attorney fees and costs of a person who petitions for protective placement of the person unless the court finds it would be inequitable to do so. In determining whether it would be inequitable to award payment of costs and fees, the court must consider all of the following:

1. The petitioner's interest in the matter, including any conflict of interest that the petitioner may have had in pursuing the guardianship or protective placement.
2. The ability of the ward's estate to pay the petitioner's reasonable attorney fees and costs.
3. Whether the petition was contested and, if so, the nature of the contest.
4. Whether the person sought to be protectively placed had executed a durable power of attorney under s. 243.07 or a power of attorney for health care under s. 155.05 or had provided advance consent to nursing home placement or engaged in other advance planning to avoid protective placement.
5. Any other factors that the court considers to be relevant.

With respect to guardianships under ch. 880, current law provides that if the court finds that a ward had executed a durable power of attorney or a power of attorney for health care or engaged in other advance planning to avoid guardianship, the court may not award payment of the petitioner's attorney fees and costs from the ward's estate. The bill provides, instead, that the court may consider these items as factors in determining whether to award the payment.

Time Limit for Protective Placement Hearing

The bill specifies that a court must hold a hearing on any petition for protective placement within 60 days after it is filed. The bill provides that the court may extend the date for the hearing by up to 45 days if an extension of time is requested by the petitioner, individual sought to be placed or his or her guardian ad litem, or the county department.

Attendance at Hearing of Person Sought to be Protected

Under current s. 55.06 (5), a person sought to be protectively placed is presumed able to attend the hearing on protective placement unless, after a personal interview, the guardian ad litem certifies to the court that the person is unable to attend. Chapter 55 does not require the court to hold the hearing in the presence of the person sought to be placed if that person is unable to attend the hearing, as is required in ch. 880 for hearings on guardianship.

The bill deletes language stating that the person sought to be protectively placed is presumed to be able to attend the hearing. The bill provides that the person sought to be protected shall be present at the hearing unless, after a personal interview, the guardian ad litem certifies in writing to the court specific reasons why the person is unable to attend or certifies in writing that the person is unwilling to participate or is unable to participate in a meaningful way. The bill also provides that, if the person is unable to attend a hearing because of physical inaccessibility or lack of transportation, the court must hold the hearing in a place where the person may attend, if requested by the person sought to be placed, guardian ad litem, adversary counsel. This provision is similar to provisions which currently exist in ch. 880, relating to appointment of a guardian for a person alleged to be incompetent. The bill specifies, however, that the court is *not* required to hold the hearing in the presence of the person sought to be placed if the guardian ad litem, after a personal interview with the person, certifies in writing to the court that the person is unwilling to participate or unable to participate in a meaningful way.

The bill also amends s. 880.08 (1) relating to the appointment of a guardian in the same way.

Procedural Rights in Ch. 55 Proceedings

Currently, s. 55.06 (6), requires the appointment of a guardian ad litem for a person sought to be protectively placed and states that s. 880.33 (2), which sets forth certain procedural rights and the right to counsel in a guardianship hearing, applies to all hearings under ch. 55 except hearings regarding certain transfers of placement. This bill deletes that cross-reference and instead inserts the language to which it refers to into appropriate sections of ch. 55. The bill makes minor changes to that language necessary to reflect that the rights apply to ch. 55 proceedings rather than guardianship hearings. The bill also replaces the term "county of legal settlement" with the term "county in which the hearing is held", as recommended by the committee.

The provisions in current s. 880.33 (2) that are inserted into ch. 55 by the bill are the following:

1. The right to counsel.

2. The right to a jury trial.
3. The right of the person sought to be placed, his or her attorney and guardian ad litem to present and cross-examine witnesses.
4. The right to a copy of any medical, psychological, social, vocational, or educational evaluation of the person sought to be placed.
5. Provisions requiring the county in which the hearing is held to pay guardian ad litem and attorney fees of the person sought to be placed if the person is indigent.
6. The right of the person sought to be protected to request that the hearing be closed.

The bill retains the requirements in current s. 55.06 (6), relating to the appointment of a guardian ad litem for a person sought to be placed.

Right to an Independent Evaluation in Ch. 55 Proceedings

Under current law, s. 880.33 (2) (b) provides that the individual who is the subject of a guardianship petition, or anyone on the individual's behalf, has the right, at the individual's own expense, or if indigent at the expense of the county where the petition is filed, to secure an independent medical or psychological examination relevant to the issue involved at the hearing on the petition, and to present a report of this independent evaluation or the evaluator's personal testimony as evidence at the hearing.

This bill provides the same right to an independent evaluation to an individual who is the subject of a protective placement proceeding, if such an evaluation has not already been made.

Duties of Guardian ad Litem in Ch. 55 Proceedings

Under current law, protective placement hearings are held as provided under s. 55.06. Under s. 55.06 (5), notice of a petition for protective placement must be served on the individual who is the subject of the petition, as well as several other persons, including the guardian, if one has been appointed. Current law also requires a guardian to be provided a copy of the comprehensive evaluation of the individual who is the subject of the protective placement petition. However, current law does not specify that the guardian must be provided notice of the protective placement hearing. Also, current law does not specify the guardian's rights to participation at the hearing on protective placement.

Current law, under s. 880.331, specifies duties of a guardian ad litem in guardianship proceedings.

This bill specifies that the duties of a guardian ad litem in a guardianship proceeding in s. 880.331 also apply to a guardian ad litem in a protective placement proceeding. This bill also creates additional duties of a guardian ad litem in guardianship and protective placement proceedings. The new duties are: to interview the proposed guardian; to make a recommendation to the court regarding the fitness of the proposed guardian; to interview the guardian, if one has already been appointed, of a subject of a petition for protective placement or court-ordered protective services; to inform the court and the petitioner or the petitioner's counsel, if any, if the proposed ward requests representation by counsel; to attend all court proceedings related to the guardianship; and to notify any guardian of an individual who is the subject of a protective placement proceeding about the hearing on the petition, as well as the right to be present at the hearing, the right to present and cross-examine witnesses, and the right to receive a copy of the evaluations.

Role of Power of Attorney for Health Care in Ch. 55 Proceedings

Under current law, in an incompetency proceeding, if the proposed incompetent has executed a power of attorney for health care under ch. 155, the court must make a finding as to whether the power of attorney for health care instrument should remain in effect. If the court so finds, the court shall so order and shall limit the power of the guardian to make those health care decisions for the ward that are to be made by the health care agent under the terms of the power of attorney for health care instrument, unless the guardian is the health care agent under those terms.

Currently, when reference is made to a guardian in ch. 55, no reference is made to a power of attorney for health care, where a court, in an incompetency proceeding, has found that the power of attorney should remain in effect for certain health care decisions.

This bill clarifies the role of the power of attorney for health care in ch. 55 proceedings. It provides that, if a court has made a determination under s. 880.33 (8) (b) that a power of attorney for health care under ch. 155 should remain in effect, and the courts limits the power of the guardian to make health care decisions, the provisions of ch. 55 that confer upon the guardian the rights to notice and participation, and the authority to act, in a proceeding under ch. 55, shall also apply to the health care agent.

Rights of “Interested Persons” in Ch. 55 Proceedings

Under current law, under s. 55.01 (4), an “interested person” is defined as “any adult relative or friend of a person to be protected under this subchapter; or any official or representative of a public or private agency, corporation or association concerned with the person’s welfare”.

An interested person is given the opportunity, in guardianship and protective placement proceedings, to participate in many ways, including: requesting a different location for the hearing if the proposed ward is unable to attend due to physical inaccessibility or lack of transportation; complaining to the court if they suspect fraudulent activity by the guardian; and requesting an independent medical or psychological examination of the proposed ward.

This bill codifies the Wisconsin Court of Appeals’ decision in *Coston v. Joseph P.*, 586 N.W.2d 52 (Ct. App. 1998), by providing that an interested person may participate in the hearing on the guardianship and protective placement petition at the court’s discretion. In that case, 2 interested persons, who were relatives of the subject of the petition, asserted that they had a right to participate in the hearing. The court disagreed, saying that the rights of interested persons to participate in guardianship and protective placement hearings are specific and limited. However, the court also stated that circuit courts are not foreclosed from allowing for the participation of interested persons, if the court decided to exercise its discretion to allow interested persons to participate to the extent it would deem appropriate.

Procedures for Protective Services Order

Current law provides that the court may order protective services for an individual for whom a determination of incompetency is made if the individual entitled to the protective services will otherwise incur a substantial risk of physical harm or deterioration or will present a substantial risk of physical harm to others. However, no procedures are specified in statute for obtaining a court order for protective services.

This bill includes court-ordered protective services under the revised procedural provisions for protective placement.

Procedures for Emergency Protective Services

Under current law, s. 55.05 (4) provides that emergency protective services may be provided for not more than 72 hours when there is reason to believe that if the services

are not provided, the person entitled to the services or others will incur a substantial risk of serious physical harm. No procedures are specified in the statute for obtaining a court order for emergency protective services.

This bill establishes procedures for obtaining emergency protective services. Under the bill, if the provider of the emergency protective services has reason to believe that protective services must continue to be provided beyond the 72-hour period, a petition for court-ordered protective services may be filed. If a petition is filed, a preliminary hearing must be held within 72 hours, excluding Saturdays, Sundays, and holidays, to establish probable cause to believe that the grounds for court-ordered protective services are present. If probable cause is found, the court may order protective services for up to 60 days, pending a hearing on the petition for court-ordered protective services.

Emergency Protective Placements

This bill makes several changes to the law governing emergency protective placements.

Current law provides that a sheriff, police officer, fire fighter, guardian, or authorized representative of a county board or an agency designated by a county board may make an emergency protective placement of an individual if, *based on their personal observation*, it appears probable that the individual meets the criteria for emergency placement. The bill provides that emergency placement may be made by the persons listed above *based on a reliable report made to them* as well as based on their personal observation.

Current law provides that an individual may be protectively placed on an emergency basis if it appears probable that the individual *will suffer irreparable injury or death or will present a substantial risk of serious physical harm to others* as a result of developmental disabilities, infirmities of aging, chronic mental illness, or other like incapacities. The bill amends this language to provide that an individual described above may be protectively placed on an emergency basis if it appears probable that the individual *is so totally incapable of providing for his or her own care or custody as to create a substantial risk of serious physical harm to himself or herself or others* as a result of developmental disabilities, degenerative brain disorder, serious and persistent mental illness, or other like incapacities if not immediately placed. This new language is the same as current s. 55.06 (2) (c), which sets forth one of the standards which must be met for protective placement on a non-emergency basis.

Current law provides that a person may be protectively placed on an emergency basis in an appropriate medical or protective placement facility. The bill provides that emergency protective placement may also be made to a hospital.

The bill requires each county department to designate at least one appropriate medical facility, hospital, or other protective placement facility as an intake facility for the purpose of emergency protective placements.

Voluntary Administration of Medication, Including Psychotropic Medication, to an Incompetent Person

Under current laws relating to guardianship, a petition for guardianship of a person who is alleged to be incompetent may further allege that the person is not competent to refuse psychotropic medication and that the psychotropic medication is, under several criteria, necessary. If the petition contains these allegations, and if, at hearing, the court finds that the person is not competent to refuse psychotropic medication and that the medication is necessary, the court must appoint a guardian to consent to or refuse the medication on behalf of the person and order development of a treatment plan, including psychotropic medication, for the person. If the person

substantially fails to comply with the treatment plan and if certain conditions are met, the court may authorize the person's guardian to consent to the forcible administration of psychotropic medication to the person.

This bill defines "psychotropic medication" and authorizes the guardian of a nonprotesting ward with whom the guardian has discussed the receipt of medication, including psychotropic medication, to give an informed consent to the voluntary receipt by the ward of the medication, without the necessity of court procedures for approval.

Involuntary Administration of Psychotropic Medication

This bill provides that a guardian may be authorized to consent to involuntary administration of psychotropic medication to a ward and involuntary administration of psychotropic medication as a protective service if certain requirements are met. The bill also specifies that psychotropic medication may not be involuntarily administered to a person who has been protectively placed except by the procedure created in the bill.

In the bill, "psychotropic medication" is defined as a prescription drug that is used to treat or manage a psychiatric symptom or challenging behavior. "Involuntary administration of psychotropic medication" is defined to include all of the following: placing psychotropic medication in a person's food or drink with knowledge that the person protests receipt of the psychotropic medication; forcibly restraining a person to enable administration of psychotropic medication; or requiring a person to take psychotropic medication as a condition to receiving privileges or benefits.

Petition

The bill requires a petition for involuntary administration of psychotropic medication as a protective service to meet all requirements for a protective services petition under ch. 55 and in addition requires the petition to allege all of the following:

1. A physician has prescribed psychotropic medication for the person.
2. The person is not competent to refuse psychotropic medication. "Not competent to refuse psychotropic medication" means that as a result of developmental disabilities, degenerative brain disorder, serious and persistent mental illness, or other like incapacities, and after the advantages and disadvantages of and alternatives to accepting the particular psychotropic medication have been explained to the individual, the individual is incapable of expressing an understanding of the advantages and disadvantages of accepting treatment and the alternatives to accepting treatment or the individual is substantially incapable of applying an understanding of the advantages, disadvantages, and alternatives to treatment to his or her medical or psychiatric condition in order to make an informed choice as to whether to accept or refuse psychotropic medication.
3. The person has refused to take psychotropic medication voluntarily or attempting to administer psychotropic medications to the person voluntarily is not feasible or is not in the person's best interests. If the petition alleges that the person has refused to take psychotropic medication voluntarily, the petition must identify the reasons for the person's refusal. The petition must also contain evidence showing that a reasonable number of documented attempts to administer psychotropic medication voluntarily using appropriate interventions that could reasonably be expected to increase the person's willingness to take the medication voluntarily, have been made and have been unsuccessful. If the petition alleges that attempting to administer psychotropic medications to the person voluntarily is not feasible or is not in the best interests of the person, the petition must identify specific reasons supporting that allegation.
4. The person's condition for which psychotropic medication has been prescribed is likely to be improved by psychotropic medication and the person is likely to respond positively to psychotropic medication.

5. That unless psychotropic medication is administered involuntarily, the person will incur an immediate or imminent substantial probability of physical harm, impairment, injury, or debilitation or will present a substantial probability of physical harm to others. The substantial probability of physical harm, impairment, injury, or debilitation may be shown either by evidence that the person has a history of at least 2 episodes, one of which has occurred within the previous 24 months, that indicate a pattern of overt activity, attempts, threats to act, or omissions that resulted from the person's failure to participate in treatment, including psychotropic medication, and that resulted in a finding of probable cause for commitment under s. 51.20 (7), a settlement agreement approved by a court under s. 51.20 (8) (bg) or commitment ordered under s. 51.20 (13), or by evidence that the subject individual meets one of the dangerousness criteria set forth in the mental health law, in s. 51.20 (1) (a) 2. a. through e.

The bill requires a petition for involuntary administration of psychotropic medication to include a written statement signed by a physician who has personal knowledge of the person that provides general clinical information regarding the appropriate use of psychotropic medication for the person's condition and specific data indicates that the person's current symptoms necessitate the use of the psychotropic medication.

The bill specifies that the corporation counsel shall be provided notice of any petition for involuntary administration of psychotropic medication and may assist in the proceedings on any such petition.

Guardian ad Litem Report

The bill requires the guardian ad litem appointed for a person who is the subject of a petition for involuntary administration of psychotropic medication as a protective service to report to the court his or her conclusion as to whether the person is competent to refuse psychotropic medication, whether the allegations in the petition pertaining to the person's dangerousness are true, whether the person refuses to take the psychotropic medication voluntarily, and whether the involuntary administration of the psychotropic medication is in the best interest of the person.

Appointment of Legal Counsel

The bill requires the court to appoint legal counsel on behalf of a person who is the subject of a petition for involuntary administration of psychotropic medication as a protective service.

Independent Evaluation

The bill provides that if requested by the person who is the subject of the petition, or anyone on his or her behalf, the person has the right to an independent medical or psychological evaluation relevant to the person's competency to refuse psychotropic medication, whether the allegations in the petition pertaining to the person's dangerousness are true, and whether involuntary administration of psychotropic medication is in the best interest of the person. The person has the right to present a report of the independent evaluation or the evaluator's personal testimony as evidence at the hearing. The evaluation shall be performed at the expense of the person who is the subject of the petition unless the person is indigent. If the person is indigent, the evaluation shall be performed at the expense of the county where the petition is filed.

Court Order

The bill provides that the court may authorize a guardian to consent to involuntary administration of psychotropic medication to a ward and may order involuntary administration of psychotropic medication to the person as a protective service, with the guardian's consent, if the court or jury finds by clear and convincing evidence that the

requirements for involuntary administration of psychotropic medication established in the bill have been met, psychotropic medication is necessary for treating the specific condition outlined in the physician's statement and all other requirements for ordering protective services under ch. 55 have been met.

The bill specifies that if the court issues an order authorizing a guardian to consent to involuntary administration of psychotropic medications, the order must specify the methods of involuntary administration of psychotropic medication to which the guardian may consent. An order authorizing the forcible restraint of a person must require a registered nurse, a licensed practical nurse, a physician or a physician's assistant to be present at all times that psychotropic medication is administered in this manner. An order must require the person or facility administering psychotropic medication to maintain records noting each instance of involuntary administration of psychotropic medication that identify the methods of administration utilized.

The court must also order development of a treatment plan that includes a plan for involuntary administration of psychotropic medication to the person with consent of the guardian. If the person resides in a hospital or nursing home, the hospital or nursing home must develop the plan; otherwise the county department or an agency designated by it must develop the plan. The court must review the plan and approve or disapprove the plan. The court must order the county department or an agency designated by it to ensure that psychotropic medication is administered in accordance with the treatment plan.

Enforcement

The bill specifies that if a person who is subject to an order for involuntary administration of psychotropic medication refuses to take the medication and it is necessary for the person to be transported to an appropriate facility so that the person may be forcibly restrained for administration, the corporation counsel may file a statement of noncompliance with the court. The statement must be signed by the guardian and the director (or designee) of the county department or the agency designated by it to develop and administer the treatment plan. Upon receipt of the statement, the court may issue an order authorizing the sheriff or other law enforcement agency to take the person into custody and transport the person to an appropriate facility for administration of psychotropic medication using forcible restraint, with consent of the guardian.

Annual Review of Order Authorizing Involuntary Administration of Psychotropic Medication

The bill specifies an order authorizing a guardian to consent to involuntary administration of psychotropic medication as a protective service must be reviewed by the court annually under generally the same procedure that protective placements are reviewed ("Watts" reviews).

County Department Review and Report

The bill requires the county department of the county of residence of any individual who is subject to an order authorizing involuntary administration of psychotropic medication as a protective service 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 termination of the order and the court provides a full due process hearing or a full due process hearing is provided pursuant to a petition for termination of the order, 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.

If the individual is, or subsequently becomes, subject to an order for protective placement, the annual review shall be conducted simultaneously with the annual review of the individual's protective placement.

The county of residence of an individual who is subject to an order authorizing involuntary administration of psychotropic medication and 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 that are relevant to the continued need for the order for involuntary administration of psychotropic medication. 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 a facility in which the individual resides or from which the individual receives services.

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

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

The report must contain information on all of the following:

1. Whether the individual continues to meet the standards for protective services.
2. Whether the individual is competent to refuse psychotropic medication as set forth in s. 55.06 (9) (am) 3. b.
3. Whether the individual continues to refuse to take psychotropic medication voluntarily or attempting to administer psychotropic medication to the individual voluntarily is not in the best interests of the individual as set forth in s. 55.06 (9) (am) 3. c.
4. Whether the individual's condition for which psychotropic medication has been prescribed has been improved by psychotropic medication and the person has responded positively to psychotropic medication.
5. Whether the individual continues to meet the dangerousness criteria set forth in s. 55.06 (9) (am) 3. e.
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 any facility at which the individual is placed, receives services or at which psychotropic medication is administered to the individual which are relevant to the continued need for the order.

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 reports on the individual's condition that are relevant to the continued need for involuntary administration of psychotropic medication.
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 the order for involuntary administration of psychotropic medication.
- 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 termination of the order 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 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 the order. 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 termination of the order.
 - 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 issues an order for involuntary administration of psychotropic medication to, not more than 12 months after the initial order 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), stats. 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 that are relevant to the issue of the continued need for the order. 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 the order.

c. The report of the guardian ad litem indicates that the individual objects to the order.

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

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,
2 is amended to read:

3 20.435 (2) (gk) *Institutional operations and charges.* The amounts in the
4 schedule for care, other than under s. 51.06 (1r), provided by the centers for the
5 developmentally disabled to reimburse the cost of providing the services and to remit
6 any credit balances to county departments that occur on and after July 1, 1978, in
7 accordance with s. 51.437 (4rm) (c); for care, other than under s. 46.043, provided by
8 the mental health institutes, to reimburse the cost of providing the services and to
9 remit any credit balances to county departments that occur on and after
10 January 1, 1979, in accordance with s. 51.42 (3) (as) 2.; for maintenance of
11 state-owned housing at centers for the developmentally disabled and mental health
12 institutes; for repair or replacement of property damaged at the mental health
13 institutes or at centers for the developmentally disabled; and for reimbursing the
14 total cost of using, producing and providing services, products and care. All moneys
15 received as payments from medical assistance on and after August 1, 1978; as
16 payments from all other sources including other payments under s. 46.10 and
17 payments under s. 51.437 (4rm) (c) received on and after July 1, 1978; as medical
18 assistance payments, other payments under s. 46.10 and payments under s. 51.42
19 (3) (as) 2. received on and after January 1, 1979; as payments for the rental of
20 state-owned housing and other institutional facilities at centers for the

1 developmentally disabled and mental health institutes; for the sale of electricity,
 2 steam or chilled water; as payments in restitution of property damaged at the mental
 3 health institutes or at centers for the developmentally disabled; for the sale of
 4 surplus property, including vehicles, at the mental health institutes or at centers for
 5 the developmentally disabled; and for other services, products and care shall be
 6 credited to this appropriation, except that any payment under s. 46.10 received for
 7 the care or treatment of patients admitted under s. 51.10, 51.15 or 51.20 for which
 8 the state is liable under s. 51.05 (3), ~~of patients admitted under s. 55.06 (9) (d) or (e)~~
 9 ~~for which the state is liable under s. 55.05 (1),~~ of forensic patients committed under
 10 chapter 971 or 975, admitted under chapter 975 or transferred under s. 51.35 (3) or
 11 of patients transferred from a state prison under s. 51.37 (5), to Mendota mental
 12 health institute or Winnebago mental health institute shall be treated as general
 13 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.

INSERT 31-13

14 SECTION 2. 46.27 (11) (b) of the statutes is amended to read:
 15 46.27 (11) (b) The department shall include all assurances required under 42
 16 USC 1396n (c) in the implementation of the waiver. The department shall ensure,
 17 pursuant to 42 CFR 441.302(d), that the recipient or his or her legal representative
 18 is informed of the alternatives available under the waiver and is given a choice
 19 whether to participate in the wavier program. The legal representative may be the
 20 person's parent, guardian, legal custodian, or a court ~~if the person is under age 18~~
 21 or the person's guardian, activated power of attorney for health care, ~~or the court if~~
 22 ~~the person is age 18 or over.~~ If the person is under guardianship and subject to
 23 protective placement under ss. 55.07 to 55.12 but the guardian does not consent to

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1 participation, the determination to participate in the program shall be made under
 2 ss. 55.07 to 55.12 by the court that ordered protective placement. If the person is
 3 under age 18 and is not subject to ss. 55.07 to 55.12 but the person's parent or
 4 guardian does not consent to participation, the determination to participate in the
 5 program shall be made under 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~~ and given the choice as to whether to participate. Also, describes who may act as a legal representative.

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

7 46.275 (4) (b) 1. Pursuant to 42 CFR 441.302 (d), ~~that~~ the recipient or his or her
 8 legal representative is informed of the alternatives available under the waiver, and
 9 is given a choice whether to participate in the waiver program. The legal
 10 representative may be the ~~person's~~ recipient's parent, guardian, legal custodian, or ~~the~~ a court ~~if~~
 11 ~~the person is under age 18~~ or the recipient's guardian, activated power of attorney for
 12 health care, or a court ~~if the person is age 18 or over~~. If the person is under
 13 guardianship and subject to protective placement under ss. 55.07 to 55.12 but the
 14 guardian does not consent to participation, the determination to participate in the
 15 program shall be made under ss. 55.07 to 55.12 by the court that ordered protective
 16 placement. If the person is under age 18 and is not subject to ss. 55.07 to 55.12 but
 17 the person's parent or guardian does not consent to participation, the determination
 18 to participate in the program shall be made under subch. VI of ch. 48 or subch. VI
 19 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~~ and given the choice as to whether to participate. Also, describes who may act as a legal representative.

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

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1 46.277 (2) DEPARTMENTAL POWERS AND DUTIES. (intro.) The department may
 2 request a waiver from the secretary of the federal department of health and human
 3 services, under 42 USC 1396n (c), authorizing the department to serve medical
 4 assistance recipients, who meet the level of care requirements for medical assistance
 5 reimbursement in a skilled nursing facility or an intermediate care facility, in their
 6 communities by providing home or community-based services as part of medical
 7 assistance. The number of persons for whom the waiver is requested may not exceed
 8 the number of nursing home beds that are delicensed as part of a plan submitted by
 9 the facility and approved by the department. If the department requests a waiver,
 10 it shall include all assurances required under 42 USC 1396n (c) (2) in its request.
 11 The department shall ensure, pursuant to 42 CFR 441.302 (d), that the recipient or
 12 his or her legal representative is informed of the alternatives available under the
 13 waiver and is given a choice whether to participate in the waiver program. The legal
 14 representative may be the person's parent, guardian, legal custodian, or a court if the
 15 person is under age 18 or the person's guardian, activated power of attorney for
 16 health care, or a court if the person is age 18 or over. If the person is under
 17 guardianship and subject to protective placement under ss. 55.07 to 55.12 but the
 18 guardian does not consent to participation, the determination to participate in the
 19 program shall be made under ss. 55.07 to 55.12 by the court that ordered protective
 20 placement. If the person is under age 18 and is not subject to ss. 55.07 to 55.12 but
 21 the person's parent or guardian does not consent to participation, the determination
 22 to participate in the program shall be made under subch. VI of ch. 48 or subch. VI
 23 of ch. 938. If the department receives this waiver, it may request one or more 3-year
 24 extensions of the waiver under 42 USC 1396n (c) and shall perform the following
 25 duties:

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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.

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executed by the recipient

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

2 46.278 (2) (a) The department may request one or more waivers from the
3 secretary of the federal department of health and human services, under 42 USC
4 1396n (c), authorizing the department to serve medical assistance recipients, who
5 meet the level of care requirements for medical assistance reimbursement in an
6 intermediate care facility for the mentally retarded or in a brain injury rehabilitation
7 facility, in their communities by providing home or community-based services as
8 part of medical assistance. If the department requests a waiver, it shall include all
9 assurances required under 42 USC 1396n (c) (2) in its request. The department shall
10 ensure, pursuant to 42 CFR 441.302 (d), that the recipient or his or her legal
11 representative is informed of the alternatives available under the wavier and is
12 given a choice whether to participate in the waiver program. The legal
13 representative may be the person's parent, guardian, legal custodian, or a court if the
14 person is under age 18 or the person's guardian, activated power of attorney for
15 health care, or a court if the person is age 18 or over. If the person is under
16 guardianship and subject to protective placement under ss. 55.07 to 55.12 but the
17 guardian does not consent to participation, the determination to participate in the
18 program shall be made under ss. 55.07 to 55.12 by the court that ordered protective
19 placement. If the person is under age 18 and is not subject to ss. 55.07 to 55.12 but
20 the person's parent or guardian does not consent to participation, the determination
21 to participate in the program shall be made under subch. VI of ch. 48 or subch. VI
22 of ch. 938.

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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.

INSERT
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if incompetent

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

unless

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

or

PLAIN TEXT

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35-7

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

50.01 (2) (ad) The department shall promulgate rules that require each facility licensed under this subchapter to provide information necessary for the department to assess the 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.

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

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

incapacitated individual

the

he or she makes

(a)

he or she may be admitted to the facility, but

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

incapacitated individual

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

the individual does not satisfy criteria under

7 3. Comply with s. 55.135 if all elements are present and emergency placement
8 in that facility or another facility is necessary or file a petition for protective
9 placement under s. 55.07. The court, with the permission of the facility, may order
10 the person to remain in the facility pending the outcome of the protective placement
11 proceedings.

the requirements of s. 55.135 (1) are met

14t

re-numbered 51.01 (14t) and

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

13 51.01 (3g) "Chronic Serious and persistent mental illness" means a mental
14 illness which is severe in degree and persistent in duration, which causes a
15 substantially diminished level of functioning in the primary aspects of daily living
16 and an inability to cope with the ordinary demands of life, which may lead to an
17 inability to maintain stable adjustment and independent functioning without
18 long-term treatment and support and which may be of lifelong duration. "Chronic
19 Serious and persistent mental illness" includes schizophrenia as well as a wide
20 spectrum of psychotic and other severely disabling psychiatric diagnostic categories,
21 but does not include ~~infirmities of aging~~ degenerative brain disorder or a primary
22 diagnosis of ~~mental retardation~~ a developmental disability or of alcohol or drug
23 dependence.

INSERT 36-23

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

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

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

6 51.10 (8) An adult for whom a guardian of the person has been appointed under
7 ch. 880 because of the subject's incompetency may be voluntarily admitted to an
8 inpatient treatment facility under this section ~~only~~ if the guardian and the ward
9 consent to ~~such~~ the admission or if the guardian consents and the procedures under
10 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.

INSERT
37-10

11 SECTION 12. 51.20 (13) (g) 4. of the statutes is created to read:
12 51.20 (13) (g) 4. The county department under s. 51.42 or 51.437 to which the
13 individual is committed under par. (a) 3. retains responsibility for the person when
14 the person voluntarily moves to another county until venue for the person is
15 transferred to the county where the person is residing or until the person is no longer
16 a proper subject of continued commitment.

individual

17 SECTION 13. 51.22 (4) of the statutes is amended to read:
18 51.22 (4) If a patient is placed in a facility authorized by a county department
19 under s. 51.42 or s. 51.437 and ~~such~~ placement is outside the jurisdiction of that
20 county department under s. 51.42 or s. 51.437, the placement does not transfer the

the

1 patient's legal residence to the county of the facility's location while ^{the} such patient is
2 under commitment.

INSERT
38-2

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

4 51.40 (title) **Determination of the residence of certain adults for**
5 **purposes of determining county of responsibility.**

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

7 51.40 (1) (em) "Facility" means any facility licensed or registered under ch. 50.

8 SECTION 16. 51.40 (1) (k) ^{im} of the statutes is created to read: ^{given in}

9 51.40 (1) (k) "Relative" has the meaning ^{im} under s. 48.02 (15) and includes the
10 spouse of ^{it} a person. ^{individual's}

11 SECTION 17. 51.40 (1) (l) ^{it} and (m) ^{im} of the statutes are created to read:

12 51.40 (1) (l) "Residence" has the meaning ^{given in} specified under s. 49.001 (6).

13 ^{51.40(1)} (m) "Voluntary" has the meaning ^{SECTION CR: 51.40 (1) (m)} specified under s. 49.001 (8).

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

15 51.40 (2) DETERMINATION OF RESIDENCE. (intro.) ~~For purposes of determining~~
16 ~~responsibility for funding the provision of services under chs. 46, 51 and 55, the~~ The
17 county of residence of individuals an individual aged 18 or older with a
18 developmental disability ~~or chronic, serious and persistent~~ mental illness ~~in state~~
19 facilities ~~or nursing homes,~~ ^{shall} degenerative brain disorder, or another like incapacity
20 in a facility ~~shall be~~ ^{is} responsible for funding the provision of services under chs. 46,
21 51, and 55, and ~~such residency~~ ^{that residence} shall be determined as follows:

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

23 51.40 (2) (a) *Directed placement.* 1. 'Commitment or protection protective
24 placement or services.' If an individual is under a court order of commitment under
25 this chapter or protective placement or services under s. 55.06 ch. 55, the individual

the court may make a specific finding of a county of residence

1 remains a resident of the county in which he or she has residence at the time the
 2 initial commitment or initial order for protective placement or services is made. If
 3 the court makes no specific finding of a county of residence, the individual is a
 4 resident of the county in which the court is located. The court may make a specific
 5 finding of a county of residence, after notice and opportunity to be heard has been
 6 provided to all affected counties and parties, if there is no objection. Notice shall be
 7 sent to the corporation counsel of each affected county by certified mail. If any
 8 affected county or party objects to the proposed finding of a county of residence, the
 9 county or party may request the department to make a determination under par. (g)
 10 and any transfer of venue shall be suspended until the determination is final.

11 2. 'Placement by a county.' Except for the provision of emergency services under
 12 s. 51.15, 51.42 (1) (b), 51.437 (4) (c), 51.45 (11) and (12) ~~or 55.06 (11), 55.13, or 55.135,~~
 13 if a county department or an agency of a county department arranges or makes
 14 placement of the individual into ⁱⁿ a state facility or nursing home, the individual is a
 15 resident of the county of that county department. Placement of an individual by a
 16 county department or an agency of a county department into a facility outside the
 17 jurisdiction of the county department or agency does not transfer the individual's
 18 legal residency to the county of the facility's location. If a person is present in a
 19 county while being a resident of another county and is in need of immediate care, a
 20 county of appropriate venue may provide for the immediate needs of a person under
 21 ss. 51.15, 51.20, 51.42 (1) (b), 51.437 (4) (c), 51.45 (11) and (12), and 880.07, and ch.
 22 55, without being declared the person's county of residence. Any agency of the county
 23 department is deemed to be acting on behalf of the county department in arranging
 24 or making placement.

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

individual's

the individual

an individual

(Intro.)

1 51.40 (2) (b) *Other admissions.* If par. (a) does not apply, ~~one of the following~~
2 shall apply the county of residence shall be determined as follows:

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

4 51.40 (2) (b) 2. 'Individuals in nursing homes.' The following are presumptions
5 regarding the residence of a person in a nursing home. ~~The presumption of residence~~
6 may be overcome by substantial evidence that clearly establishes residence in
7 another county.

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

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

INSERT
40-15

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

17 (2) (b) 2. ~~c., d., e., and f.~~

2m. a., b., c. and d

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

19 51.40 (2) (c) *Resident of a facility. I* If pars. (a) and (b) do not apply, an individual who is incapable of
20 indicating intent *and is* residing in a facility is a resident of the county in which the person
21 ~~resided prior to entering~~ the facility. *had residence before admittance to*

INSERT
40-17

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

23 51.40 (2) (f) *Guardian's authority to declare county of residence.*

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

the guardian's

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

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

12 51.40 (2) (f) 2. If pars. (a), (b), and (c) do not apply, a guardian may declare ~~a~~
 13 ~~ward's~~ the county of residence to be the county where the ward is physically present if
 14 all of the following apply: of the guardian's ward

- 15 a. The ward's presence in the county is voluntary.
- 16 b. There is no current order under ch. 55 in effect with respect to the ward, and
- 17 the ward is not under an involuntary commitment order to a county other than the
- 18 county where the ward is physically present, or to the department of corrections.
- 19 c. The ward is living in a place of fixed habitation.
- 20 d. The guardian states in writing that it is the ward's intent to remain in the
- 21 county for the foreseeable future.

22 3. Notwithstanding pars. (a) to (d) for good cause shown, a guardian may, if in
 23 the ward's best interest, clarify or change a ~~ward's~~ the county of residence by filing with
 24 the probate court having jurisdiction of the guardianship and protective placement//
 25 a written statement declaring the ward's domiciliary intent, subject to court

of the guardian's ward

and if notice and opportunity to be heard are provided to all affected counties and parties

1 approval, ~~if notice and opportunity to be heard are provided to all affected counties~~
 2 ~~and parties.~~ Notice shall be sent to the corporation counsel of each affected county
 3 by certified mail.

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

5 51.40 (2) (g) 1. An individual, an interested person on behalf of the individual,
 6 or any county may request that the department make a determination of the county
 7 of responsibility of the individual. Any motion for change of venue pending before
 8 the court of jurisdiction shall be stayed until the determination under this paragraph
 9 is final. Within 10 days after receiving the request, the department shall provide
 10 written notice to the individual, to the individual's guardian, guardian ad litem and
 11 counsel, if any, to the individual's immediate family, if they can be located and to all
 12 potentially responsible counties that a determination of county of responsibility
 13 shall be made and that written information and comments may be submitted within
 14 30 days after the date on which the notice is sent.

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

16 51.40 (2) (g) 6. The county determined to be responsible for providing care,
 17 treatment, and services ordered under ch. 46, 51, or 55 to an individual shall
 18 reimburse any other county for all care, treatment, and services that county provided
 19 to the individual under ch. 46, 51, or 55. Full reimbursement by the county
 20 determined to be responsible for the person shall be made within 120 days following
 21 the date of the department's determination of the county of responsibility ~~or of the~~
 22 outcome of any appeal of the department's determination that is brought under ch.
 23 227, or on a date or schedule of two or more payments agreed to by both parties.

INSERT
42-23

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

1 **55.001 Declaration of policy.** The legislature recognizes that many citizens
 2 of the state, because of ~~the infirmities of aging, chronic serious and persistent~~ mental
 3 illness, ~~mental retardation, other degenerative brain disorders,~~ developmental
 4 disabilities ² or other like incapacities incurred at any age, are in need of protective
 5 services or protective placement. Except as provided in s. 49.45 (30m) (a), ~~these~~
 6 ^{the} protective services or protective placement should, to the maximum degree of
 7 feasibility under programs, services and resources that the county board of
 8 supervisors is reasonably able to provide within the limits of available state and
 9 federal funds and of county funds required to be appropriated to match state funds,
 10 allow the individual the same rights as other citizens, and at the same time protect
 11 the individual from exploitation, abuse and degrading treatment. This chapter is
 12 designed to establish those protective services and protective placements and assure
 13 their availability to all persons individuals when in need of them, and to place the
 14 least possible restriction on personal liberty and exercise of constitutional rights
 15 consistent with due process and protection from abuse, 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".

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

17 55.01 (1d) "Activated power of attorney for health care" means a power of
 18 attorney for health care that has taken effect in the manner specified in s. 155.05 (2).

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

20 55.01 (1v) "Degenerative brain disorder" means the loss or dysfunction of brain
 21 cells to the extent that the individual is substantially impaired in his or her ability
 22 to adequately provide for his or her own care or custody.

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

INSET
43-22

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

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

as defined in

2 55.01 (4) "Interested person" means any adult relative or friend of a person to

3 be protected under this subchapter chapter; a health care agent ~~under~~ s. 155.01 (4);

4 or any official or representative of a public or private agency, corporation or

5 association concerned with the person's welfare.

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

7 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".

MOVE TO P. 45, after line 16

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

9 55.01 (6) "Placement facility" means a facility to which a court may order a

10 person to be protectively placed under s. 55.12 for the primary purpose of residential

11 care and custody.

12 (6m) "Placement unit" means a ward, wing, or other designated part of a

13 placement facility.

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

15 55.01 (6p) "Protective placement" means a process by which an individual who

16 has been determined incompetent under ch. 880 is ordered by a court to be provided

17 care and custody.

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

the provision of

18 (6r) "Protective services" includes any of the following:

19 1. Outreach.

20 2. Identification of persons in need of services.

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

that

himself,

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.

himself

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

15 55.01 (6v) "Serious and persistent mental illness" has the meaning given in s.

16 51.01 (~~3g~~). 14c

MATERIAL FROM P. 44, lines 6+7 + NOTE goes HERE

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

18 **55.02 Protective services and placement: duties. (1) DEPARTMENT DUTIES.**

19 (a) The department shall do all of the following:

20 1. Cooperate with county departments to develop and operate a coordinated,

21 statewide system for protective services and protective placement.

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

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

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

6 (b) The department may ~~do any of the following~~

7 ~~1. Provide protective services and protective placement directly or contract for~~
8 the provision of protective services or protective placement.

9 ~~2. Promulgate rules governing protective services, protective placement, or~~
10 both.

11 (2) COUNTY DEPARTMENT DUTIES. (a) The chairperson of the county board of
12 supervisors in a county with a single-county department under s. 46.215, 46.22,
13 46.232, 51.42, or 51.437 or the chairpersons of the county boards of supervisors of
14 counties with a multicounty department under s. 46.22, 46.23, 51.42, or 51.437 shall
15 designate a county department or county departments providing services in the
16 county or counties to have the responsibility for planning for the provision of
17 protective services and protective placement ^{and} providing direct protective services
18 or protective placement ^{or} entering into contracts under s. 46.036 with a responsible
19 agency for the provision of protective services or protective placement.

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

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

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

24 3. Develop reporting requirements for ^{submitted by} guardians of the person ~~who are~~
25 ~~required to submit~~ reports to the county department under s. 880.38 (3).

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

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

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

7 **SECTION 39.** 55.03 of the statutes is renumbered 55.03 (1) and ~~(2)~~ and amended
8 to read:

9 **55.03 Status of guardian. (1) AGENCY AS GUARDIAN.** No agency acting as a
10 guardian appointed under ch. 880 shall may be a provider of protective services or
11 placement for its ward under this chapter.

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

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

SECTION RN; 55.04(4); 55.03(3)

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

18 **55.03 (3) GUARDIAN AUTHORITY AND RESPONSIBILITY APPLICABLE TO PARENT OF**
19 **MINOR.** Where any responsibility or authority is created under this chapter upon or
20 in relation to a guardian, such responsibility or authority is deemed to apply to a
21 parent or person in the place of a parent in the case of a minor who is or who is alleged
22 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.

INSERT
47-14

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.

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

② 55.043 (1) (a) ^(intro.) If a county protective services agency has probable cause to
3 believe that there is misappropriation of property or neglect or abuse of a vulnerable
4 adult, the county protective services agency may conduct an investigation in
5 ~~Milwaukee County~~ to determine if the vulnerable adult in question is in need of
6 protective services. The county protective services agency shall conduct the
7 investigation in accordance with standards established by the department for
8 conducting the investigations. The investigation shall include at least one of the
9 following:

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

11 55.043 (1) (a) 1. Observation of or an interview with the vulnerable adult, in
12 private to the extent practicable, and with or without consent of his or her guardian
13 or agent under an activated power of attorney for health care, if any.

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

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

17 55.043 (1) (b) 1. The vulnerable adult or his or her guardian or agent under an
18 activated power of attorney for health care, if any, consents to the examination.

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

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