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Protective Placement TRANSFERS

I. Introduction:

Individuals subject to a protective placement order often move to new placement locations or types of facilities. There are a variety of reasons for why that transfer might take place including, the need for a higher level of care than the current facility offers, improvement in the individual's condition so that a lesser restrictive environment is more appropriate, facility closure, and cost of living are a few examples. While a court order placing an individual in a specific facility, or a specific type of facility does not require that the individual remain in the named location, there are specific procedures outlined in the Wisconsin Statutes to follow when an individual will be transferred from their current protective placement facility.

This publication attempts to explain the role of the different parties involved in transferring an individual subject to a protective placement order, the steps required to transfer, and the rights of the individual subject to the protective placement order.

II. What is a protective placement?

Protective placement is a court order directing an individual to be placed in certain types of facilities with the primary goal of providing care and custody. A person who is incompetent and who does not have evaluative capacity to decide where to live cannot provide consent to be placed in restrictive residential environments. A protective placement requires a formal court hearing where the court decides whether the individual meets the standards for protective placement. Those standards are as follows:

- The person is legally incompetent and has a guardian or needs a guardian;
- The ward or proposed ward requires residential care and custody;
- The ward/proposed ward is totally incapable of providing for his/her own care or custody as to create a substantial risk of serious harm to himself/herself or others;
- This incapability results from a developmental disability, degenerative brain disorder, serious and persistent mental illness or other like incapacities;
- The incapacity is permanent or likely to be permanent; and
- The ward/proposed ward is 18 or older or if the suspected impairment is a developmental disability the individual is age 14 or older.

(Wis. Stat. §55.08)

**For more information see [Standards for Ordering Protective Services and Protective Placements](#)



III. Who can petition for a protective placement?

- The Department of Health Services;
- The county department or an agency with which the county department contracts under § 55.02(2);
- A guardian; or
- An interested party:
 - An adult relative or friend of an individual sought to be protected under this chapter.
 - Any official or representative of a public or private agency, corporation or association concerned with the individual's welfare.
 - A health care agent, as defined in §155.01 (4).

Wis. Stat. § 55.075(1); § 55.01(4)(a)-(c)

IV. Where can an individual be placed under a protective placement order?

Protective placements are required to be provided in the least restrictive environment and least restrictive manner consistent with the needs of the individual to be protected and with the resources of the county department. (Wis. Stat. §55.12(3)) A protective placement could order an individual to a specific facility or a specific type of facility including:

- Nursing homes;
- Public medical institutions;
- Centers for the developmentally disabled according to the requirements of §51.06(3);
- Foster care services or other home placements; or
- Other appropriate facilities.

A protective placement can NOT be made to a unit for the acutely mentally ill. A person subject to a protective placement order may be detained on the basis of an emergency under §51.15 OR involuntarily committed under §51.20¹ OR may be voluntarily admitted to a treatment facility for inpatient care under § 51.10(8).

An individual under a protective placement order may NOT be transferred to, detained in, or committed to a treatment facility for care except under §51.15 or §51.20.

An individual requiring placement in a locked unit must have a specific finding from the court of the need for that action. Wis. Stat. § 55.12(2)

¹ The ch. 55 exclusion in s. 51.20 (1) (a) 2. e. includes an individual who is already subject to an order for protective placement or services, if there is another placement or additional services available that would be effective in reducing probability of requisite harm to less than a substantial probability. This exclusion may apply to an individual who is not yet subject to a ch. 55 order but who is eligible for one. Involuntary administration of medication under this section may be one of the additional services that would satisfy this exclusion if the guardian consents and depending on the circumstances. Dane County v. Kelly M. 2011 WI App 69, 333 Wis. 2d 719, 798 N.W.2d 697, 10-1486.

V. What factors must be considered when providing protective placement or services?

Wisconsin Statute 55.12(4) creates a balancing test of factors for the county department to consider in providing protective placement or services:

- The needs of the individual to be protected for health, social or rehabilitative services
- The level of supervision needed
- The reasonableness of the placement/services given the cost and actual benefits in the level of functioning to be realized by the individual
- The limits of available state and federal funds and of county funds required to be appropriated to match state funds
- The reasonableness of the protective placement/services given the number or projected number of individuals who will need protective placement or services given the limited funds available

VI. Is it possible to move an individual even though they are subject to a protective placement order?

Yes, a person subject to a protective placement order could be *transferred* between protective placement facilities, between protective placement units or from a protective placement unit to a medical facility.

However, a person subject to a protective placement order cannot be transferred (under the protective placement order) to any facility requiring commitment procedures under Wis. Stat. §51.

Wis. Stat. § 55.15(1)

VII. Who has authority to transfer an individual under a protective placement order?

According to Wisconsin Statutes the *only* individuals/entities that have authority to transfer a person subject to a protective placement order are:

- The guardian;
- County department (or agency with which it contracts) that provided the protective placement pursuant to the court order;
- The Department of Health Services; and
- Protective placement facility.

These individuals/entities have authority to transfer an individual subject to a protective placement order even though the court order named a specific facility. Wis. Stat. § 55.15(2)

**For more information on the roles of Guardians, Adult Protective Services and Managed Care Organizations see our chart on [Roles and Responsibilities](#).



VIII. What procedure must be followed to transfer an individual under a protective placement order?

An individual subject to a protective placement order may be transferred between protective placement units, between protective placement facilities or from a protective placement unit to a medical facility that is not a psychiatric facility. When the criteria of the move meets one of the previously listed categories, going back to court to modify the protective placement order is not required. The statutes specify a procedure that is required to transfer an individual without court involvement. Wis. Stat. § 55.16, §55.15.

Unless there is an emergency, the following steps are required:

- The person or entity who initiates a transfer shall provide **10 days prior written notice** of a transfer **to the court** that ordered the protective placement AND to each of the other persons or entities who did not initiate the transfer (**the guardian, county department, protective placement facility, and the department**).
 - The notice shall include: The right of the individual under a protective placement order, the individual's attorney, or other interested person to petition the court for hearing on the transfer. §55.15(5)(a)
- Written consent of the guardian. §55.15(3)
- Written consent of the county department if transfer of an individual is to a facility that is more costly to the county. §55.15(4)
- The person or agency making the transfer is still responsible for notifying the individual under protective placement of the proposed transfer and if the department is making the transfer, they must comply with any other transfer planning requirements to minimize trauma to the resident. Wis. Stat. §50.03

IX. What qualifies as an emergency for purposes of a protective placement transfer?

For a situation to be considered an emergency the individual must be “so totally incapable of providing for his or her own care or custody as to create a substantial risk of serious physical harm to himself, herself or others as a result of developmental disability, degenerative brain disorder, serious and persistent mental illness, or other like incapacities if not immediately placed.” Wis. Stat. § 55.135(1).

The procedure for an emergency transfer of a person who is protectively placed is slightly different than the procedure to initiate an emergency protective placement.

Only if an emergency makes it impossible for the party initiating transfer to give the notice required or receive the consents required for a non-emergency transfer the individual *may* be transferred without the prior written consent of the guardian or the notice requirements. However, the following steps must be completed for an emergency transfer of an individual under a protective placement order:



- **Written notice** shall be provided **immediately upon transfer** to each of the persons and entities who did not initiate the transfer (the guardian, the county department, the department, the protective placement facility) and no later than **48 hours** from the **time of transfer** to the **court**.
 - Notice shall include notice of the right to file with the court a petition objecting to the emergency transfer §55.15(5)(b). The ward, ward’s guardian, ward’s attorney or any other interested person has the right to file a petition objecting to the transfer. The petition shall specify the reason for the objection. §55.15(6).

X. What is the difference between a *transfer* of protective placement and *modification* of protective placement order?

Modification of a protective placement order instead of transferring an individual under the existing protective placement order is required when the transfer would be more restrictive to the individual. Modifying the protective placement order fulfills the individual’s due process right of having a court review on whether the added restriction is necessary to meet that individual’s care needs.

Wis. Stat. § 55.16. A modification of the Order or Treatment Plan for Involuntary Administration of Psychotropic Medication can also be requested if it would be in the ward’s best interest.

For example, placing an individual in a locked unit requires “a specific finding of the court as to the need for the action.” Wis. Stat. § 55.12(2). Moving an individual subject to a protective placement order from an unlocked to a locked unit requires court approval. The petition must be served on the individual, individual’s guardian, individuals’ legal counsel, Guardian ad Litem, if any, and the county department.

The following individuals or entities may file a petition to modify protective placement or protective services:

- An individual under protective placement;
- The guardian of the individual under protective placement;
- The individual’s attorney;
- The Department of Health Services
- The county department that placed the ward or provided the protective services (or an agency it contracts with)
- An interested person.

The modification procedures require a hearing for the court to review whether the proposed setting is the least restrictive environment for that individual. A hearing will be held within 21 days unless there was a hearing for protective services, placement or transfer of protective placement held within the past six months. Wis. Stat. § 55.16(3). The court can order the protective placement or services to continue at the facility in which the individual resides in at the time of the hearing, modify by transferring to a least restrictive environment, order protective services instead of protective placement, or terminate the protective placement or services.



XI. What happens if someone doesn't agree with the protective placement transfer?

The following individuals or entities may file a petition with the court objecting to a proposed transfer or an emergency transfer:

- An individual under protective placement;
- The guardian of the individual under protective placement;
- The individual's attorney; or
- Any other interested person (An adult relative or friend of an individual sought to be protected under this chapter, any official or representative of a public or private agency, corporation or association concerned with the individual's welfare, a health care agent, as defined in § 155.01 (4)).

The petition must include the reasons for objecting to the transfer. If a petition objecting to the transfer is filed, the court will schedule a hearing within 10 days. A Guardian Ad Litem will also be appointed to represent the best interest of the individual under protective placement. Anyone can request legal counsel on behalf of the individual under protective placement. The petitioner, individual under protective placement, guardian ad litem, and the individual's attorney have the right to attend the hearing and present and cross-examine witnesses. Wis. Stat. 55.15(6)-(7)

When determining whether to approve the proposed transfer or emergency transfer the court will consider whether the required transfer procedure was completed and whether the requirements for a petition objecting to transfer were met. The court can also consider whether the proposed placement or new placement is in the least restrictive environment consistent with §55.12(3), (4) and (5) or if the transfer was in the most integrated setting. Finally, the court can consider the best interest of the individual under protective placement.

QUESTIONS? Call the Wisconsin Guardianship Support Center at 1-855-409-9410 or email at guardian@gwaar.org.

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