

Selections from
CH 50: CARE AND SERVICE RESIDENTIAL FACILITIES

50.06 Certain admissions to facilities.

(1) In this section, "incapacitated" means unable to receive and evaluate information effectively or to communicate decisions to such an extent that the individual lacks the capacity to manage his or her health care decisions, including decisions about his or her post-hospital care.

(2) An individual under sub. (3) may consent to admission, directly from a hospital to a facility, of an incapacitated individual who does not have a valid power of attorney for health care and who has not been adjudicated incompetent in this state, if all of the following apply:

(a) No person who is listed under sub. (3) in the same order of priority as, or higher in priority than, the individual who is consenting to the proposed admission disagrees with the proposed admission.

(am) 1. Except as provided in subd. 2., no person who is listed under sub. (3) and who resides with the incapacitated individual disagrees with the proposed admission.

2. Subdivision 1. does not apply if any of the following applies:

a. The individual who is consenting to the proposed admission resides with the incapacitated individual.

b. The individual who is consenting to the proposed admission is the spouse or domestic partner under ch. 770 of the incapacitated person.

(b) The individual for whom admission is sought is not diagnosed as developmentally disabled or as having a mental illness at the time of the proposed admission.

(c) A petition for guardianship for the individual under s. 54.34 and a petition under s. 55.075 for protective placement of the individual are filed prior to the proposed admission.

(d) The incapacitated individual does not verbally object to or otherwise actively protest the admission. If he or she makes such an objection or protest, he or she may be admitted to the facility, but the person in charge of the facility shall immediately notify the county department under s. 55.02 (2) for the county in which the individual is living or the agency with which the county department contracts. Representatives of the county department or agency shall visit the individual as soon as possible, but not later than 72 hours after notification, and do all of the following:

1. Determine whether the protest persists or has been voluntarily withdrawn and consult with the person who consented to the admission regarding the reasons for the admission.

2. Attempt to have the incapacitated individual released within 72 hours if the protest is not withdrawn and the individual does not satisfy all of the criteria under s. 55.08 (1) or 55.135 (1), and provide assistance in identifying appropriate alternative living arrangements.

3. Comply with s. 55.135 if the requirements of s. 55.135 (1) are met and emergency protective placement in that facility or another facility is necessary. The court, with the permission of the facility, may order the incapacitated individual to remain in the facility pending the outcome of the protective placement proceedings.

(3) The following individuals, in the following order of priority, may consent to an admission under sub. (2):

(a) The spouse or domestic partner under ch. 770 of the incapacitated individual.

(b) An adult son or daughter of the incapacitated individual.

(c) A parent of the incapacitated individual.

(d) An adult brother or sister of the incapacitated individual.

(e) A grandparent of the incapacitated individual.

(f) An adult grandchild of the incapacitated individual.

(g) An adult close friend of the incapacitated individual.

(4) A determination that an individual is incapacitated for purposes of sub. (2) shall be made by 2 physicians, as defined in s. 448.01 (5), or by one physician and one licensed psychologist, as defined in s. 455.01 (4), who personally examine the individual and sign a statement specifying that the individual is incapacitated. Mere old age, eccentricity or physical disability, either singly or together, are insufficient to make a finding that an individual is incapacitated. Neither of the individuals who make a finding that an individual is incapacitated may be a relative, as defined in s. 242.01 (11), of the individual or have knowledge that he or she is entitled to or has a claim on any portion of the individual's estate. A copy of the statement shall be included in the individual's records in the facility to which he or she is admitted.

(5) (a) Except as provided in par. (b), an individual who consents to an admission under this section may, for the incapacitated individual, make health care decisions to the same extent as a guardian of the person may and authorize expenditures related to health care to the same extent as a guardian of the estate may, until the earliest of the following:

1. Sixty days after the admission to the facility of the incapacitated individual.
2. Discharge of the incapacitated individual from the facility.
3. Appointment of a guardian for the incapacitated individual.

(b) An individual who consents to an admission under this section may not authorize expenditures related to health care if the incapacitated individual has an agent under a durable power of attorney, as defined in s. 244.02 (3), who may authorize expenditures related to health care.

(6) If the incapacitated individual is in the facility after 60 days after admission and a guardian has not been appointed, the authority of the person who consented to the admission to make decisions and, if sub. (5) (a) applies, to authorize expenditures is extended for 30 days for the purpose of allowing the facility to initiate discharge planning for the incapacitated individual.

(7) An individual who consents to an admission under this section may request that an assessment be conducted for the incapacitated individual under the long-term support community options program under s. 46.27 (6) or, if the secretary has certified under s. 46.281 (3) that a resource center is available for the individual, a functional screening and a financial and cost-sharing screening to determine eligibility for the family care benefit under s. 46.286 (1). If admission is sought on behalf of the incapacitated individual or if the incapacitated individual is about to be admitted on a private pay basis, the individual who consents to the admission may waive the requirement for a financial and cost-sharing screening under s. 46.283 (4) (g), unless the incapacitated individual is expected to become eligible for medical assistance within 6 months.

History: 1993 a. 187; 1999 a. 9; 2005 a. 264, 387; 2007 a. 20, 45; 2009 a. 28, 319.

50.94 Admission to and care in a hospice for certain incapacitated persons

(1) In this section:

(a) "Hospice care" means palliative care, respite care, short-term care or supportive care.

(b) "Incapacitated" means unable to receive and evaluate information effectively or to communicate decisions to such an extent that a person lacks the capacity to manage his or her health care decisions.

(c) "Physician" means a person licensed to practice medicine and surgery under ch. 448.

(d) "Terminal condition" means an incurable condition caused by injury, disease or illness that according to reasonable medical judgment will produce death within 6 months, even with available life-sustaining treatment provided in accordance with the prevailing standard of medical care.

(2) A person who is determined to be incapacitated under the requirements of sub. (8), does not have a valid living will or valid power of attorney for health care, and has not been adjudicated incompetent in this state may be admitted to a hospice under this section only if all of the following requirements are met:

(a) An individual who is specified in sub. (3) signs all of the following:

1. On behalf of the person who is incapacitated, an informed consent for the receipt of hospice care by the person who is incapacitated.

2. A statement certifying that it is his or her belief, to the best of his or her knowledge, that, if able to do so, the person who is incapacitated would have selected hospice care.

(b) A physician certifies that the person who is incapacitated has a terminal condition and that the physician believes that the individual under par. (a) is acting in accordance with the views or beliefs of the person who is incapacitated.

(3) The following individuals, in the following order of priority, may act under sub. (2) (a):

(a) The spouse or domestic partner under ch. 770 of the person who is incapacitated.

(b) An adult child of the person who is incapacitated.

(c) A parent of the person who is incapacitated.

(d) An adult sibling of the person who is incapacitated.

(e) A close friend or a relative of the person who is incapacitated, other than as specified in pars. (a) to (d), to whom all of the following apply:

1. The close friend or other relative is aged at least 18 and has maintained sufficient regular contact with the person who is incapacitated to be familiar with the person's activities, health and beliefs.

2. The close friend or other relative has exhibited special care and concern for the incapacitated person.

(4) The individual who acts under sub. (2) (a) may make all health care decisions related to receipt of hospice care by the person who is incapacitated.

(5) The person who is incapacitated or the individual under sub. (4) may object to or revoke the election of hospice care at any time.

(6) A person who disagrees with a hospice decision made under this section may apply under s. 54.50 for temporary guardianship of the person who is incapacitated. In applying for the temporary guardianship, such a person has the burden of proving that the person who is incapacitated would not have consented to admission to a hospice or hospice care.

(7) The individual who acts under sub. (2) (a) shall, if feasible, provide to all other individuals listed under sub. (3) notice of the proposed admission of the person who is incapacitated to a hospice and of the right to apply for temporary guardianship under sub. (6). If it is not feasible for the individual to provide this notice before admission of the person who is incapacitated to a hospice, the individual who acts under sub. (2)

(a) shall exercise reasonable diligence in providing the notice within 48 hours after the admission.

(8) A determination that a person is incapacitated may be made only by 2 physicians or by one physician and one licensed psychologist, as defined in s. 455.01 (4), who personally examine the person and sign a statement specifying that the person is incapacitated. Mere old age, eccentricity or physical disabilities, singly or together, are insufficient to determine that a person is incapacitated. Whoever determines that the person is incapacitated may not be a relative, as defined in s. 242.01 (11), of the person or have knowledge that he or she is entitled to or has claim on any portion of the person's estate. A copy of the statement shall be included in the records of the incapacitated person in the hospice to which he or she is admitted.

History: 1999 a. 9; 2005 a. 387; 2009 a. 28.