



Date: August 18, 2022 DPH Numbered Memo BADR 2022-01, replaces 2018-04

To: County Adult Protective Services Units

From: Adult Protective Services,
Office on Aging, Bureau of Aging and Disability Resources

Wisconsin Adult Protective Services System

Overview

This document provides a description of the Wisconsin Adult Protective Services (APS) system, specifying the roles and responsibilities of counties and the Department of Health Services (DHS) with references to applicable laws. The Wisconsin APS system is county based; however, both DHS and the counties have separate and distinct statutorily imposed duties relative to elder adults at risk, adults at risk, and the adult protective services system.

County Summary

Each county is required to identify a lead elder-adults-at-risk (EAAR) agency for adults ages 60 and over, per Wis. Stat. § 46.90(2), and an adults-at-risk (AAR) agency for adults ages 18–59, per Wis. Stat. § 55.043(1d), to take primary responsibility for receiving and responding to allegations of abuse, financial exploitation, neglect, and self-neglect. Although a county is permitted to put these functions in separate agencies, most combine them in the same agency. Each county is also required to designate an APS agency responsible for providing protective services and protective placements to all individuals at risk, regardless of age, per Wis. Stat. § 55.02(2)(a). The EAAR, AAR, and APS agencies are often collectively referred to as the county APS unit. Note that Wis. Stat. ch. 55 governs two components: the AAR reporting system and the adult protective services system.

Elder Abuse Reporting and Response System

Wis. Stat. § 46.90 governs the elder abuse reporting system. It provides for the establishment of the county EAAR agency with responsibility for receiving and responding to reports of abuse, financial exploitation, neglect, and self-neglect of adults ages 60 or older. The statute specifies the agency's duties along with requirements for responding to and investigating reports, offering services, making referrals to law enforcement and other agencies, and initiating other appropriate action, such as guardianship or protective services and placements. In reports involving elder adults at risk, the agency shall respond to the report including, if necessary, by conducting an investigation or referring the report to another agency for investigation. The agency has no discretion and must respond to the report. The response to the report shall commence within 24 hours after its receipt, exclusive of weekends and holidays, per Wis. Stat. § 46.90(5)(a)(1).

Adult-at-Risk Reporting and Response System

Wis. Stat. § 55.043 governs the adult-at-risk reporting system. It provides for the establishment of the county AAR agency with responsibility for receiving and responding to reports of abuse, financial exploitation, neglect, and self-neglect of adults ages 18–59. The statute specifies the agency’s duties along with requirements for responding to and investigating reports, offering services, making referrals to law enforcement and other agencies, and initiating other appropriate action, such as guardianship or protective services and placements. In reports involving adults at risk, if the agency has reason to believe the adult at risk has been abused, financially exploited, neglected, or self-neglecting, the agency shall respond to the report including, if necessary, by conducting an investigation, to determine whether the adult is in need of protective services. The response shall commence within 24 hours after receipt of the report, exclusive of weekends and holidays, Wis. Stat. § 55.043 (1r) (a) (1g).

[Reference: 2021 Wisconsin Act 122]

Other EAAR and AAR Agency Responsibilities Regarding Receipt of and Response to Abuse Allegations

In addition to receiving and responding to allegations of abuse, financial exploitation, neglect, and self-neglect, per Wis. Stat. §§ 46.90(5) and 55.043(1r), the lead EAAR and AAR agencies in each county are required to do the following per Wis. Stat. §§ 46.90(3) and 55.043(1g):

- Develop a policy for notifying other investigative agencies, including law enforcement agencies, in appropriate cases.
- Establish reporting and referral protocols.
- Enter into a memorandum of understanding regarding operation of the reporting and response system that, at a minimum, identifies the agencies responsible for investigating reports of abuse, financial exploitation, neglect, and self-neglect, and for providing specific direct services.
- Publicize the existence of the reporting system in the county as well as a telephone number that can be used to report suspected cases of abuse, financial exploitation, neglect, and self-neglect.

Protective Services and Protective Placements

Counties are responsible for the reasonable program needs of individuals who are protectively placed or who receive protective services, per Wis. Stat. § 55.045. The adult protective services system established by ch. 55 provides a mechanism for organizing, planning, and delivering services to protect elder adults at risk and adults at risk with serious and persistent mental illness, degenerative brain disorders, developmental disabilities, or other like incapacities per. § 55.001. The primary purpose of protective services and protective placements is to keep an individual who is at risk of harm due to a condition that is permanent, or likely to be permanent, safe from harm by providing for long-term care and custody of the individual. A court-ordered protective placement is focused primarily on residential care and custody. A non-institutional alternative is court-ordered protective services which, when delivered, serves the same purpose as protective placements. Essentially, protective placements must meet the same requirements as protective services as well as additional requirements applicable only to protective placements (i.e., primary need for residential care and custody; a disability that is permanent or likely to be permanent), per § 55.08(1) and (2).

Protective services can be voluntary or involuntary and can be ordered by a court as part of a protective order for individuals who have been found to be incompetent. Voluntary services are favored over involuntary ones per Wis. Stat. § 55.05(3).

Per Wis. Stat. § 55.01(6r), protective services include any of the following:

- Outreach
- Identification of individuals in need of services
- Counseling and referral for services
- Coordination of services
- Tracking and follow-up
- Social services
- Case management
- Legal counseling or referral
- Guardianship referral
- Diagnostic evaluation
- Any services that keep the individual safe from abuse, financial exploitation, neglect, or self-neglect, or keep the individual from experiencing deterioration or from inflicting harm on himself or herself or another person.

Any time a petition for protective placement is filed, a petition for guardianship must also be filed if the person does not already have a guardian, per § 55.075(3).

Although any person may petition for guardianship of an individual, per Wis. Stat. § 54.34(1), counties generally, but not always, serve as the petitioner in guardianship proceedings in cases involving a petition for protective services or placement. However, in addition to county agencies or contractors, DHS, a guardian, or other interested person may file for guardianship and protective services or protective placement of an individual under § 55.075(1).

“Protective placements or protective services provided by a county department or agency with which it contracts ... shall be provided in the least restrictive environment and in the least restrictive manner consistent with the needs of the individual to be protected and with the resources of the county department” per Wis. Stat. § 55.12.

Additional County Responsibilities for Guardianships, Protective Services, and Protective Placements

Counties are also charged with the following duties relative to guardianships, protective services, and protective placements under Wis. Stat. § 55.02(2)(b):

- Monitoring and evaluating protective services and protective placements.
- Preparing and submitting reports required by DHS or by a court when protective services or protective placements are ordered.
- Developing requirements for submittal by guardians of the person of reports to the county as required by law.
- Designating at least one appropriate medical facility or protective placement facility as an intake facility for emergency protective placements.

Additional County Responsibilities

Finally, counties are required to do the following:

- Report on referrals, investigations, and outcomes of abuse, financial exploitation, neglect, and self-neglect in the Wisconsin Incident Tracking System (WITS), per Wis. Stat. §§ 46.90(6)(am) and 55.043(6)(am).
- Distribute elder abuse direct service funds and report on expenditures, per Wis. Stat. §§ 46.90(5m).
- Establish and report on interdisciplinary (I-Team) activities. I-Teams are not statutorily required; rather, they are required by DHS as a condition of counties receiving general purpose revenue elder abuse direct service funds.

DHS

DHS has the following duties relative to both elder-adults-at-risk (EAAR) and adults-at-risk (AAR) agencies designated by each county, per Wis. Stat. §§ 46.90 (8) and 55.043 (8):

- Develop a plan to assist lead agencies in responding to reports of abuse, financial exploitation, neglect, and self-neglect.
- Prepare and distribute sample departmental report forms for county use.
- Collect statistical information from each county pertaining to reported cases of abuse, financial exploitation, neglect, and self-neglect.
- Develop and disseminate aggregate information on and agency reporting of abuse, financial exploitation, neglect, and self-neglect.

DHS developed and maintains the web-based Wisconsin Incident Tracking System, known as WITS, into which counties enter information about alleged cases of abuse, financial exploitation, neglect, and self-neglect. The system collects initial information about the allegations and referral, information about the elder adult at risk or adult at risk and the alleged abuser, and a report summary (incident result, action taken, services planned). DHS receives no personally identifiable information in WITS, but uses the statistical summary information to formulate reports and make program changes, per Wis. Stat. §§ 46.90(8) and 55.043(8).

Except when alleged abuse occurs in a DHS-regulated facility, DHS has no investigatory authority in cases of alleged abuse, financial exploitation, neglect, or self-neglect of elder adults at risk or adults at risk. As described above, that authority is expressly provided to counties. For information about reporting requirements for all entities regulated by the Division of Quality Assurance, see [P-00907, Reporting Requirements for All Entities Regulated by DQA Except Nursing Homes](#) (03/2015), and [P-00981, Nursing Home Reporting Requirements](#) (11/2017).

In addition, DHS is charged with the following duties relative to the protective service system under Wis. Stat. § 55.02(1)(a):

- Cooperate with counties to develop and operate a coordinated, statewide system for protective services and protective placements.
- Monitor and supervise the implementation and operation of the system.
- Provide technical assistance to counties.
- Evaluate the protective service and protective placement systems.

Other Applicable Laws

Guardianships

Wis. Stat. ch. 54 dictates the procedures, standards, and required findings for guardianship of individuals based on a finding of incompetency. A court may appoint a guardian of the person or a guardian of the estate or both. Guardianships are required to be tailored to the individual's needs and to be as unrestrictive as possible to the individual's rights. The court order creating the guardianship must specify the areas of decision-making where the guardian has authority to act, and any restrictions the court has imposed on the ability of the individual to exercise rights. There are certain rights that, even if removed from the individual, cannot be exercised by the guardian. Therefore, guardianships may be limited to certain functions or may cover many or all of the decisions an individual could make.

State Alcohol, Drug Abuse, Developmental Disabilities and Mental Health Act

Wis. Stat. ch 51 sets forth the roles of the state and counties in providing mental health services, the procedures for voluntary admissions of adults and juveniles to inpatient facilities, the standards and procedures for civil commitment, community mental health services, including crisis response and stabilization, and the rights of individuals receiving mental health care. The chapter has a clear policy in favor of providing a range of services that will enable individuals to receive treatment in the least restrictive environment appropriate to their needs. It also has a strong focus on protecting individual rights and liberties and favors voluntary over involuntary treatment. The process by which an individual is taken into custody for mental health treatment in an emergency is called an emergency detention.

Emergency Mental Health Services Programs

Wis. Admin. Code ch DHS 34 establishes standards and procedures for certification of county and multi-county emergency mental health services programs. Such programs are required to provide services to persons experiencing a mental health crisis or in a situation likely to turn into a mental health crisis if supportive services are not provided. Certain standards are required to enable emergency mental health services programs to be eligible for medical assistance reimbursement.