Greater Wisconsin Agency on Aging Resources, Inc.

The Guardian

Volume 6, Issue 1 (March 2018)

The Guardian is a quarterly newsletter published by the Greater Wisconsin Agency on Aging Resources' (GWAAR) Wisconsin Guardianship Support Center (GSC).

The GSC provides information and assistance on issues related to guardianship, protective placement, advance directives, and more.

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Save the Date! September 12-14, 2018

GWaar Greater Wisconsin Agency on Aging Resources, Inc.

Wisconsin Department of Health Services

Attend the 2018 Aging & Disability Network Conference

The Kalahari Resort & Convention Center
Wisconsin Dells, WI
For more information:
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Title: Outagamie County v. C.A. (In the matter of the mental health commitment of C.A.)

Court: Court of Appeals, District III

Date: January 23, 2018

Citation: 2017AP450

Case Summary:

Outagamie County filed an emergency detention in September 2016. The Circuit Court entered an order under Wis. Stat. ch 51 for involuntary commitment. The hearing included testimony from a psychiatrist, police officer and clinical therapist. The only witness to testify on C.A.'s behalf was her mother. C.A. argued that Outagamie County failed to show she was dangerous to herself or others as required under Wis. Stat. §51.20(1)(a)2. The Court of Appeals affirmed the decision of the Circuit Court.

Case Details:

C.A. was taken into custody under an emergency detention based on reports from her family members that she had made "serious" threats to kill a judge. At the commitment hearing, a psychiatrist testified that C.A. was mentally ill. The psychiatrist testified that her condition was treatable and that she was a danger to herself. The doctor's opinion was based in part on her paranoid and delusional thoughts which he personally observed and which were also in her medical records. The doctor also testified that he spoke with C.A.'s mother who appeared intimidated by C.A.

The hearing included testimony from a police officer who had previous interactions with C.A. and who was familiar with her current mental state. The police officer also testified that based on interactions with C.A.'s mother he noted she seemed guarded and reluctant to talk out of fear. A clinical therapist also testified that C.A.'s mental health was decompensating. C.A.'s mother testified and denied that C.A. had threated a judge or that she was fearful of C.A.

Under Wis. Stat. ch 51, a petitioner has the burden to prove by clear and convincing evidence that the subject is mentally ill, a proper subject for treatment and dangerous to self or others. C.A. argued that the county did not satisfy its burden to show she was dangerous to herself or others. C.A. argued that there was no evidence of recent acts or omissions that would show the need for treatment to prevent further deterioration. The court noted the County did present sufficient evidence of several recent acts which did show the need for treatment to prevent further deterioration. The doctor also provided testimony that C.A. would lack services necessary for her health and safety as there was a substantial probability she would refuse to seek treatment or medication and her mental health would deteriorate.

The Court of Appeals held that the evidence clearly proved C.A. was dangerous under all elements of Wis. Stat. §51.20(1)(a)2. The County was allowed to intervene before the deterioration reached an acute stage which the County successfully argued is exactly the type of situation this section of the statute looks to address. The Court of Appeals affirmed the decision of the Circuit Court. ❐

Helpline Highlights

1. What types of professions are included in the definition of "health care provider" who cannot be named as an agent on a Power of Attorney for Health Care unless they are related to the principal?

"Health care provider" includes a nurse, chiropractor, dentist, physician, physician assistant, perfusionist, podiatrist, physical therapist, physical therapist assistant, occupational therapist, occupational therapist assistant, a person practicing Christian Science treatment, an optometrist, a psychologist, a partnership, corporation or LLC that provides health care services, a cooperative health care association that directly provides services through salaried employees in its own facility, or a home health agency. See Wis. Stat. §155.01(7), 155.05(3).

2. What happens to a valid Power of Attorney document if there is a court ordered guardianship?

The Power of Attorney for Health Care will remain in effect, except the court may, only for good cause, revoke the Power of Attorney or limit the authority of the agent. The court must make this revocation or limitation, otherwise the ward's guardian may not make health care decisions for the ward that may be made by the health care agent, unless the guardian is also the agent. See Wis. Stat. §54.46(2)(b). The Power of Attorney for Finances also remains in effect unless the court for good cause shown has limited or revoked the authority of the agent. The guardian may not make decisions that may be made by the agent, unless the agent is also the guardian. See Wis. Stat. §54.46(2)(c). A judge may revoke the authority of the agent if the agent exceeded his/her authority, misappropriated funds, or otherwise acted inappropriately.

3. Does a Power of Attorney for Finances allow gifting?

A Power of Attorney must specifically authorize an agent to make gifts to self or gifts to others. Gifting authority is not included within the general authority of a Power of Attorney for Finances. See Wis. Stat. §244.07.

4. Are medical records required to be provided before someone can petition for guardianship?

No. When a person petitions for guardianship, a physician or psychologist is required to examine the proposed ward and furnish a written report stating their professional opinion regarding the presence and likely duration of any medical or other condition causing the incapacity. The petitioner does not have to provide medical records to the court. The physician or psychologist uses a form titled Examining Physician's or Psychologist's Report, form number GN-3130. See Wis. Stat. §54.36. ❒

The Guardianship Support Center Welcomes New Attorney!

GWAAR would like to welcome its newest addition to the Guardianship Support Center. Attorney Jessica Trudell joined us in March 2018 as the Managing Attorney of the Guardianship Support Center. Jessica is a Milwaukee area native and attended college at the University of Wisconsin-Eau Claire and law school at Hamline University School of Law in St. Paul, MN. Jessica has been a practicing attorney for 10 years, practicing mainly in La Crosse, Vernon and Monroe Counties where she ran her own solo law practice. Jessica's practice focused on children's law, elder law, criminal defense and family law issues including advocacy in guardianships and protective placements, juvenile delinquencies and Children or Juveniles in Need of Protection or Services. Jessica has acted in these cases as Guardian ad Litem and as adversary counsel. GWAAR is excited to have Jessica on the team! ❒

Upcoming Events and Noteworthy Dates That May Be of Interest:

- ◊ Hunger and Health Summit, April 9-10, WI Dells
- ◊ Autism Conference, April 19-21, WI Dells
- ◊ National Health Care Decisions Day, April 16
- ◊ Circles of Life Conference, May 3-4, WI Dells
- ◊ Alzheimer's Assc. State Conference, May 7-8, WI Dells
- ◊ Aging Advocacy Day, Wednesday, May 16, Madison
- ◊ WI Institute for Healthy Aging Summit, June 7-8, WI Dells
- ◊ Social Services Conference, June 13-14, WI Dells
- ◊ Aging Empowerment Conference June 14-15, Madison
- ◊ World Elder Abuse Awareness day, June 15
- ◊ Aging and Disability Network Conference, September 12-14, WI Dells
- ◊ WI Self-Determination Conference, October 29-31, WI Dells ❒

New Medicare IDs on the Way!

The Centers for Medicare and Medicaid Services (CMS) announced that it will start mailing the new Medicare cards with the new Medicare Beneficiary Identifier (MBI) in April 2018. The cards will be mailed out in phases by geographic region. Wisconsin Medicare beneficiaries can expect to receive their new cards **after June 2018**.

The new Medicare cards are still red, white, and blue, but they no longer have your Social Security number, gender, signature, or other personal information that could compromise your identity. Each person who is enrolled in Medicare will receive a new card with their new MBI. The MBIs are 11 characters long, and they are randomly assigned so that there is no connection to your other personal data.

The Social Security Administration (SSA) will be preparing and mailing the cards. If you need to update your address, you can contact SSA at ssa.gov/myaccount or by calling 800-772-1213.

Make sure to check your mailbox regularly until your new card arrives. At the latest, you will receive your new card by December 2019. You should continue to use the Medicare card you have now until you receive your new one in the mail. Once your new card arrives, you should destroy your old Medicare card and start using your new card right away. Remember that you should only give your new MBI to doctors, pharmacists, other health care providers, your insurance company, or people you trust to work with Medicare on your behalf.

Social Security and CMS **will not** call or email you about your new card – you will only receive information by mail. Beware of anyone who contacts you about your new Medicare card. Scammers have already tried to trick beneficiaries into providing personal information or paying money for their new cards. Your new card is free. If anyone calls or emails you about your new or old Medicare number, hang up or delete the message. ❒

Free Dental Care!

Who: WI Dental Association's Mission of Mercy

What: Free dental care for children and adults

Where: Exposition Center at WI State Fair Park, 8200 W. Greenfield Ave., West Allis, WI 53214

When: Friday, June 22 and Saturday, June 23, 2018
Doors open at 5:30 a.m. both days.

No appointments—first come, first served.

FAQ's

Q: Is there an income or asset limit?

A: No, anyone who needs dental care can come.

Q: What is the charge for services? Do I need to have insurance?

A: All work is done at no charge by volunteers donating their time.

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*(**Free Dental Care,** continued from page 5)*

Q: What type of work can be done at the event?

A: Cleanings, filings, extractions, and limited treatment partials can be done. Dentures and denture repairs cannot be done at this clinic.

Q: Do I need to bring photo identification?

A: No. Photo ID, Social Security numbers, and other personal documentation is NOT required.

Q: Do I need to bring anything?

A: Bring a list of your current medications and medical conditions. You may be standing in line for several hours, so feel free to bring a lawn chair, a book, a water bottle, and other necessary items.

Q: Who will be providing the care and treatment?

A: The WI Dental Assoc. has approximately 1,000 volunteers including dentists, specialists, dental hygienists, administrative staff, and community volunteers who help out at this event.

Q: What if I need an interpreter?

A: Interpreters will be available to assist patients who speak Spanish, Hmong, or American Sign Language.

Q: Can a person under guardianship come?

A: Yes, provided their legal guardian accompanies them and authorizes care.

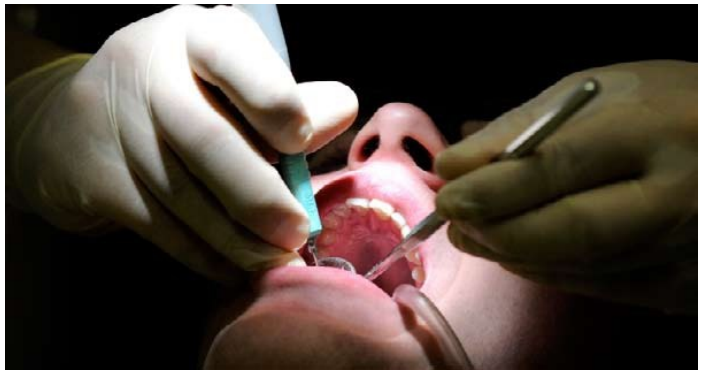
Q: What if I am in pain now?

A: Please do not wait for treatment. Go to a dentist, doctor, or emergency room if you are in pain now.

Q: Where can I go to get more information?

A: https://www.wda.org/wda-foundation/mission-of-mercy/patients and

https://www.wda.org/wp-content/uploads/2018/03/2018-MOM-Flyer-FINAL.pdf ❐



Medicare Hospice Benefits

By the GWAAR Legal Services Team (for reprint)

Hospice care focuses on comfort, symptom control, and pain relief for patients with a life-limiting illness. Services provided by the hospice team relate to caring for the individual, rather than curing a condition or disease. Support is available to the patient as well as family members and caregivers.

A person is eligible for hospice benefits under Medicare if he or she has a life expectancy of six months or less, as certified by a doctor. The person must also be enrolled in Medicare Part A to be eligible for hospice benefits paid by Medicare. The election into hospice is not required—it's entirely optional--and requires an affirmative election in writing signed by the patient. By electing into hospice, a patient acknowledges that Medicare will no longer cover treatment or medications intended to cure the person's terminal illness and related conditions.

A person can remain in hospice longer than six months if his or her medical provider recertifies that the person remains terminally ill. Likewise, a person can opt-out of hospice at any time. If a person's health improves, or an illness goes into remission, the person may no longer need hospice care.

The Medicare hospice benefit includes a comprehensive care team consisting of a doctor, nurse, social worker, physical and occupational therapists, counselors, hospice aides, chaplains, and volunteers. Other covered hospice benefits include 24/7 crisis response, respite care, durable medical equipment and supplies, prescription drugs for symptom control and pain relief, and grief counseling for family members and caregivers after a person passes away. A person's hospice team will work with the person to set up a plan of care to ensure all of the person's needs are met.

Out-of-pocket costs under hospice care are low. The Medicare Part A deductible does not apply to hospice benefits and services. A person enrolled in hospice pays 5% coinsurance on medications up to a maximum of $5 per drug, and 5% coinsurance for short-term inpatient respite care. If a person enrolled in hospice chooses to receive care or treatment for health problems that are not related to the terminal illness, that would still be covered under Original Medicare and deductibles and coinsurance would apply.

Hospice care is generally provided in a person's home. Room and board is *not* a covered benefit under hospice. A person who requires inpatient care in a nursing home or other care setting needs to private pay or apply for Medicaid. An exception to this rule is the 5-day caregiver respite benefit, which provides inpatient care on an occasional basis.

Hospital inpatient stays, emergency room visits, and ambulance transportation are typically *not* covered under hospice. The only way to get Medicare coverage for these services is if they are written into the person's hospice plan of care and arranged by the hospice provider. For example, if a person's pain cannot be managed in their home setting, the hospice plan of care could include an overnight stay in a hospital so that medical professionals can utilize more intensive interventions to better control or minimize pain.

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(***Medicare Hospice Benefits***, *continued from page 7)*

Medicare hospice benefit FAQ's

Q: Because hospice benefits are covered under Medicare Part A, should I drop Medicare Part B and D and my supplement policy after electing into hospice?

A: It is advantageous to keep Part B, Part D, and a Medicare supplement policy in place, even if a person is on hospice. Hospice only pays for care and services related to the terminal illness, including comfort care and pain management. If a person broke an arm or developed a urinary tract infection, that person may need medical treatment that is unrelated to the terminal condition. In that case, Original Medicare would provide coverage, but it would be subject to the standard deductibles and coinsurance under Original Medicare. For example, Part B would cover outpatient services under the 80/20% coinsurance structure. A Medicare supplement would cover the remaining 20%. In addition, a Medicare supplement will cover the 5% coinsurance for hospice-covered drugs and respite care. Finally, if a person drops Medicare Part B, but then recovers from his or her illness and is not re-certified for continuing hospice benefits, that person would have to wait until the Medicare General Enrollment Period (January through March each year) to enroll in Medicare Part B. That person's Part B would then start the following July, which means a person may go up to 16 months without Part B.

Q: How should I select a hospice provider?

A: First and foremost, ask if the hospice provider is Medicare-approved. If the provider is not Medicare-approved, then Medicare will not cover the services and benefits received. It may be helpful to know whether the doctors, nurses, and nurse practitioners are certified in palliative care. Caregivers may want to know what the provider's arrangements are for inpatient respite stays—does the hospice provider have its own facility or an arrangement with a nearby facility? How fast is the crisis response? Word of mouth may also provide insight into prior experiences with that agency.

Q: If a person elects hospice, does he/she have to change doctors?

A: No. Usually a person can keep his or her same doctor after electing into hospice.

Q: Should a person only opt into hospice in the last few days of their life?

A: No. Hospice provides a wide range of services to the patient, family, and caregivers - all of which are available within the last six months of a person's life expectancy. The sooner hospice gets involved, the more help they are able to provide. Most people state that they wish they had involved hospice sooner. ❒

Use Person-First Language

By the GWAAR Legal Services Team (for reprint)

Person-first language puts the person before the disability. People with disabilities have interests, dreams, abilities, and needs. They are our family members, friends, neighbors, co-workers, and are so much more than just a disability. The language our society uses to describe people with disabilities shapes the beliefs and ideas about them. Words are powerful. Use person-first language to support and respect all people.

Instead of this . . .	Say this . . .
Disabled person	A person with a disability
Diabetic uncle	My uncle with diabetes
Mental retardation*	Cognitive or intellectual disability
Normal kid	Children without disabilities
She is autistic	She has autism
Brain-damaged	Brain injury
Birth defect	Congenital disability
Wheelchair bound or Confined to a wheelchair	Uses a wheelchair (for mobility)
Does not communicate	Communicates with her eyes/body language/by crying/using a device/through vocalizations, etc.
He is a tube-feeder	He receives nutrition from a G-tube
Suffers from muscular dystrophy	He has muscular dystrophy
A building for handicapped people	An accessible building or apartment
She is crazy or she is psychotic	Person with a mental health history, or a person diagnosed with schizophrenia, or a person experiencing a psychotic episode
Suffering from Alzheimer's	Living with Alzheimer's

**This term is considered derogatory and offensive. Please do not use this term under any circumstances.*

References: Publication from Central Wisconsin Center, Madison, WI, May 2017
http://ncdj.org/2015/09/terms-to-avoid-when-writing-about-disability/

See also: the National Center on Disability and Journalism. ❒

Silver Alert

By the GWAAR Legal Services Team (for reprint)

A Silver Alert is a specific type of alert, similar to an Amber Alert, sent via the Wisconsin Crime Alert Network within Wisconsin. It is a way of notifying the public when an older adult is missing in hopes of helping that person return home safely.

The Silver Alert program started in Wisconsin in 2014, and since then has had 234 activations. Approximately one-half of the people missing were in a vehicle, and were eventually located an average of 70+ miles away from their last known location.

What are the requirements for issuing a Silver Alert?

- The missing person is age 60 or older;
- The missing person is believed to have Alzheimer's, dementia, or another permanent cognitive impairment which poses a threat to his or her health and safety;
- There is a reasonable belief that the missing person's disappearance is due to his or her impaired cognitive condition;
- The Silver Alert request is made within 72 hours of the person's disappearance;
- There is sufficient information available to disseminate to the public that could assist in locating the missing person; and
- The missing person is entered into the National Crime Information Center (NCIC) database.

No official medical diagnosis is required, and there is no waiting period before a Silver Alert can be issued. In fact, the sooner a Silver Alert is issued, the better. Alerts can be issued at any time of the day or night. The local police department makes the referral to the staff at the Silver Alert program. Members of the public are notified of the Silver Alert via Facebook, Twitter, lottery terminal screens at gas stations, digital advertising billboards, and DOT messaging boards on the highways. Local news stations and websites will also share information about Silver Alerts.

Members of the public are a vital part in ensuring missing people return home safely. Oftentimes, people with dementia will stop at a gas station or a fast food restaurant and they will be "missing in plain sight." Sometimes they can be tracked by using a credit or debit card. Or, a member of the public may recognize them from an alert sent out and then notify authorities.

How can families be prepared for this type of situation?

- Have a recent picture of the person.
- Know the license plate, make, and model of the car the person drives.
- Note if the vehicle has any distinguishing characteristics (bumper stickers, damage, etc.).
- Consider purchasing On-Star, GPS, or other vehicle location/assistance systems.
- Make sure the person has a cell phone on and fully charged when going out.

To get more information about Silver Alert or to sign up for notifications, visit www.wisconsincrimealert.gov. ❐

Legislative Updates

The following bills have passed the Assembly and the Senate and they now await Governor Walker's signature to become law.

AB-655-Supported Decision-Making Agreements: creates a formal supported-decision making process in Wisconsin. This allows adults, of any age, with a functional impairment to create a supported decision-making agreement to allow a "supporter" to assist them in making life decisions. Advocates from both the aging and disability network have been strong supporters of this legislation. This bill was passed by the Senate on a voice vote. Some notes about this bill include:

- The supporter does not have individual authority to make decisions but rather the agreement gives them a seat at the table to provide help and advice;
- An individual can have one supporter or they can have multiple supporters; and
- Supporters can help in areas such as medical, financial, educational and/or housing.

The law allows the supporter to assist with decision-making in one or more of the following areas:

- Understanding the options, responsibilities and consequences of life decisions;
- Assessing and obtaining relevant information. This can include medical, psychological, financial, education or treatment records;
- Understanding the information once it is provided; and
- Communicating the adult's life decisions to the appropriate persons.

A supporter cannot make decisions, sign legal documents or bind the adult to legal agreements. The supporter's authority is limited to that which is given to them in the document. The existence of a supported decision-making agreement is not evidence of incompetency or incapacity. The document must be in writing, voluntary, signed, dated, and witnessed by two adult witnesses or a notary. An adult with a functional impairment can revoke the agreement at any time.

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Interested in Receiving *The Guardian?*

Do you know someone who would like to receive the *Guardian* newsletter? Do you want more information about guardianship and related issues? Signing up is easy with the link on the Guardianship Support Center Webpage: Guardian Newsletter Sign-Up. You can also subscribe by emailing your name, email address, and organization to guardian@gwaar.org. ❐

(***Legislative Updates***, *continued from page 11*)

AB-632-Alzheimer's and Dementia Grants: requires the state Department of Health Services (DHS) to distribute up to $500,000 in grants to community programs across the state to increase awareness of Alzheimer's disease and dementia in rural and underserved urban areas. The Senate passed this bill on a vote of 32-0.

AB-629-Uniform Adult Guardianship Jurisdiction: creates uniform guardianship laws in Wisconsin by incorporating the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA). The purpose is to resolve conflicts regarding jurisdiction between states and to make uniform guardianship laws. The current process is a Wisconsin specific procedure which involves petitioning for Receipt and Acceptance of a Foreign Guardianship.

The bill allows a Wisconsin court to communicate with a court in another state regarding a guardianship. The Wisconsin court can allow the parties to participate in the communication. A Wisconsin court is also able to request the court of another state to do certain things including holding an evidentiary hearing, ordering a person in that state to produce evidence or give testimony, issue an order necessary to assure a person's appearance or to authorize the release of information.

Under the bill, a Wisconsin court has personal jurisdiction to appoint a guardian of the person or of the estate if any of the below is true:

- Wisconsin is the resident's home state;
- On the date of filing, there is a significant connection to Wisconsin and respondent does not have a home state or the respondent does have a home state but a petition is not pending in that state;
- Wisconsin is not a home state or a significant connection state but a home state or significant connection state have declined jurisdiction as Wisconsin is the more appropriate venue; or
- Wisconsin meets requirements for special jurisdiction.

Under the bill, a guardian can petition to transfer a Wisconsin guardianship to another state or can petition to confirm transfer of a guardianship to Wisconsin. If the Wisconsin court grants the petition and accepts transfer, they must recognize the order from the other state including the determination of incapacity and appointment of the guardian. The court can appoint a Guardian ad Litem at any time, and is required to appoint a Guardian ad Litem when there is an objection. ❐