

1 **AN ACT** *to amend* 55.14 (3) (e) (intro.); and *to create* 55.13 (6), 55.133 and 55.14 (3)
2 (em) of the statutes; **relating to:** involuntary administration of psychotropic
3 medication as a protective service to a person with dementia.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill draft was prepared for the Joint Legislative Council’s Special Committee on Legal Interventions for Persons With Alzheimer’s Disease and Related Dementias.

IAPM as an Emergency Protective Service

Current Law

Under current law, involuntary administration of psychotropic medication (IAPM) may be ordered as a protective service pursuant to a petition filed under s. 55.14, stats. The court must hold a hearing on the petition within 30 days. If the individual does not already have a guardian, a petition for guardianship must be heard, and a guardian appointed, before the hearing on the petition for IAPM. IAPM may not begin until the court has issued the order.

There is some disagreement as to whether, under current law, IAPM may be provided as an emergency protective service under s. 55.135, stats.

The Draft

The draft creates a procedure under which IAPM may be provided as an emergency protective service to an individual with dementia, or a person who, based on observation and currently available information, appears to have dementia. The draft specifies that IAPM may be provided as a protective service to these individuals only by following the procedures created in the draft.

The draft does not specify whether, or by what procedures, IAPM may be provided as an emergency protective service to individuals or who do not have, or do not appear to have, dementia.

Under the draft, “involuntary administration of psychotropic medication” means any of the following:

1. Placing psychotropic medication in an individual's food or drink with knowledge that the individual protests receipt of the psychotropic medication.
2. Forcibly restraining an individual to enable administration of psychotropic medication.
3. Requiring an individual to take psychotropic medication as a condition of receiving privileges or benefits.

Under the draft, IAPM may be provided as an emergency protective service only if all of the following are true:

- (a) A physician has prescribed the psychotropic medication for the individual.
- (b) The individual is not competent to refuse psychotropic medication.
- (c) The individual's condition for which psychotropic medication has been prescribed is likely to be improved by administration of psychotropic medication and the individual is likely to respond positively to psychotropic medication.
- (d) Unless psychotropic medication is administered involuntarily, the individual will incur a substantial probability of physical harm, impairment, injury or debilitation or will present a substantial probability of physical harm to others.
- (e) Unless psychotropic medication is administered involuntarily, there is a substantial likelihood that the individual may be subject to involuntary admission to an inpatient facility for psychiatric treatment.
- (f) If the individual resides in a long-term care facility, all of the following are true:
 1. The individual has been diagnosed with dementia.
 2. A physician who has personal knowledge of the individual has conducted a physical examination of the individual within the past 7 days and, based on that examination, the the physician has determined with reasonable certainty that the behavior is not caused by a physical condition or illness that could be successfully treated by means other than psychotropic medication.
 3. The staff at the long-term care facility has made reasonable efforts to address or accommodate the behavior or condition for which involuntary administration of psychotropic medications is requested and these efforts are documented in the individual's plan of care.

4. The long-term care facility has prepared detailed documentation of the behaviors or condition of the individual leading to the request for involuntary administration of psychotropic medications.

If the individual is under guardianship, a good faith effort to obtain the consent of the guardian must be made before involuntary administration of psychiatric medication is provided as an emergency protective service.

A county department or agency with which the county department contracts that provides IAPM as an emergency protective service to an individual must immediately file a petition for IAPM to the individual as a protective service under s. 55.14, stats. If the individual resides in a long-term care facility, the petition must also allege that all of the following are true:

1. The individual has been diagnosed with dementia.
2. A physician who has personal knowledge of the individual has conducted a physical examination of the individual within the past 7 days and, based on that examination, the the physician has determined with reasonable certainty that the behavior is not caused by a physical condition or illness that could be successfully treated by means other than psychotropic medication.
3. The staff at the long-term care facility has made reasonable efforts to address or accommodate the behavior or condition for which involuntary administration of psychotropic medications is requested and these efforts are documented in the individual's plan of care.
4. The long-term care facility has prepared detailed documentation of the behaviors or condition of the individual leading to the request for involuntary administration of psychotropic medications.

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.

A preliminary hearing must be held within 72 hours, excluding Saturdays, Sundays, and legal holidays, to establish probable cause that the criteria under s. 55.14, stats., are present.

The county department or agency that provides IAPM as an emergency protective service must provide the individual with written notice and orally inform the individual of the time and place of the preliminary hearing.

If the court finds probable cause to believe that the criteria under s. 55.14 are present and that the medication will not unreasonably impair the

ability of the individual to prepare for or participate in subsequent legal proceedings, it may order IAPM to continue to be provided as an emergency protective service for up to 30 days pending the hearing under s. 55.14, stats.

If the individual is not under guardianship, a petition for guardianship must be submitted to the court prior to the time of the hearing on the petition under s. 55.14, stats., and the guardianship petition must be heard prior to the petition under s. 55.14, stats.

IAPM as a Non-Emergency Protective Service

Current Law

Under current law, IAPM may not be ordered as a protective service unless, in addition to other requirements, it is shown that unless psychotropic medication is administered involuntarily, the individual will incur a 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 must be evidenced by one of the following:

1. The individual'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 individual'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), stats., a settlement agreement approved by a court under s. 51.20 (8) (bg), stats., or commitment ordered under s. 51.20 (13), stats.
2. Evidence that the individual meets one of the dangerousness criteria set forth in s. 51.20 (1) (a) 2. a. to e., stats.

The Draft

The draft changes the evidence required to prove a substantial probability of physical harm, impairment, injury, or debilitation in cases in which the individual who is the subject of the petition has dementia. Under the draft, for individuals with dementia, the substantial probability of physical harm, impairment, injury, or debilitation must be shown by evidence that the individual meets the criteria for emergency protective placement in an inpatient facility under s. 55.135, as created by WLC: 0017/4.

1 **SECTION 1.** 55.13 (6) of the statutes is created to read:

1 55.13 (6) For individuals with dementia, or who, based on observation and
2 currently-available information, appear to have dementia, involuntary administration of
3 psychotropic medications may be provided as an emergency protective service only as
4 provided under s. 55.133.

5 **SECTION 2.** 55.133 of the statutes is created to read:

6 **55.133 Involuntary administration of psychotropic medications as an emergency**
7 **protective service. (1)** In this section:

8 (a) “Involuntary administration of psychotropic medication” means any of the
9 following:

10 1. Placing psychotropic medication in an individual’s food or drink with knowledge that
11 the individual protests receipt of the psychotropic medication.

12 2. Forcibly restraining an individual to enable administration of psychotropic
13 medication.

14 3. Requiring an individual to take psychotropic medication as a condition of receiving
15 privileges or benefits.

16 (b) “Not competent to refuse psychotropic medication” means that, as a result of
17 dementia and after the advantages and disadvantages of and alternatives to accepting the
18 particular psychotropic medication have been explained to an individual, one of the following
19 is true:

20 1. The individual is incapable of expressing an understanding of the advantages and
21 disadvantages of accepting treatment and the alternatives to accepting treatment.

22 2. The individual is substantially incapable of applying an understanding of the
23 advantages, disadvantages, and alternatives to his or her condition in order to make an
24 informed choice as to whether to accept or refuse psychotropic medication.

1 (c) "Protest" means make more than one discernible negative response, other than mere
2 silence, to the offer of, recommendation for, or other proffering of voluntary receipt of
3 psychotropic medication. "Protest" does not mean a discernible negative response to a
4 proposed method of administration of the psychotropic medication.

5 (d) "Psychotropic medication" means a prescription drug, as defined in s. 450.01 (20),
6 that is used to treat or manage a psychiatric symptom or challenging behavior.

7 (2) Involuntary administration of psychotropic medications may be provided as an
8 emergency protective service to an individual with dementia, or to an individual who, based
9 on observation and currently available information, appears to have dementia, only if all of
10 the following are true:

11 (a) A physician has prescribed the psychotropic medication for the individual.

12 (b) The individual is not competent to refuse psychotropic medication.

13 (c) The individual's condition for which psychotropic medication has been prescribed
14 is likely to be improved by administration of psychotropic medication and the individual is
15 likely to respond positively to psychotropic medication.

16 (d) Unless psychotropic medication is administered involuntarily, the individual will
17 incur a substantial probability of physical harm, impairment, injury, or debilitation or will
18 present a substantial probability of physical harm to others.

19 (e) Unless psychotropic medication is administered involuntarily, there is a substantial
20 likelihood that the individual will be subject to involuntary admission to a inpatient facility
21 for psychiatric treatment.

22 (f) If the individual resides in a long-term care facility, all of the following are true:

23 1. The individual has been diagnosed with dementia.

1 2. A physician who has personal knowledge of the individual has conducted a physical
2 examination of the individual within the past 7 days and, based on that examination, the the
3 physician has determined with reasonable certainty that the behavior is not caused by a
4 physical condition or illness that could be successfully treated by means other than
5 psychotropic medication.

6 3. The staff at the long-term care facility has made reasonable efforts to address or
7 accommodate the behavior or condition for which involuntary administration of psychotropic
8 medications is requested and these efforts are documented in the individual's plan of care.

9 4. The long-term care facility has prepared detailed documentation of the behaviors or
10 condition of the individual leading to the request for involuntary administration of
11 psychotropic medications.

COMMENT: Should the draft require the department of health services to promulgate rules describing the efforts to address the individual's condition or behaviors that must be made by the long-term care facility before psychotropic medications may be administered as an emergency protective services?

12 **(3)** Any county department or agency with which the county department contracts
13 under s. 55.02 (2) that provides involuntary administration of psychotropic medication as an
14 emergency protective service to an individual under sub. (1) shall immediately file a petition
15 for involuntary administration of psychotropic medication to the individual under s. 55.14.
16 In the case of an individual residing in a long-term care facility, the petition shall, in addition
17 to the allegations required under s. 55.14 (3), allege that all of the grounds in sub. (2) (f) are
18 true. The petition shall be served on the individual, the individual's guardian, the individual's
19 legal counsel, and guardian ad litem, if any, and the county department. A preliminary hearing
20 shall be held within 72 hours, excluding Saturdays, Sundays, and legal holidays, to establish
21 probable cause that the criteria under s. 55.14 are present. The county department or agency

1 shall provide the individual with written notice of, and orally inform the individual of, the time
2 and place of the preliminary hearing.

3 (4) Upon finding probable cause under sub. (3) and finding that the medication will not
4 unreasonably impair the ability of the individual to prepare for or participate in subsequent
5 legal proceedings, the court may order involuntary administration of psychotropic medication
6 to continue to be provided as an emergency protective service for up to 30 days pending the
7 hearing under s. 55.14.

8 (5) If the individual is not under guardianship, a petition for guardianship shall be
9 submitted to the court prior to the time of the hearing on the petition under s. 55.14, and the
10 guardianship petition shall be heard prior to the petition under s. 55.14.

11 (6) If the individual is under guardianship, a good faith effort shall be made to obtain
12 the consent of the guardian before involuntary administration of psychotropic medication may
13 is provided as an emergency protective service.

14 **SECTION 3.** 55.14 (3) (e) (intro.) of the statutes is amended to read:

15 55.14 (3) (e) (intro.) Unless psychotropic medication is administered involuntarily, the
16 individual will incur a substantial probability of physical harm, impairment, injury, or
17 debilitation or will present a substantial probability of physical harm to others. The ~~Except~~
18 as provided in par. (em), the substantial probability of physical harm, impairment, injury, or
19 debilitation shall be evidenced by one of the following:

20 **SECTION 4.** 55.14 (3) (em) of the statutes is created to read:

21 55.14 (3) (em) In the case of an individual who has dementia, the substantial probability
22 of physical harm, impairment, injury, or debilitation under par. (e) shall be shown by evidence

