Wisconsin Public Psychiatry Network Teleconference (WPPNT)

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WPPNT Reminders

How to join the Zoom webinar

- **Online:** https://dhswi.zoomgov.com/j/1606358142
- **Phone:** 669-254-5252
- Enter the Webinar ID: 160 635 8142#.
  - Press # again to join. (There is no participant ID)

Reminders for participants

- Join online or by phone by 11 a.m. Central and wait for the host to start the webinar. Your camera and audio/microphone are disabled.
- Download or view the presentation materials. The evaluation survey opens at 11:59 a.m. the day of the presentation.
- Ask questions to the presenter(s) in the Zoom Q&A window. Each presenter will decide when to address questions. People who join by phone cannot ask questions.
- Use Zoom chat to communicate with the WPPNT coordinator or to share information related to the presentation.

- Participate live to earn continuing education hours (CEHs). Complete the evaluation survey within two weeks of the live presentation and confirmation of your CEH will be returned by email.
- A link to the video recording of the presentation is posted within four business days of the presentation.
- Presentation materials, evaluations, and video recordings are on the WPPNT webpage: https://www.dhs.wisconsin.gov/wppnt/2024.htm

POAs and Guardianship: Mental Health Options & Limits

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Greater WI Agency on Aging Resources, Inc.
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WI Guardianship Support Center

- Legal information provided to attys, guardians, APS, families, professionals, and vulnerable adults
- Guardianships, POA, Protective placement, DNR, Living wills
- Free quarterly newsletter
- Consumer publications
- No court representation or legal advice

About This Presentation

What options do legal decision-makers have to make decisions about behavioral health treatment?

Objectives:

- Learn about the options and limits of authority of POA agents and guardians
- Learn about the interaction between guardianship, mental commitments, and protective placement

Case Example: Jane

- Jane is 80 and has been diagnosed with dementia. Her health care POA has been activated and her husband George is her agent.
- Recently Jane has become aggressive and violent, including lashing out at George and their adult children who have been helping provide care. She has also been leaving the house in the middle of the night and wandering onto a busy road.
- George brings Jane to the ER one evening following an incident when she threatened him with a knife.

Health Care Power of Attorney

- Must be completed voluntarily by adult of sound mind, two disinterested witnesses
  - Note: sound mind *may* exist after incapacity – very low standard
- Family members cannot complete on their loved one's behalf
- Typically activated on incapacity – but check POA doc to be sure
- Out of state POAs are ok but WI limitations apply

POA-HC: Statutory Limitations

- Long-term care admissions:
  - Individual must grant agent specific authority to admit to SNF and/or CBRF for anything other than post-inpatient rehab or respite
- Mental health admissions:
  - Agent may not admit to inpatient psych treatment
  - Agent may not admit for LTC if individual has mental illness or developmental disability diagnosis at time of admission*
  - Agent may consent to outpatient treatment/meds if individual does not object

POA-HC: Other Limitations

- Individual's objections
  - Agent must follow wishes of individual, as expressed in the document itself or communicated by individual at any time – cannot override if individual objects
- Limited to health care decisions only
  - Cannot make decisions about visitation
  - Cannot change health insurance or sign financial documents (unless also agent for POA for finance)

Psych-specific POAs

- Typically either activated on signing or has definition of incapacity that includes psychiatric crisis
- Typically allow admission to IP psych or residential psych programs
- Typically allow agent to override objections
- Might not allow individual to revoke while activated

- Validity is unclear, both for WI-drafted docs and out-of-state docs where doc gives agent authority

Case Example: Victor

- Victor is 45 and suffered a traumatic brain injury several years ago. He has also been diagnosed with PTSD. Victor is reasonably compliant with psych medications but refuses to participate in any other treatment. He lives on his own.
- Recently Victor has been experiencing more flashbacks that have led to lashing out and minor property damage. He has also been neglecting his health and his untreated diabetes has led to a couple of ER visits.
- Victor's friend, Igor, would like to help Victor get his medical needs handled and get him into treatment if possible. Victor wants to continue to live on his own and does not want help.

Guardianship – When and Why

- Concerns about validity of POA documents (e.g., undue influence/coercion, person didn't understand what they were signing, document is deficient)
- POA document doesn't give authority to make certain decisions
- POA document gives authority (e.g., admission to long-term care) but principal objects
- Person has POA-HC but no POA-F
- Person doesn't have any POAs, or no agents are available/willing to act
- Agent shenanigans

Guardianship

- Court process
- Temporary – 60-120 days
  - Individual “likely to be found incompetent” and needs decision-maker appointed right away
- Permanent – final hearing w/in 90 days
- Guardian of person: health care, other daily activities
- Guardian of estate: financial matters, including Medicaid applications/insurance decisions

POAs and Guardianship

- Court must determine if POAs are sufficient
- If not, court appoints agent(s) to be guardian(s) unless not in individual's best interest
- Court leaves POAs in place unless good cause to limit or revoke
- POA takes priority for decisions it covers

Guardianship Standard – Incompetency

- Individual has a long-term impairment (e.g., I/DD, serious and persistent mental illness, degenerative brain disorder, etc.)
- Impairment results in inability to receive/evaluate information or communicate decisions
- Unable to meet essential needs for health and safety and/or
- Unable to provide for own support or prevent financial exploitation
- No less restrictive alternative
- Only a court determines whether this standard is met

Guardian Authority for Medical Decisions

- Outlined in Letters of Guardianship and/or Determination and Order
- Guardian can consent to voluntary medical treatment
  - Good-faith effort to discuss & determine if there is a protest
- Guardian can consent to involuntary medical treatment
  - Consider invasiveness, benefits, and side effects
  - Limitation on psych care + meds
- Must secure any necessary care in the ward's best interest based on the risks and benefits and alternatives especially if drastic or restrictive treatment is proposed

Guardianship Limitations

- WI only has limited guardianship
- Guardian must make decisions in the least restrictive manner/ensure the least restrictive environment
- Ward always retains some rights – right to consult w/ attorney, right to file grievances, right to contact DRWI or BOALTC, right to refuse treatment under Ch. 51

Guardianship Limitations – Placement

- Guardian may place in facility < 16 beds w/o court involvement unless individual objects
- Guardian may place in facility ≥ 16 beds for short-term stabilization/respite/rehab but not for treatment/services related to mental illness or developmental disability (Wis. Stat. § 55.055(1)(b))
- All other non-psych placements require protective placement court order
- Involuntary placements for psych treatment require Ch. 51 order
  - BUT: individual may voluntarily admit with guardian consent (51.10(8))

Guardianship Limitations – *Helen E.F.* (2012)

- Court determined that individual with dementia is not appropriate subject for treatment for Ch. 51
- Habilitation vs. rehabilitation – *symptoms* of dementia may be treatable but underlying disease is not
- Cannot commit individual w/ dementia; cannot protectively place to psych
- ED → EPP (51.67) – but cannot use this to bypass Ch. 51/55 limitations
- 55.13/135: Emergency protective services/placement
  - "take into custody and transport the individual to an appropriate medical or protective placement facility"

Case Example: Kelly

- Kelly has a developmental disability and bipolar disorder. She has been under guardianship since 18 and has been protectively placed in an adult family home for the last several years.
- Kelly has not been taking her psych medications consistently, resulting in self-destructive and dangerous behavior. Her guardian doesn't think she needs hospitalization, but would like to make sure she takes her meds and attends treatment. The guardian wants to know if the AFH can put the meds in Kelly's food to make sure she takes them.

- Loosely based on *Dane County v. Kelly M*, 2011 WI App 69

Guardianship and Involuntary Meds

- Guardian cannot consent to psychotropic meds over ward's objection
  - "Psychotropic" in Ch. 54/55 is about reason for med, not FDA classification
  - This includes hiding meds in food if individual has objected, coercion, etc.
- Two options:
  - Ch. 51 meds order – available w/ involuntary commitment
  - 55 meds order – option for emergency protective service (55.13, up to 72 hours), or ongoing available as a protective service (55.14); does not require protective placement order

55.14 – Ongoing Involuntary Meds Order

- Petition must document:
  - Ward's reasons for refusal
  - Reasonable # of documented attempts to administer
- Order includes:
  - Authority for guardian to consent
  - Method of administration or directive to develop treatment plan w/ method
- Hearing requires GAL to be appointed
- Requires annual review (55.19, done w/ Watts if protectively placed)

Ch. 51, 54, and 55 Together

- Guardianship + mental commitment is possible if underlying conditions are treatable
- Guardianship + mental commitment + protective placement are also possible

- Ch. 51 is about what treatment the person gets (and whether it's voluntary)
- Ch. 54 is about who makes decisions
- Ch. 55 is about where they live (and whether it's voluntary)

Gaps

- *Helen E.F.* (and 55.13) assume appropriate protective placement facilities exist for EPP – very few options in reality
- Can you ED someone with dementia?
- Can you EPP to psych?
- Limits to POAs
- Guardianship for serious & persistent mental illness – what can a guardian do?

WI Guardianship Support Center

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