

55.17 PROTECTIVE SERVICE SYSTEM

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residential facility, the county department shall assist the residential facility with discharge planning for the individual, including planning for a proper residential living arrangement and the necessary support services for the individual.

3. Any individual whose protective placement is terminated under this paragraph may reside in his or her current protective placement facility for up to 60 days after a determination under subd. 1. or 2. in order to arrange for an alternative living arrangement. If the protective placement facility has fewer than 16 beds, the individual may remain in the protective placement facility as long as the requirements of s. 55.055 are met. Admission by the individual, if an adult, to another residential facility shall be made under s. 55.055.

(4) ORDER FOR INDIVIDUAL RECEIVING COURT-ORDERED PROTECTIVE SERVICES. (a) After a hearing under sub. (2) on a petition for termination of an order for protective services, other than an order under s. 55.14, the court shall make one of the following orders and shall include in the order the information relied on as a basis for that order:

1. If the individual continues to meet the standards under s. 55.08 (2) and the protective services ordered for the individual are provided in the least restrictive manner that is consistent with the requirements of s. 55.12 (3), (4), and (5), the court shall continue the order for protective services.

2. If the individual continues to meet the standards under s. 55.08 (2) and the protective services ordered for the individual are not provided in the least restrictive manner that is consistent with the requirements of s. 55.12 (3), (4), and (5), the court shall make an order for protective services as provided in s. 55.16 (5) (a) 2.

3. If the individual no longer meets the standards for protective services under s. 55.08 (2), the court shall terminate the order for protective services.

(b) After a hearing under sub. (2) on a petition for termination of an order under s. 55.14, the court shall make one of the orders required under s. 55.19 (3) (e) and shall include in the order the information relied on as a basis for that order.

History: 2005 a. 264 ss. 142, 168; 2007 a. 45.

Under s. 55.17, the court may order a termination of a protective placement only if the standards in s. 55.08 (1) are no longer met; if they are met, the court must order a continuation, though it may change the placement if the person is not in the least restrictive setting. Nowhere does s. 55.17 provide that the court may terminate an order for protective placement if under s. 55.055 (1) the person could remain in the facility without a protective order. Jackson Co. Department of Health and Human Services v. Susan H. 2010 WI App 82, 326 Wis. 2d 246, 785 N.W.2d 677, 09–1997.

55.175 Discharge from protective placement. Prior to discharge of an individual from a protective placement, the county department that is responsible for protective placement shall review the need for continuing protective services, continuation of full or limited guardianship, or, if the individual has no guardian, guardianship. If the county department's recommendation includes a course of action for which court approval would be required, the county department shall make the recommendation to the court. Prior to discharge of the individual from any mental health institute or center for the developmentally disabled, the department shall make the review under s. 51.35 (7).

History: 2005 a. 264 s. 151; 2005 a. 387 s. 119; 2007 a. 45.

55.18 Annual review of protective placement. All of the following shall be performed with respect to any individual who is subject to an order for protective placement under s. 55.12 or to an order for protective placement initially issued under s. 55.06 (9) (a), 2003 stats.:

(1) COUNTY DEPARTMENT PERFORMANCE OF REVIEW. (a) The county department of the individual's county of residence shall, except as provided in sub. (1m), annually review the status of each individual who has been provided protective placement. The review shall include a visit to the individual and a written evaluation of the physical, mental and social condition of the individual and the service needs of the individual. The review shall be made a part of the permanent record of the individual. The county department shall inform the guardian of the individual of the

review at the time the review is made and shall, before completing a report of the review, invite the individual and the guardian to submit comments or information concerning the individual's need for protective placement or protective services. Not later than the first day of the 11th month after the initial order is made for protective placement for an individual and, except as provided in par. (b), annually thereafter, the county department shall do all of the following:

1. File a report of the review with the court that ordered the protective placement. The report shall include information on all of the following:

a. The functional abilities and disabilities of the individual at the time the review is made, including the needs of the individual for health, social, or rehabilitation services, and the level of supervision needed.

b. The ability of community services to provide adequate support for the individual's needs.

c. The ability of the individual to live in a less restrictive setting.

d. Whether sufficient services are available to support the individual and meet the individual's needs in the community and if so, an estimate of the cost of the services, including the use of county funds.

e. Whether the protective placement order should be terminated or whether the individual should be placed in another facility with adequate support services that places fewer restrictions on the individual's personal freedom, is closer to the individual's home community, or more adequately meets the individual's needs, including any recommendation that is made during the reporting period by the county department with respect to termination of the protective placement or placement of the individual in another facility.

f. The comments of the individual and the individual's guardian during the performance of the review, as summarized by the county department, and the response of the county department to the comments.

g. The comments, if any, of a staff member at the facility in which the individual is placed that are relevant to the review of the individual's placement.

2. File with the court under subd. 1. a petition for annual review by the court of the protective placement ordered for the individual.

3. Provide the report under subd. 1. to the individual and the guardian of the individual, and to the individual's agent under an activated power of attorney for health care, if any.

(ar) If the individual has a developmental disability and is protectively placed in an intermediate facility or a nursing facility, the agency that is responsible for the protective placement shall notify in writing the county department of the county of residence of the individual that is participating in the program under s. 46.278 or, if s. 46.279 (4m) applies to the individual, the department, at least 120 days before the review. The county department so notified or, if s. 46.279 (4m) applies, the department's contractor, shall develop a plan under s. 46.279 (4) and furnish the plan to the court that ordered the protective placement and to the individual's guardian. The court shall order that the individual be transferred to the noninstitutional community setting in accordance with the plan unless the court finds that protective placement in the intermediate facility or nursing facility is the most integrated setting, as defined in s. 46.279 (1) (bm), that is appropriate to the needs of the individual taking into account information presented by all affected parties.

(b) If, following an annual review of an individual's status under par. (a), the individual or the individual's guardian or guardian ad litem requests modification or termination of the individual's protective placement and a hearing under the requirements of s. 55.10 (2) to (4) is provided, or if a hearing under the requirements of s. 55.10 (2) to (4) is provided pursuant to a petition for modification or termination of the protective placement, the

county is not required to initiate a subsequent review of the individual's status under par. (a) until the first day of the 11th month after the date that the court issues a final order after the hearing.

(bm) If the individual is subject to an order for involuntary administration of psychotropic medication under s. 55.14, the review under par. (a) shall be conducted simultaneously with the review under s. 55.19.

(c) The review under par. (a) may not be conducted by a person who is an employee of the facility in which the individual resides.

(1m) COUNTY AGREEMENT. The county of residence of an individual whose placement is in a different county may enter into an agreement with that county under which the county of the individual's placement performs all or part of the duties of the county of residence under this section.

(2) GUARDIAN AD LITEM APPOINTMENT AND REPORT. After a county department has filed a report with a court under sub. (1) (a) 1., the court shall appoint a guardian ad litem in accordance with s. 757.48 (1). The guardian ad litem shall do all of the following:

(a) Review the report filed under sub. (1) (a) 1., the report required under s. s. 54.25 (1) (a), and any other relevant reports on the individual's condition and placement.

(b) Meet with the individual and contact the individual's guardian and orally explain to the individual and guardian all of the following:

1. The procedure for review of protective placement.
2. The right of the individual to appointment of legal counsel under sub. (3) (c).
3. The right to an evaluation under sub. (3) (b).
4. The contents of the report under sub. (1) (a) 1.
5. That a change in or termination of protective placement may be ordered by the court.
6. The right to a hearing under sub. (3) (d) and an explanation that the individual or the individual's guardian may request a hearing that meets the requirements under s. 55.10 (2) to (4).

(c) Provide the information required under par. (b) to the individual and to the individual's guardian in writing.

(d) Review the individual's condition, placement, and rights with the individual's guardian.

(e) Ascertain whether the individual wishes to exercise any of his or her rights under sub. (3) (b), (c), or (d)

(f) Within 30 days after appointment, file with the court a written report based on information obtained under this subsection and any other evaluations or records of the individual. The report shall discuss whether the individual appears to continue to meet the standards for protective placement under s. 55.08 (1) and whether the protective placement is in the least restrictive environment that is consistent with the individual's needs. The report shall also state whether any of the following apply:

1. An evaluation under sub. (3) (b) is requested by the individual or the individual's guardian ad litem or guardian.
2. The individual or the individual's guardian requests modification or termination of the protective placement.
3. The individual or the individual's guardian requests or the guardian ad litem recommends that legal counsel be appointed for the individual.

4. The individual or the individual's guardian or guardian ad litem requests a hearing that meets the requirements of s. 55.10 (2) to (4) for the individual.

(g) Certify to the court that he or she has complied with the requirements of pars. (a) to (e).

(3) COURT REVIEW OF REPORTS; HEARING; ORDER. (a) The court that ordered protective placement for an individual under s. 55.12 shall review the report of the guardian ad litem under sub. (2) (f), the report filed under sub. (1) (a) 1., and the report required under s. 54.25 (1) (a).

(b) The court shall order an evaluation, by a person who is not an employee of the county department of the physical, mental, and

social condition of the individual and the service needs of the individual that is independent of the review performed under sub. (1) (a) if any of the following apply:

1. The report required under sub. (1) (a) 1. is not timely filed, or the court determines that the report fails to meet the requirements of sub. (1) (c).

2. Following review of the guardian ad litem's report under sub. (2) (f), the court determines that an independent evaluation for the individual is necessary.

3. The individual or the individual's guardian or guardian ad litem so requests.

(bm) If an evaluation is ordered under par. (b), it shall be performed at the expense of the individual or, if the individual is indigent, at the expense of the county under sub. (1) (a).

(br) The court shall order that the county department obtain any other necessary information with respect to the individual.

(c) The court shall refer an individual for appointment of legal counsel under s. 55.105 if any of the following apply:

1. Following review of the guardian ad litem's report under sub. (2) (f), the court determines that legal counsel for the individual is necessary.

2. The individual or the individual's guardian or guardian ad litem so requests.

(d) The court shall order either a summary hearing or a hearing under the requirements of s. 55.10 (2) to (4). A summary hearing shall be held on the record, may be held in court or by other means, including by telephone or videoconference, is not an evidentiary hearing, and does not require attendance by the individual. The court shall hold a hearing under the requirements of s. 55.10 (2) to (4) if any of the following apply:

1. The individual or the individual's guardian or guardian ad litem so requests.

2. The report under sub. (2) (f) indicates that the individual no longer meets the standards for protective placement under s. 55.08 (1).

3. The report under sub. (2) (f) indicates that the current protective placement is not in the least restrictive environment consistent with the individual's needs.

4. The report under sub. (2) (f) indicates that the individual objects to the current protective placement.

(e) Following the hearing under par. (d), the court shall do one of the following:

1. If the court finds that the individual continues to meet the standards under s. 55.08 (1) and the protective placement of the individual is in the least restrictive environment that is consistent with the requirements of s. 55.12 (3), (4), and (5), the court shall order the continuation of the protective placement in the facility in which the individual resides at the time of the hearing. The court shall include in the order the information relied upon as a basis for the order and shall make findings based on the standards under s. 55.08 (1) in support of the need for continuation of the protective placement.

2. If the court finds that the individual continues to meet the standards under s. 55.08 (1) and the protective placement of the individual is not in the least restrictive environment that is consistent with the requirements of s. 55.12 (3), (4), and (5), the court shall order transfer of the individual to a protective placement that is in the least restrictive environment consistent with the requirements of s. 55.12 (3), (4), and (5). In lieu of ordering transfer of the individual to a specific facility, the court may order the county department of residence to develop or recommend a protective placement that is in the least restrictive environment consistent with the requirements of s. 55.12 (3), (4), and (5) and arrange for the individual's transfer to that protective placement within 60 days after the court's order. The court may extend this period to permit development of a protective placement. The court may order protective services as well as a transfer of protective placement. The court shall include in the order the information relied

upon as a basis for the order and shall make findings based on the standards under s. 55.08 (1) in support of the need for continued protective placement.

3. If the court finds that the individual no longer meets the standards under s. 55.08 (1), the court shall terminate the protective placement. If the protective placement is terminated, s. 55.17 (3) (c) 1. to 3. shall apply.

(f) The court shall provide a copy of the order made under par. (e) to all of the following:

1. The individual.
2. The individual's guardian, guardian ad litem, and legal counsel, if any, and the individual's agent under an activated power of attorney for health care, if any.
3. The facility in which the individual resided when the petition for annual review was filed.
4. The county department under sub. (1) (a) and, if relevant, sub. (1m).

(4) **ESTABLISHMENT OF COUNTY POLICY.** The county department shall ensure that no later than 180 days after November 1, 2006, the county establishes a written policy that specifies procedures to be followed in the county that are designed to ensure that annual reviews of all individuals who are subject to orders for protective placement under s. 55.12 or to orders for protective placement initially issued under s. 55.06 (9) (a), 2003 stats., residing in the county are conducted as required by this section. The county department shall maintain a copy of the written policy and shall make the policy available for public inspection.

(5) **REPORT BY REGISTER IN PROBATE.** By the first January 31 after November 1, 2006, and by every January 31 thereafter, the register in probate of each county shall file with the chief judge of the judicial administrative district a statement indicating whether each report and petition required to be filed by the county department under sub. (1) that year has been filed. If the statement indicates that a required report or petition has not been filed, the statement shall include an explanation of the reasons the report or petition has not been filed.

History: 2005 a. 264 ss. 140, 141, 169; 2007 a. 20, 45.

55.19 Annual review of order authorizing involuntary administration of psychotropic medication. All of the following shall be performed annually with respect to any individual who is subject to an order under s. 55.14 or an order initially issued under s. 880.33 (4r), 2003 stats., authorizing involuntary administration of psychotropic medication:

(1) **COUNTY DEPARTMENT PERFORMANCE OF REVIEW.** (a) The county department of the individual's county of residence shall, except as provided in sub. (1m), review, in compliance with the requirements of this section, the status of each individual who is the subject of the order. The review shall include a visit to the individual and a written evaluation of the physical, mental, and social condition of the individual that is relevant to the issue of the continued need for the order. The review shall be made a part of the permanent record of the individual. The county department shall inform the guardian of the individual of the review at the time the review is made and shall, before completing a report of the review, invite the individual and the guardian to submit comments or information concerning the individual's need for involuntary administration of psychotropic medication or other protective services. Not later than the first day of the 11th month after the initial order is made for an individual, except as provided in par. (b), and at least annually thereafter, the county department shall do all of the following:

1. File a report of the review with the court that issued the order. The report of the review shall include information on all of the following:
 - a. Whether the individual continues to meet the standards for protective services.

b. Whether the individual is not competent to refuse psychotropic medication, as defined in s. 55.14 (1) (b).

c. Whether the individual continues to refuse to take psychotropic medication voluntarily; and whether attempting to administer psychotropic medication to the individual voluntarily is not feasible or is not in the best interests of the individual, including all information required to be specified under s. 55.14 (3) (c).

d. Whether the individual's condition for which psychotropic medication has been prescribed has been improved by psychotropic medication and the individual has responded positively to psychotropic medication.

e. If the petitioner alleged under s. 55.14 (3) (e) 2. that the individual met one of the dangerousness criteria set forth in s. 51.20 (1) (a) 2. a. to e., whether the individual continues to meet the criterion.

f. The comments of the individual and the individual's guardian during the performance of the review, as summarized by the county department, and the response of the county department to the comments.

g. The comments, if any, of a staff member at the facility at which the individual is placed or receives services or at which psychotropic medication is administered to the individual that are relevant to the review of the continued need for the order.

2. File with the court under subd. 1. a petition for annual review by the court of the order.

3. Provide the report under subd. 1. to the individual and the guardian of the individual.

(b) If, in an annual review of an individual's status under par. (a), the individual or the individual's guardian or guardian ad litem requests termination of the order and a hearing that meets the requirements of s. 55.10 is provided, or if a hearing under the requirements of s. 55.10 is provided pursuant to a petition for modification or termination of the order, the county department is not required to initiate a subsequent review under par. (a) until the first day of the 11th month after the date that the court issues a final order after the hearing.

(bm) If the individual is subject to a protective placement order, the review under par. (a) shall be conducted simultaneously with the review under s. 55.18 of the individual's protective placement.

(c) The review under par. (a) may not be conducted by a person who is an employee of a facility in which the individual resides or from which the individual receives services.

(1m) **COUNTY AGREEMENT.** The county of residence of an individual who is subject to an order under s. 55.14 and is provided protective placement in a different county may enter into an agreement with that county under which the county of the individual's placement performs all or part of the duties of the county of residence under this section.

(2) **GUARDIAN AD LITEM APPOINTMENT AND REPORT.** After a county department has filed a report with a court under sub. (1) (a) 1., the court shall appoint a guardian ad litem in accordance with s. 757.48 (1). The guardian ad litem shall do all of the following:

(a) Review the report filed under sub. (1) (a) 1., and any other relevant reports on the individual's condition and continued need for the order under s. 55.14.

(b) Meet with the individual and contact the individual's guardian and orally explain to the individual and guardian all of the following:

1. The procedure for review of an order for involuntary administration of psychotropic medication.
2. The right of the individual to appointment of legal counsel under sub. (3) (c).
3. The right to an evaluation under sub. (3) (b).
4. The contents of the report under sub. (1) (a) 1.