

1993 Senate Bill 374

Date of enactment: **March 30, 1994**

Date of publication\*: **April 13, 1994**

# 1993 WISCONSIN ACT 187

AN ACT *to renumber* 880.12; *to amend* 55.05 (5) (d); and *to create* 50.06, 55.06 (5m), 880.075 and 880.12 (2) of the statutes, **relating to:** admission of certain individuals from hospitals to nursing homes or community-based residential facilities.

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

**SECTION 1.** 50.06 of the statutes is created to read:

**50.06 Certain admissions to facilities.** (1) In this section, "incapacitated" means unable to receive and evaluate information effectively or to communicate decisions to such an extent that the individual lacks the capacity to manage his or her health care decisions, including decisions about his or her post-hospital care.

(2) An individual under sub. (3) may consent to admission, directly from a hospital to a facility, of an incapacitated individual who does not have a valid power of attorney for health care and who has not been adjudicated incompetent under ch. 880, if all of the following apply:

(a) No person who is listed under sub. (3) in the same order of priority as, or higher in priority than, the individual who is consenting to the proposed admission disagrees with the proposed admission.

(am) 1. Except as provided in subd. 2, no person who is listed under sub. (3) and who resides with the incapacitated individual disagrees with the proposed admission.

2. Subdivision 1 does not apply if any of the following applies:

a. The individual who is consenting to the proposed admission resides with the incapacitated individual.

b. The individual who is consenting to the proposed admission is the spouse of the incapacitated person.

(b) The individual for whom admission is sought is not diagnosed as developmentally disabled or as having a mental illness at the time of the proposed admission.

(c) A petition for guardianship for the individual under s. 880.07 and a petition for protective placement of the individual under s. 55.06 (2) are filed prior to the proposed admission.

(3) The following individuals, in the following order of priority, may consent to an admission under sub. (2):

(a) The spouse of the incapacitated individual.

(b) An adult son or daughter of the incapacitated individual.

(c) A parent of the incapacitated individual.

(d) An adult brother or sister of the incapacitated individual.

(e) A grandparent of the incapacitated individual.

(f) An adult grandchild of the incapacitated individual.

(g) An adult close friend of the incapacitated individual.

(4) A determination that an individual is incapacitated for purposes of sub. (2) shall be made by 2 physicians, as defined in s. 448.01 (5), or by one physician and one licensed psychologist, as defined in s. 455.01 (4), who personally examine the individual and sign a statement specifying that the individual is incapacitated. Mere old age, eccentricity or physical disability, either singly or together, are insufficient to make a finding that an individual is incapacitated. Neither of the individuals

who make a finding that an individual is incapacitated may be a relative, as defined in s. 242.01 (11), of the individual or have knowledge that he or she is entitled to or has a claim on any portion of the individual's estate. A copy of the statement shall be included in the individual's records in the facility to which he or she is admitted.

(5) (a) Except as provided in par. (b), an individual who consents to an admission under this section may, for the incapacitated individual, make health care decisions to the same extent as a guardian of the person may and authorize expenditures related to health care to the same extent as a guardian of the estate may, until the earliest of the following:

1. Sixty days after the admission to the facility of the incapacitated individual.
2. Discharge of the incapacitated individual from the facility.
3. Appointment of a guardian for the incapacitated individual.

(b) An individual who consents to an admission under this section may not authorize expenditures related to health care if the incapacitated individual has an agent under a durable power of attorney, as defined in s. 243.07 (1) (a), who may authorize expenditures related to health care.

(6) If the incapacitated individual is in the facility after 60 days after admission and a guardian has not been appointed, the authority of the person who consented to the admission to make decisions and, if sub. (5) (a) applies, to authorize expenditures is extended for 30 days for the purpose of allowing the facility to initiate discharge planning for the incapacitated individual.

(7) An individual who consents to an admission under this section may request that an assessment be conducted for the incapacitated individual under the long-term support community options program under s. 46.27 (6).

**SECTION 2.** 55.05 (5) (d) of the statutes is amended to read:

55.05 (5) (d) The admission to a facility of a principal by a health care agent under the terms of a power of attorney for health care instrument and in accordance with ch. 155 or the admission of an individual to a nursing home or community-based residential facility under the requirements of s. 50.06 is not a protective placement under this chapter.

**SECTION 3.** 55.06 (5m) of the statutes is created to read:

55.06 (5m) A petition for protective placement of a person who has been admitted to a nursing home or a community-based residential facility under s. 50.06 shall be heard within 60 days after it is filed. If an individual under s. 50.06 (3) alleges that an individual is making a health care decision under s. 50.06 (5) (a) that is not in the best interests of the incapacitated individual or if the incapacitated individual verbally objects to or otherwise actively protests the admission, the petition shall be heard as soon as possible within the 60-day period.

**SECTION 4.** 880.075 of the statutes is created to read:  
**880.075 Time of hearing for certain appointments.**

A petition for guardianship of a person who has been admitted to a nursing home or a community-based residential facility under s. 50.06 shall be heard within 60 days after it is filed. If an individual under s. 50.06 (3) alleges that an individual is making a health care decision under s. 50.06 (5) (a) that is not in the best interests of the incapacitated individual or if the incapacitated individual verbally objects to or otherwise actively protests the admission, the petition shall be heard as soon as possible within the 60-day period.

**SECTION 5.** 880.12 of the statutes is renumbered 880.12 (1).

**SECTION 6.** 880.12 (2) of the statutes is created to read:

880.12 (2) In appointing a guardian for a person who has been admitted to a nursing home or a community-based residential facility under s. 50.06, the court shall make a finding as to whether the person's incompetence is potentially reversible.