AN ACT to renumber 50.08 (3) (h); to renumber and amend 50.08 (3m); to amend 50.08 (2), 50.08 (3) (a), 50.08 (3) (c), 50.08 (3) (cm), 50.08 (3) (d), 50.08 (3) (e), 50.08 (3) (f), 50.08 (3) (fm) (intro.), 50.08 (3) (fm) 1., 50.08 (3) (fm) 2., 50.08 (3) (g), 50.08 (4) (a) (intro.), 50.08 (4) (a) 2., 50.08 (4) (a) 3., 50.08 (4) (a) b and 50.08 (4) c; and to create 50.08 (3) (bg), 50.08 (3) (bh), 50.08 (3) (h) 2. and 50.08 (3m) (b) of the statutes; relating to: informed consent for psychotropic medications in nursing homes and community–based residential facilities.

Analysis by the Legislative Reference Bureau

This bill requires a community–based residential facility to obtain a signed acknowledgment form for administration of psychotropic medications in a similar manner and for the same individuals as a nursing home is required to obtain informed consent for administration of psychotropic medications under current law. The bill also creates requirements for obtaining a signed acknowledgment form, for residents who are prescribed medications while off the premises of a community–based residential facility.

Current law prescribes the situations and procedures under which a guardian may consent to the voluntary or involuntary administration of psychotropic medications to his or her ward. Current law also requires that a nursing home obtain written informed consent before administering a psychotropic medication that
contains a boxed warning to any resident who has degenerative brain disorder. A
psychotropic medication is an antipsychotic, an antidepressant, lithium carbonate,
or a tranquilizer. A boxed warning is a warning, described in federal regulations, the
text of which is contained in a black outlined box on the drug’s label and in the full
prescribing information. Either the resident, or, if the resident is incapacitated, a
person acting on behalf of the resident, may provide written informed consent. A
nursing home is not required under current law to obtain written informed consent
if there is an emergency in which the resident, who is not under a court order for
administration of psychotropic medication, is at significant risk of physical or
emotional harm or puts others at significant risk of physical harm; if time and
distance preclude obtaining written informed consent; and if a physician has
determined that the resident or others will be harmed if treatment is not initiated.
In such an emergency situation, the nursing home must obtain oral consent and
must obtain written consent within ten days. If the nursing home is unable to contact
a person acting on behalf of an incapacitated resident to obtain oral consent but has
made a good faith effort to do so, the nursing home may administer the psychotropic
medication to the resident for up to 24 hours before it must obtain oral consent from
the resident or a person acting on behalf of the resident. The bill imposes those same
requirements on community-based residential facilities, except instead of written
informed consent the bill requires a signed acknowledgment form from a resident of
a community-based residential facility. The bill requires that the acknowledgment
form acknowledges receipt of an informational form indicating that the resident has
been prescribed a medication that has a boxed warning and information from the
federal Food and Drug Administration for the specific psychotropic medication the
resident has been prescribed. The acknowledgment form also notifies the resident,
or person acting on behalf of the resident, that if he or she seeks more information
that he or she should contact the prescriber of the medication. The
community-based residential facility is required to include contact information for
the prescriber on the acknowledgment form.

Under current law, a nursing home is not required to obtain written informed
consent before administering a psychotropic medication to a resident if the
prescription for the psychotropic medication is written or reauthorized while the
resident is off of the nursing home’s premises. Under the bill, if the prescription for
the psychotropic medication is written or reauthorized while a resident of a
community-based residential facility is off of the premises of the community-based
residential facility and if the community-based residential facility has not
previously obtained a signed acknowledgment form for administration of that
psychotropic medication to that resident, the community-based residential facility
must obtain written informed consent or a signed acknowledgment form within 72
hours after first administering that psychotropic medication to that resident before
continuing to administer that psychotropic medication to that resident. The bill
maintains current law for nursing homes when a prescription for a psychotropic
medication for a nursing home resident is written or reauthorized while the resident
is off of the nursing home’s premises.
For further information see the state fiscal estimate, which will be printed as an appendix to this bill.

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

**SECTION 1.** 50.08 (2) of the statutes is amended to read:

50.08 (2) A physician, an advanced practice nurse prescriber certified under s. 441.16 (2), or a physician assistant licensed under ch. 448, who prescribes a psychotropic medication to a nursing home or community-based residential facility resident who has degenerative brain disorder shall notify the nursing home or community-based residential facility if the prescribed medication has a boxed warning under 21 CFR 201.57.

**SECTION 2.** 50.08 (3) (a) of the statutes is amended to read:

50.08 (3) (a) Except as provided in sub. (3m) or (4), before administering a psychotropic medication that has a boxed warning under 21 CFR 201.57 to a resident of a nursing home who has degenerative brain disorder, a nursing home shall obtain written informed consent from the resident or, if the resident is incapacitated, a person acting on behalf of the resident, on a form provided by the department under par. (b) or on a form that contains the same information as the form under par. (b).

**SECTION 3.** 50.08 (3) (bg) of the statutes is created to read:

50.08 (3) (bg) Except as provided in sub. (3m) or (4), before administering a psychotropic medication that has a boxed warning under 21 CFR 201.57 to a resident of a community-based residential facility who has a degenerative brain disorder, a community-based residential facility shall obtain a signed acknowledgment form described in par. (bh) from the resident or, if the resident is incapacitated, a person acting on behalf of the resident.
SECTION 4. 50.08 (3) (bh) of the statutes is created to read:

50.08 (3) (bh) 1. The department shall make available on its Internet site or by mail acknowledgment forms for obtaining a signature acknowledging receipt of all of the following:

   a. An informational form, created by the department, indicating that the resident has been prescribed a medication that has a boxed warning under 21 CFR 201.57.

   b. Information created by the federal food and drug administration for the specific psychotropic medication the resident has been prescribed. The community-based residential facility shall obtain the information sheet from the federal food and drug administration or obtain information from the federal food and drug administration’s Internet site.

   2. The acknowledgment form under this paragraph shall contain a notification that if the resident, or person acting on behalf of the resident, if applicable, seeks more information the resident or person acting on behalf of the resident should contact the individual who prescribed the medication. The community-based residential facility shall indicate on the acknowledgment form contact information for the prescriber of the medication.

SECTION 5. 50.08 (3) (c) of the statutes is amended to read:

50.08 (3) (c) Written informed consent or a signed acknowledgment form provided by a guardian is subject to s. 54.25 (2) (d) 2. ab. and ac.

SECTION 6. 50.08 (3) (cm) of the statutes is amended to read:

50.08 (3) (cm) If a health care agent is acting on behalf of a resident, the health care agent shall give informed consent or sign an acknowledgment form in accordance with the desires of the resident as expressed in the power of attorney for
health care instrument under ch. 155 or, if the resident’s desires are unknown, in accordance with s. 155.20 (5).

**SECTION 7.** 50.08 (3) (d) of the statutes is amended to read:

50.08 (3) (d) Upon request, the nursing home or community–based residential facility shall give the resident, or a person acting on behalf of the resident, a copy of the completed informed consent form described under par. (a) or acknowledgment form described under par. (bg).

**SECTION 8.** 50.08 (3) (e) of the statutes is amended to read:

50.08 (3) (e) Unless consent or acknowledgment is withdrawn sooner, written informed consent or a signed acknowledgment obtained under this subsection is valid for the period specified on the informed consent form or acknowledgment form but not for longer than 15 months from the date the resident, or a person acting on behalf of the resident, signed the form.

**SECTION 9.** 50.08 (3) (f) of the statutes is amended to read:

50.08 (3) (f) A resident, or a person acting on behalf of the resident, may withdraw consent or acknowledgment, in writing, at any time.

**SECTION 10.** 50.08 (3) (fm) (intro.) of the statutes is amended to read:

50.08 (3) (fm) (intro.) At the time a resident, or a person acting on behalf of the resident, signs the informed consent form or acknowledgment form, the nursing home or community–based residential facility shall orally inform the resident, or the person acting on behalf of the resident, of all of the following:

**SECTION 11.** 50.08 (3) (fm) 1. of the statutes is amended to read:

50.08 (3) (fm) 1. That the resident, or the person on behalf of the resident, may withdraw consent or acknowledgment, in writing, at any time.

**SECTION 12.** 50.08 (3) (fm) 2. of the statutes is amended to read:
50.08 (3) (fm) 2. That, unless consent or acknowledgment is withdrawn sooner, the informed consent or acknowledgment is valid for the period specified on the informed consent form or acknowledgment form or for 15 months from the date on which the resident, or the person acting on behalf of the resident, signs the form, whichever is shorter.

**SECTION 13.** 50.08 (3) (g) of the statutes is amended to read:

50.08 (3) (g) No person may retaliate against or threaten to retaliate against a resident or person acting on behalf of a resident for refusing to provide or withdrawing consent or acknowledgment.

**SECTION 14.** 50.08 (3) (h) of the statutes is renumbered 50.08 (3) (h) 1.

**SECTION 15.** 50.08 (3) (h) 2. of the statutes is created to read:

50.08 (3) (h) 2. The community-based residential facility shall use the most current information available from the federal food and drug administration under par. (bh) 1. b.

**SECTION 16.** 50.08 (3m) of the statutes is renumbered 50.08 (3m) (a) and amended to read:

50.08 (3m) (a) Except as provided in par. (b), a nursing home or community-based residential facility is not required to obtain written informed consent or a signed acknowledgment form before administering a psychotropic medication to a resident under sub. (3) if the prescription for the psychotropic medication is written or reauthorized while the resident is off of the nursing home's premises.

**SECTION 17.** 50.08 (3m) (b) of the statutes is created to read:

50.08 (3m) (b) If the prescription for the psychotropic medication is written or reauthorized while a resident of a community-based residential facility is off of the
premises of the community–based residential facility and if the community–based residential facility has not previously obtained a signed acknowledgment form for administration of that psychotropic medication to that resident, the community–based residential facility shall obtain a signed acknowledgment form under sub. (3) within 72 hours after first administering that psychotropic medication to that resident before continuing to administer that psychotropic medication to that resident.

**SECTION 18.** 50.08 (4) (a) (intro.) of the statutes is amended to read:

50.08 (4) (a) (intro.) A nursing home or community–based residential facility is not required to obtain written informed consent or a signed acknowledgment form before administering a psychotropic medication to a resident under sub. (3) if all of the following apply:

**SECTION 19.** 50.08 (4) (a) 2. of the statutes is amended to read:

50.08 (4) (a) 2. There is an emergency in which a resident is at significant risk of physical or emotional harm or the resident puts others at significant risk of physical harm and in which time and distance preclude obtaining written informed consent or a signed acknowledgment before administering psychotropic medication.

**SECTION 20.** 50.08 (4) (a) 3. of the statutes is amended to read:

50.08 (4) (a) 3. A physician has determined that the resident or others will be harmed if the psychotropic medication is not administered before written informed consent or a signed acknowledgment form is obtained.

**SECTION 21.** 50.08 (4) (b) of the statutes is amended to read:

50.08 (4) (b) If par. (a) applies, the nursing home or community–based residential facility shall obtain oral consent or acknowledgment from the resident or, if the resident is incapacitated, a person acting on behalf of the resident, before
administering the psychotropic medication, except as provided in par. (c). The oral consent or acknowledgment shall be entered in the resident’s medical record. The oral consent or acknowledgment shall be valid for 10 days, after which time the nursing home or community-based residential facility may not continue to administer the psychotropic medication unless it has obtained written informed consent or a signed acknowledgment form under sub. (3).

SECTION 22. 50.08 (4) (c) of the statutes is amended to read:

50.08 (4) (c) If par. (a) applies, the resident is incapacitated, and the nursing home or community-based residential facility has made a good faith effort to obtain oral consent or acknowledgment, under par. (b), of a person acting on behalf of the resident but has been unable to contact such a person, the nursing home or community-based residential facility may administer the psychotropic medication to the resident for up to 24 hours before obtaining consent or acknowledgment under par. (a) or sub. (3).