Department of Health Services' Response to Legislation Proposed by Wisconsin Legislative Council Special Committee on Legal Interventions for Persons with Alzheimer's Disease and Related Dementias

DHS RECOMMENDATION:
Revising existing legal procedures is neither an appropriate nor necessary response to the issue.

The Department recognizes that the draft legislation is an attempt to address a difficult and complex issue – how to respond appropriately to people with dementia, living either in the community or in facilities, who exhibit challenging behaviors. In 2006, significant revisions were made to Chapter 54 (Guardianship) and Chapter 55 (Protective Service System), in part to provide greater protections for persons subject to these laws. Those revisions rightfully maintained a focus on conditions which are permanent and degenerative, as opposed to those which are treatable and correctly addressed in Chapter 51 (the Mental Health Act).

Part of the revisions made in 2006 as a result of the Supreme Court decision in State ex rel. Watts v. Combined Community Services Board of Milwaukee County, 122 Wis. 2d 65, 362 N.W.2d 104 (1985), created the language in subsection 55.12(2) of the current statutes which states: No individual who is subject to an order for protective placement or services may be involuntarily transferred to, detained in, or committed to a treatment facility for care except under s. 51.15 or 51.20. This language clarifies that the state mental health institutes may not be designated as facilities to accept individuals on temporary or permanent protective placement orders.

The Department's recommendation is that a major system re-design is required of our community-based, facility-based, and institutional care delivery systems and capacities for this population. The Department's overall goal is to maintain individuals in their current placements with adequate treatment and supports until such time as their behavior warrants an alternative placement. At that time, the placement should be in the least restrictive environment to meet their needs. It is unrealistic to believe that additional legislative changes will address the real issue: lack of appropriate community-based, facility-based delivery systems and capacities to provide services to the population in their current location. It will take a comprehensive multi-system effort to address the longstanding and complex issues raised by challenging behaviors in persons with dementia and Alzheimer's disease.

The Department Will Support:
Inpatient Psychiatric Admissions as a Short Term Option (WLC: 0017/4) with the following assumptions/provisions:

- The legislation is designed as a short term legal option and includes a sunset provision of no more than two years during which time the Department will take the lead in researching, designing, and building a dementia capable system designed to avoid unnecessary admissions for individuals with dementia.

- The legislation must define precisely the intended target group. Although a large percentage of people with dementia will exhibit challenging behaviors at some point in the course of their disease, the great majority of these cases can be effectively managed where the individual resides and without resorting to the use of psychotropic medications or inpatient hospitalization. In contrast, the group of people who cannot be managed "in place" is very small. The legislation should serve only the needs of this very small group without infringing on their rights and potentially the rights of others with dementia.
- The legislation must also define precisely:
    - The threshold at which challenging behaviors may be subject to this approach keeping in mind that challenging behaviors are often either medically related or attempts to communicate a problem or fear;
    - What clinical, social, environmental, and other non-pharmacological interventions must be attempted and documented and in what particular settings before an inpatient admission is allowed;
    - That inpatient admissions will be permitted only to dementia capable facilities or units after examination and these patients will be examined by clinicians trained in the unique needs of this population.
- Patient protections must be enhanced to at least the level of those afforded to patients admitted to similar facilities for actual treatment services.

Power of Attorney for Health Care Authorizing Involuntary Administration of Psychotropic Drugs:
The principal should be able to determine and specifically authorize in the power of attorney for health care document that he or she will allow the agent to make a decision regarding the involuntary administration of psychotropic drugs. As with all other decisions authorized in the health care power of attorney document, the principal retains the ability to rescind part or all of the document.

The Department Does Not Support:
Emergency Involuntary Administration of Psychotropic Medications (WLC: 0015/2) The Department does not support the proposed legislation regarding the emergency involuntary administration of psychotropic medications for this population under Chapter 55. Current law already permits the involuntary administration of psychotropic medications as an emergency protective service under s. 55.13.

- The proposed legislation does not ensure that appropriate non-pharmacological interventions have been attempted or specify that the behavior actually requires a pharmacological intervention. As written, the legislation essentially codifies chemical restraint for persons with dementia without adequate protections and is inconsistent with national and state efforts aimed at restricting the use of psychotropic medications to a treatment of last resort. The Centers for Medicare and Medicaid Services (CMS) is amidst a national program aimed at reducing the use of these medications in nursing homes. The proposed legislation is likely to encourage their use in these settings, thereby conflicting with the CMS initiative.

Changes to Health Care Power of Attorney Statute (WLC: 0018/3).

The proposed legislation allows an agent under a health care power of attorney to admit the principal to an inpatient psychiatric facility. Only individuals with a pre-existing mental health condition would consider the need for admission to a mental health facility when executing a health care power of attorney and individuals would not anticipate the need to be admitted to a mental health facility for dementia related behaviors. As written, the legislation bypasses all patient protections provided in Chapter 51 and DHS 94 and allows for direct admission of the principal by the agent. The potential for abuse is too significant.

Department Proposal for System Re-Design:

As stated above, the Department's recommendation is that a system re-design is required and capacities reviewed for the population that is the focus of the draft legislation. It should be noted that the Department will require additional resources to implement proposed Department led initiatives.

The following section outlines current efforts:

The Division of Long Term Care (DLTC) and the Division of Quality Assurance (DQA) are currently involved in providing programming, supports, and training aimed at appropriate treatment and capacity for these individuals.

The Division of Long Term Care (DLTC):

- Administers programs that serve people with dementia in the community. Several long term care programs operate under Medicaid Home and Community-Based Services waivers and are intended to support individuals in community settings. Family Care and IRIS serve persons with long term care needs in all but 15 counties.
- Adding new dementia care specialists in Aging and Disability Resource Centers (ADRCs) to provide federally funded evidence-based activities and interventions operated by county governments usually through the Aging Network or Aging and Disability Resource Centers (ADRC) in the community, supporting persons with dementia and their caregivers. These include the Memory Care Connections pilot project which supports caregivers of individuals with dementia by helping to provide care and manage challenging behaviors and the LEEPS pilot project, the goal of which is to delay facility admissions through exercise.
- DLTC is increasing its efforts to identify people with dementia, regardless of financial eligibility for funded long-term care, and to support the person and his/her family caregivers so the person is able to remain at home for as long as possible with appropriate supports.
- ADRCs are conducting early dementia screenings.
- The State Office on Aging Committee for a Wisconsin Response to Dementia is developing a state plan to address Alzheimer's Disease.
- Other long term care sustainability projects include facilitation of dialogue between county crisis response systems and managed long term care systems to address shared responsibility for adequate planning and response to emergent needs of persons with developmental disabilities and comorbid mental health concerns. Much of this dialogue and resulting collaboration could be applied to individuals with dementia.

The Division of Quality Assurance (DQA):

- The DQA has implemented projects, many of which are education and training related, designed to benefit persons with dementia living in facilities.
- The DHS/DQA website, Alzheimer's Disease and Dementia Resources, offers training materials, assessment tools and links to publication on dementia care.

The website includes a two-part webcast explaining a person-directed approach to dementia care that creates an environment designed to reduce challenging behaviors from occurring. If these behaviors occur, the program shows how to identify the source and correct the problem to prevent the need to remove the person from their home.

- In 2007, the Wisconsin Health Care Association and Leading/Age Wisconsin developed the Wisconsin Clinical Resource Center (WCRC) project. The WCRC website is a user-friendly resource available to nursing homes to provide key information about eight care areas along with access to companion training materials. The training module for dementia and distressed behavior includes guidelines and tools for assessment, care planning, monitoring and evaluation of resident behavioral needs.
- The American Medical Directors Association (AMDA) Clinical Practice Guidelines for Dementia in the Long Term Care Setting and other environmental recommendations were designed to optimize the quality of life for individuals with dementia. Through December 2012 the department has awarded $437,435 in Civil Monetary Penalty (CMP) funding and $161, 435 in Medicaid funding to support this project.

Proposed Department Led Initiatives for System Re-Design within 2 Years:

- Continue researching current best practices in dementia care and response to challenging behaviors.
- Quantify issues related to this population in Wisconsin
- Define the geographic regions where there is population density and research the appropriateness for regionally based facilities to serve the needs of individuals with dementia.
- Establish Wisconsin's current dementia care delivery system baseline in comparison to current best practices.
- Develop a detailed multi-divisional workplan to include county systems in planning to implement the above described initiatives with timelines and outcome measures.
- Present DHS plan for improvement to the Legislative Council Committee upon request.
- DHS/DLTC will develop and staff a workgroup with County Departments to develop a central listing of facilities appropriate for Emergency Protective Placement admission for persons with dementia. Workgroup will: identify inpatient facility/facilities appropriate to provide behavioral or psychiatric evaluation, diagnosis, services or treatment to individuals with dementia. The division/counties will be expected to update the facility/facilities listing annually and submit the approved facilities to all parties statewide who need access and post on the DHS website.