



WISCONSIN LEGISLATIVE COUNCIL

LEGAL INTERVENTIONS FOR PERSONS WITH ALZHEIMER'S DISEASE AND RELATED DEMENTIAS

Room 411 South
State Capitol

October 18, 2012
10:00 a.m. – 3:30 p.m.

[The following is a summary of the October 18, 2012 meeting of the Special Committee on Legal Interventions for Persons With Alzheimer's Disease and Related Dementias. The file copy of this summary has appended to it a copy of each document prepared for or submitted to the committee during the meeting. A digital recording of the meeting is available on our Web site at <http://www.legis.state.wi.us/lc>.]

Call to Order and Roll Call

Chair Knodl called the committee to order. The roll was called and staff noted that a quorum was present.

COMMITTEE MEMBERS PRESENT: Rep. Dan Knodl, Chair; Rep. Penny Bernard Schaber, Vice Chair; Sen. Neal Kedzie; and Public Members Suzanne Bottum-Jones, Kathi Cauley, Tom Hlavacek, Gina Koepl, Robert Lightfoot, Rob Mueller, Wanda Plachecki, Brian Purtell, Tom Reed, Kenneth Robbins, and Chrystal Rosso.

COMMITTEE MEMBERS ABSENT: Sen. Robert Wirth; and Public Member William Hanrahan.

COUNCIL STAFF PRESENT: Mary Matthias, Senior Staff Attorney; Brian Larson, Staff Attorney; and Tawsif Anam, Intern.

APPEARANCES: Sergeant John Wallschlaeger, Community Liaison Officer, Crisis Intervention Team Officer, Appleton Police Department; Sergeant David A. Coughlin, Racine County Sheriff's Office; Captain Ron Lueneburg, Rhinelander Police Department; and Officer Sarah Shimko, Madison Police Department.

Approval of the Minutes From the September 12, 2012 Meeting of the Special Committee

Senator Kedzie moved, seconded by Chair Knodl, to approve the minutes of the September 12, 2012 meeting. The motion passed on a unanimous voice vote.

Presentations by Invited Speakers

Chair Knodl welcomed the members of the committee. He explained that after the presentations by the invited speakers from the law enforcement community, the committee would begin discussions of the bill drafts prepared by Legislative Council staff.

Sergeant John Wallschlaeger, Community Liaison Officer, Crisis Intervention Team Officer, Appleton Police Department, provided an overview of the Crisis Intervention Team (CIT) model implemented by the Appleton Police Department beginning in 2004. Under this model, officers may volunteer to become designated as “CIT officers,” which signifies 40 hours of additional training in crisis intervention. This includes training in identifying the signs and symptoms of mental illness, with an emphasis on de-escalation. Officers from all divisions of the agency have received the training, and there are currently 40 CIT-trained officers within the agency, out of a total of 108 positions.

Sergeant Wallschlaeger described how CIT officers respond to an elderly individual in crisis. This includes efforts to de-escalate the situation and minimize use of force. It also involves consultation with the appropriate county mental health department (one of three counties within the Appleton Police Department’s jurisdiction). When necessary the CIT officers will initiate an emergency detention. In some cases, he stated, the county’s interpretation of the *Helen E.F.* case has caused the denial or delay of care for a person in crisis who is a danger to themselves or others. As an example, he relayed an incident involving an elderly gentleman whose care was significantly delayed. In addition to some of the statutory changes contemplated by the committee, he suggested that a letter to law enforcement officers from the Department of Justice and the Department of Health Services explaining the proper law enforcement procedures in light of the *Helen E.F.* decision would be helpful. Sergeant Wallschlaeger also expressed concern about standard practices of transporting individuals in handcuffs who have dementia or who are mentally ill; however, when safety is an issue, officers may have no other option.

Sergeant David A. Coughlin, Racine County Sheriff’s Office, provided additional perspective on the CIT model by describing its operation in Racine County. Based on their process of tracking how CIT has affected calls for service, committals are down about 60%. He attributes this to an ability to de-escalate situations and find placements other than a secure detention facility. When individuals in crisis are transported, the first priority is to have rescue personnel handle the transportation; however, law enforcement will sometimes transfer, and use of restraints is sometimes necessary to ensure safety. Sergeant Coughlin provided a description of the facilities available in Racine County, including the psychiatric ward at St. Luke’s and a hospital unit at Wheaton Franciscan. If an individual has dementia or Alzheimer’s issues, they will be placed at Wheaton Franciscan where they get medically stabilized and placed back in their home or in facilities such as assisted living facilities under ch. 55. This occurs under the guidance of the county health services department. Sergeant Coughlin indicated that, as far as

his office has observed, it is rare for those individuals to be committed under ch. 51 and taken to St. Luke's.

Captain Ron Lueneburg, Rhinelander Police Department, outlined the concerns facing the Rhinelander police, as well as other law enforcement agencies in the northern part of the state, regarding care for elderly individuals with mental health issues. Public safety is the number one concern. However, he noted that resources are more limited in his area of the state. He described how they have had some success by gathering stakeholders across several counties to meet periodically and arrive at common understandings and approaches.

In Captain Lueneburg's experience, Rhinelander police understand the challenges facing caregivers and strive to have good relationships with care facilities. Recently officers have become more concerned about removing individuals from nursing homes, based on guidance from corporation counsel regarding the *Helen E.F.* decision. Captain Lueneburg also stated that when challenging behaviors arise, law enforcement is sometimes used as an expedited and convenient solution to the problem. Captain Lueneburg shared his belief that facilities should monitor residents closely, and have a plan in place for when behaviors arise; law enforcement should not be viewed as a solution to the problem of challenging behaviors when it may not be truly in the best interests of residents to detain and transport them. Captain Lueneburg also suggested reforming ch. 51 to address jurisdictional issues among agencies. When an overt act occurs leading to an emergency detention, agencies in the jurisdiction where it occurred should be responsible for the investigation, detainment, and transportation associated with the emergency detention. This is not the case under the current statute.

Officer Sarah Shimko, Madison Police Department, described her work as part of the mental health liaison team in Madison. This is a group of officers across districts who have volunteered to develop expertise in responding to mental health issues arising in the community. Officer Shimko also noted that all officers in the department have at least 60 hours of mental health training through Madison's police academy. The mental health liaison team maintains strong ties to the county agency, Journey Mental Health, and places an emphasis on partnering with community resources. When an incident occurs, Journey Mental Health is always called, either before or after the person is transported to an emergency room. Personnel from Journey will meet the officers at the emergency room, and the communication is usually handled very well. Officer Shimko also shared a recent experience with a three-party petition for commitment under ch. 51 that involved an extended hospital wait. There were minimal safety issues present and, therefore, perhaps it was not efficient to devote the amount of police resources that were utilized. Also, in certain cases, rather than using police for transport it may be more efficient to transport by ambulance or other means. When an individual is assessed and then transported to the Winnebago Mental Health Institute, for example, it can take two officers off the streets for essentially an entire shift. Officer Shimko advocated making decisions about the appropriate level of police involvement on a more case-by-case basis. Officer Shimko also echoed the comments of previous speakers regarding avoiding handcuffs in cases of dementia, when possible, but using appropriate restraints whenever safety is involved. She also discussed the impact of the *Helen E.F.* case in Madison, which has been minimal as far as the police response is concerned.

At the conclusion of the presentations, Sergeant Wallschlaeger, Sergeant Coughlin, Captain Lueneburg, and Officer Shimko responded to questions from committee members.

Discussion of Committee Assignment

Memo No. 2, Selected Federal Regulations and Initiatives Related to Long-Term Care

Mr. Anam provided an overview of Memo No. 2, concerning selected federal regulations and initiatives related to long-term care facilities. The Memo identifies pertinent federal regulations under 42 CFR 483 (Requirements for States and Long-Term Care Facilities), and provides a link to the federal regulations as contained in CMS's State Operations Manual. The Memo also provides details regarding a new CMS initiative known as the Partnership to Improve Dementia Care. Following the presentation, a brief discussion followed regarding the contents and operation of the federal regulations and corresponding provisions in the Wisconsin Administrative Code. Several members of the committee commented that the operation of the regulations could best be viewed as a partnership between the entities involved.

WLC: 0018/1, relating to authorization of an agent under a power of attorney for health care to make certain decisions related to care and treatment of irreversible dementia and to consent to the admission of the principal to certain facilities

Mr. Larson provided an overview of WLC: 0018/1, regarding authorization for certain decisions related to dementia care by an agent under a power of attorney for health care. In response to the comment related to judicial review after line 4 on page 4 of the draft, Mr. Hlavacek advocated for a judicial review requirement in order to ensure adequate safeguards against abuse. Mr. Purtell and Mr. Mueller suggested that no special judicial review should be required, as there are already adequate safeguards built into the statutory scheme for powers of attorney for health care under ch. 155. Ms. Rosso also pointed out, as a safeguard, the role played by a physician in any admission to an inpatient treatment facility.

Following the review of the main portions of the draft, a discussion followed regarding the practical effect of the proposed changes. Several committee members indicated that there would be a noticeable practical effect in that the draft would allow agents to disregard comments of the principal, in certain cases, that might otherwise interfere with the operation of the power of attorney for health care and perhaps prevent its use.

Mr. Purtell raised concerns regarding the psychotropic medication provision in lines 4 to 12 on page 7 of the draft, in part because he believes that an agent's authority to consent to involuntary administration of psychotropic medication already exists in current law. He distinguished this from a case of "forcible" administration, which occurs when a principal is actively protesting. He would favor simply changing the agent's general powers to clarify that the authority to consent to involuntary administration, but not forcible administration, is included within the general powers. A discussion followed regarding Mr. Purtell's proposal. Committee members' experiences suggest that there are disagreements of what is currently allowed under the law. Several committee members also raised the need for safeguards given the fact that psychotropic medications are potentially very dangerous.

In response to the comment regarding retroactive effect on page 3 of the draft, Mr. Mueller suggested that the provisions of the draft be allowed to apply retroactively.

In response to the provision regarding revocation in lines 13 to 16 on page 7 of the draft, Mr. Purtell raised the related issue of deactivation of a power of attorney for health care. He suggested that this may also need to be addressed.

After conclusion of the discussion regarding WLC: 0018/1, a subcommittee was formed to continue to work through issues identified in the draft. The members who volunteered for the subcommittee were Vice Chair Bernard Schaber, Dr. Robbins, Mr. Mueller, Ms. Rosso, and Mr. Purtell.

WLC: 0017/1, relating to inpatient psychiatric treatment for individuals with irreversible dementia

Ms. Matthias provided an overview of WLC: 0017/1, which creates alternatives to emergency detention under ch. 51 by creating new procedures under ch. 55. In response to the provision allowing emergency placement in an inpatient facility in lines 13 to 20 on page 13 of the draft, Mr. Mueller suggested it not be necessary that the behavior causing the danger is substantially related to the irreversible dementia. Mr. Hlavacek objected to the use of the terms “behavior or condition” without also establishing the specific kinds of behaviors or conditions that will fall under the provision.

In response to the definition of “inpatient facility” in lines 8 to 10 on page 9 of the draft, Mr. Hlavacek expressed concern about the use of the ch. 51 definition and the lack of detail about the types of care and services the facility is expected to provide. For example, a facility meeting the definition should be certified to provide both medical and behavioral evaluation and treatment of dementia, and it should have the capability to separate populations of residents. A discussion followed regarding the suggestion of certification and the options for changing the definition. Mr. Mueller pointed out that the purpose of the provision is to allow what is currently unavailable under ch. 55, which is a way to get inpatient psychiatric care for individuals with dementia. Dr. Koepl suggested that the definition should specifically reference a psychiatric facility, because of the *Helen E.F.* decision.

Mr. Mueller proposed that “inpatient facility” should be defined to mean a public or private hospital or unit of a hospital which has within its primary purpose the diagnosis and treatment of individuals with irreversible dementia and accompanying behavioral disorders and provides 24-hour care. A discussion followed regarding potential options for oversight, certification, or designation of an inpatient facility by the county or another entity.

In response to the provision for a 30-day extension in lines 1 to 4 on page 13 of the draft, Dr. Robbins asked whether it would be possible to allow for additional extensions (beyond the initial 30-day extension) for those rare cases when it may be necessary. A discussion followed about the possibility of additional extensions. Mr. Purtell proposed that additional extensions be allowed under the draft, but with a very high degree of court oversight.

In response to references in the draft to a 72-hour period within which a probable cause hearing must be held, Dr. Koepl raised this issue of when the 72-hour period actually starts. She suggested that this may also need to be addressed. Mr. Mueller suggested that the new procedure be made consistent with ch. 51 in this regard.

In response to references in the draft to a “diagnosis” of irreversible dementia, Ms. Bottum-Jones raised a concern that dementia may not always be identified as a formal diagnosis even when it exists in an individual.

In response to the notice provision in line 22 on page 16 of the draft, Mr. Reed suggested that the notice also state that the individual has a right to an attorney. It was also suggested that a guardian receive notice, and that family members receive notice in cases where there is no guardian.

In response to the provision allowing a time extension for submission of the petition for guardianship in lines 10 to 12 on page 12 of the draft, Mr. Hlavacek raised a concern about the lack of a limit on the extension. He suggested that the draft include a reasonable limit as to the number of extensions that will be available. Several members suggested that the extension be limited to 72 hours.

WLC: 0015/P1, relating to involuntary administration of psychotropic medication to a person with irreversible dementia

Ms. Matthias provided an overview of WLC: 0015/P1, which creates a procedure under which involuntary administration of psychotropic medication may be provided as an emergency protective service. In response to the definition of “not competent to refuse psychotropic medication” in lines 15 to 19 on page 4 of the draft, Mr. Hlavacek raised a concern about the scope of the definition, which would include a wide array of disabilities. He suggested that it should be limited to individuals with irreversible dementia. Mr. Mueller and Mr. Purtell suggested that the provision be left as currently written in the draft. A discussion followed on the appropriate scope of the provision.

In response to the term “long-term care facility” as used in line 1 on page 6 of the draft, Mr. Lightfoot suggested that the term should be broadened to expressly include, for example, assisted living facilities. Mr. Mueller and Mr. Hlavacek suggested removing the term altogether, so that the provision (in par. (f)) will apply to all individuals and not just those in a specific type of facility. Mr. Hlavacek also suggested placing additional requirements on the prescribing physician, so that, for example, there is a requirement of a personal examination.

In response to the guardian consent requirement in lines 1 to 3 on page 7 of the draft, Mr. Hlavacek suggested that it be a requirement to make reasonable efforts to contact the guardian, but that if unable to contact the procedure may still go forward.

In response to the comment regarding administrative rules after line 3 on page 6 of the draft, Mr. Purtell stated that administrative rules are probably not necessary, and several members agreed. On the other hand, Mr. Hlavacek suggested that the draft should include a directive to create administrative rules.

After conclusion of the discussions regarding WLC: 0017/1 and WLC: 0015/P1, Chair Knodl expanded the scope of the subcommittee to include work on issues identified in those drafts. The additional members who volunteered for the subcommittee were Mr. Reed, Mr. Hlavacek, Ms. Bottum-Jones, and Ms. Cauley.

Other Business

There was no other business brought before the committee.

Adjournment

The meeting was adjourned at 3:30 p.m.

BTL:ty