

1993 Assembly Bill 650

Date of enactment: April 15, 1994
Date of publication*: April 29, 1994

1993 WISCONSIN ACT 316

AN ACT to amend 51.20 (7) (d), 55.05 (2) (d), 609.65 (1) (intro.), 880.07 (1m) (c), 880.33 (4m) (b) 1, 880.34 (6) (a) 1, 880.34 (6) (a) 2. b., 880.34 (6) (a) 2. c., 880.34 (6) (c) 2, 880.34 (6) (c) 3, 880.34 (6) (c) 4, 880.34 (6) (c) 5, 880.34 (6) (d), 880.34 (6) (f) 1, 880.34 (6) (f) 2 and 880.34 (6) (f) 3; and to create 880.07 (1m) (cm), 880.33 (4m) (b) 2m and 880.33 (4r) of the statutes, relating to: authorizing guardians of certain persons to consent to forcible administration of psychotropic medication.

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

SECTION 1. 51.20 (7) (d) of the statutes is amended to read:

51.20 (7) (d) If the court determines after hearing that there is probable cause to believe that the subject individual is a fit subject for guardianship and protective placement or services, the court may, without further notice, appoint a temporary guardian for the subject individual and order temporary protective placement or services under ch. 55 for a period not to exceed 30 days, and shall proceed as if petition had been made for guardianship and protective placement or services. If the court orders only temporary protective services for a subject individual under this paragraph, the individual shall be provided care only on an outpatient basis. The court may order psychotropic medication as a temporary protective service under this paragraph if it finds that there is probable cause to believe that the allegations under s. 880.07 (1m) (c) and (cm) apply, that the individual is not competent to refuse psychotropic medication and that the medication ordered will have therapeutic value and will not unreasonably impair the ability of the individual to prepare for and participate in subsequent legal proceedings. An individual is not competent to refuse psychotropic medication if, because of chronic mental illness, the individual is incapable of expressing an understanding of the advantages and disadvantages of accepting treatment, and the

alternatives to accepting the particular treatment offered, after the advantages, disadvantages and alternatives have been explained to the individual.

SECTION 2. 55.05 (2) (d) of the statutes is amended to read:

55.05 (2) (d) The court may order protective services for an individual for whom a determination of incompetency is made under s. 880.33 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. The court may order psychotropic medication as a protective service under this paragraph only if a determination of incompetency is made for the individual under s. 880.33 (4m). The court may authorize a guardian to consent to forcible administration of psychotropic medication for an individual only if the court has made a finding under s. 880.33 (4r) (b) that the individual has substantially failed to comply with the administration of psychotropic medication under the individual's treatment plan.

SECTION 3. 609.65 (1) (intro.) of the statutes is amended to read:

609.65 (1) (intro.) If an enrolled participant of a health maintenance organization, limited service health organization or preferred provider plan is examined, evaluated or treated for a nervous or mental disorder pursuant to an emergency detention under s. 51.15, a commitment or a court order under s. 51.20 or 880.33 (4m) or (4r), then, notwithstanding the limitations regarding

1993 Assembly Bill 650

selected providers, primary providers and referrals under ss. 609.01 (2) to (4) and 609.05 (3), the health maintenance organization, limited service health organization or preferred provider plan shall do all of the following:

SECTION 4. 880.07 (1m) (c) of the statutes is amended to read:

880.07 (1m) (c) That unless protective services, including psychotropic medication, are provided the person will incur a substantial ~~risk~~ probability of physical harm ~~or deterioration, impairment, injury or debilitation~~ or will present a substantial ~~risk~~ probability of physical harm to others.

SECTION 5. 880.07 (1m) (cm) of the statutes is created to read:

880.07 (1m) (cm) That the substantial probability of physical harm, impairment, injury or debilitation is evidenced by the person's 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).

SECTION 6. 880.33 (4m) (b) 1. of the statutes is amended to read:

880.33 (4m) (b) 1. Order the appropriate county department under s. 46.23, 51.42 or 51.437 to develop or furnish, to provide to the ward, and to submit to the court, a treatment plan specifying the protective services, including psychotropic medication as ordered by the treating physician, that the proposed ward should receive.

SECTION 7. 880.33 (4m) (b) 2m of the statutes is created to read:

880.33 (4m) (b) 2m. If the court modifies the treatment plan under subd. 2, the court shall order the appropriate county department under s. 46.23, 51.42 or 51.437 to provide the modified treatment plan to the ward.

SECTION 8. 880.33 (4r) of the statutes is created to read:

880.33 (4r) If a person substantially fails to comply with the administration of psychotropic medication, if any, ordered under the approved treatment plan under sub. (4m), a court may authorize the person's guardian to consent to forcible administration of psychotropic medication to the person, if all of the following occur before the administration:

(a) The corporation counsel of the county or the person's guardian files with the court a joint statement by the guardian and the director or the designee of the director of the treatment facility that is serving the person or a designated staff member of the appropriate county department under s. 46.23, 51.42 or 51.437, stating that the per-

son has substantially failed to comply. The statement shall be sworn to be true and may be based on the information and beliefs of the individuals filing the statement.

(b) Upon receipt of the joint statement of noncompliance, if the court finds by clear and convincing evidence that the person has substantially failed to comply with the administration of psychotropic medication under the treatment plan, the court may do all of the following:

1. Authorize the person's guardian to consent to forcible administration by the treatment facility to the person, on an outpatient basis, of psychotropic medication ordered under the treatment plan.

2. If the guardian consents to forcible administration of psychotropic medication as specified in subd. 1, authorize the sheriff or other law enforcement agency, in the county in which the person is found or in which it is believed that the person may be present, to take charge of and transport the person, for outpatient treatment, to an appropriate treatment facility.

(c) If the court authorizes a sheriff or other law enforcement agency to take charge of and transport the person as specified in par. (b) 2., a staff member of the appropriate county department under s. 46.23, 51.42 or 51.437 or of the treatment facility shall, if feasible, accompany the sheriff or other law enforcement agency officer and shall attempt to convince the person to comply voluntarily with the administration of psychotropic medication under the treatment plan.

SECTION 9. 880.34 (6) (a) 1. of the statutes is amended to read:

880.34 (6) (a) 1. Order the county department responsible for ensuring that the person receives appropriate protective services to review, at least once every 12 months from the date of the appointment, the status of the person and file a written evaluation with the court, the person and the person's guardian. Guardianship and protective services orders for psychotropic medication under ch. 55 ~~in effect on May 3, 1988~~, shall be reviewed ~~within one year after May 3, 1988~~, and annually thereafter. The evaluation shall include a description of facts and circumstances that indicate whether there is a substantial likelihood, based on the person's treatment record, that the person would meet the standard specified under s. 880.07 (1m) (c) if protective services, including psychotropic medication, were withdrawn. The substantial likelihood need not be evidenced by episodes in the person's history that are specified in s. 880.07 (1m) (cm). The evaluation shall also include recommendations for discharge or changes in the treatment plan or services, if appropriate.

SECTION 10. 880.34 (6) (a) 2. b. of the statutes is amended to read:

880.34 (6) (a) 2. b. The right to an independent evaluation under par. (d) of the person's need for a guardian for the purpose of consenting to or refusing psychotropic

1993 Assembly Bill 650

medication and the need for and appropriateness of the current treatment or services.

SECTION 11. 880.34 (6) (a) 2. c. of the statutes is amended to read:

880.34 (6) (a) 2. c. The right to a hearing under par. (e) on the need for a guardian for the purpose of consenting to or refusing ~~medication and~~ protective services, including psychotropic medication, and the need for and appropriateness of the current treatment or services.

SECTION 12. 880.34 (6) (c) 2. of the statutes is amended to read:

880.34 (6) (c) 2. Whether the person continues to be a proper subject for guardianship under s. 880.33 (4m) (a) and protective services, including psychotropic medication.

SECTION 13. 880.34 (6) (c) 3. of the statutes is amended to read:

880.34 (6) (c) 3. Whether a change in the treatment plan or protective services, including psychotropic medication, is warranted.

SECTION 14. 880.34 (6) (c) 4. of the statutes is amended to read:

880.34 (6) (c) 4. Whether the person or the guardian requests a change in status, treatment plan or protective services.

SECTION 15. 880.34 (6) (c) 5. of the statutes is amended to read:

880.34 (6) (c) 5. Whether a hearing should be held on the continued need for guardianship under s. 880.33 (4m) (a) and protective services, including psychotropic medication.

SECTION 15m. 880.34 (6) (d) of the statutes is amended to read:

880.34 (6) (d) Following review of the evaluation under par. (a) 1. and the guardian ad litem's report under par. (c), the court shall order an independent evaluation of the person's need for continued guardianship under s. 880.33 (4m) (a) and protective services or the appropriateness of the treatment plan or protective services, if requested by the person, the guardian or the guardian ad litem or if the court determines that an independent evaluation is necessary.

SECTION 16. 880.34 (6) (f) 1. of the statutes is amended to read:

880.34 (6) (f) 1. Order continuation of the guardianship under s. 880.33 (4m) (a) and protective services order, without modification. The standard for continuation of protective services, including psychotropic medication, is a substantial likelihood, based on the person's treatment record, that the person would meet the standard specified under s. 880.07 (1m) (c) if protective services, including psychotropic medication, were withdrawn. The substantial likelihood need not be evidenced by episodes in the person's history that are specified in s. 880.07 (1m) (cm).

SECTION 16g. 880.34 (6) (f) 2. of the statutes is amended to read:

880.34 (6) (f) 2. Order continuation of the guardianship under s. 880.33 (4m) (a), with modification of the protective services order.

SECTION 16r. 880.34 (6) (f) 3. of the statutes is amended to read:

880.34 (6) (f) 3. Terminate the guardianship under s. 880.33 (4m) (a) and protective services order.