



WISCONSIN LEGISLATIVE COUNCIL

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

Legislative Council Large Conference Room
Madison, WI

December 17, 2012
10:00 a.m. – 3:00 p.m.

[The following is a summary of the December 17, 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.wisconsin.gov/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; Sens. Neal Kedzie and Robert Wirch; and Public Members Suzanne Bottum-Jones, Kathi Cauley, Tom Hlavacek, Gina Koepl, Rob Mueller, Wanda Plachecki, Brian Purtell, and Tom Reed.

COMMITTEE MEMBER ABSENT: Public Member William Hanrahan, Robert Lightfoot, Kenneth Robbins, and Chrystal Rosso.

COUNCIL STAFF PRESENT: Mary Matthias, Senior Staff Attorney and Brian Larson, Staff Attorney.

APPEARANCES: Kitty Rhoades, Deputy Secretary; Alex Ignatowski, Legislative Liaison; and Kevin Bailey, Legal Counsel, Department of Health Services.

***ATTENTION:** This was the final meeting of the Special Committee on Legal Interventions for Persons With Alzheimer's Disease and Related Dementias. Committee members are requested to send any corrections regarding these Minutes to the Legislative Council staff. After the incorporation of any corrections, these Minutes will be considered approved by the committee.

Approval of the Minutes From the November 14, 2012 Meeting of the Special Committee

Tom Hlavacek moved, seconded by Chair Knodl, to approve the minutes of the November 14, 2012 meeting. The motion passed on a unanimous voice vote.

Discussion of Committee Assignment

Presentation by Representatives from the Department of Health Services (DHS): Kitty Rhoades, Deputy Secretary; Alex Ignatowski, Legislative Liaison; and Kevin Bailey, Legal Counsel

Ms. Rhoades applauded the efforts of the Special Committee to tackle difficult and complex issues confronting individuals with dementia who exhibit challenging behaviors. She noted that upcoming demographic shifts make the issue all the more important. She described recent efforts by DHS to move Wisconsin's services to these individuals to be more in line with best practices, and she acknowledged there is more work to be done.

However, Ms. Rhoades stated, the statutes are not the issue and do not require modification. The issue is the lack of a behavior-specific system of delivering care to individuals in this population. As a result, Ms. Rhoades continued, DHS recommends a major system redesign of the community-based, facility-based, and institutional care delivery systems and capacities for this population, as described in the materials from DHS provided to the Special Committee on December 13, 2012. This will require coordination with stakeholders including the counties and various departments of state government. It may result in a regional system in cases where individual counties lack resources for implementation. Also, it will require an appropriation of additional state funds to DHS's budget.

Several members of the Special Committee requested more specific recommendations from DHS regarding WLC: 0061/1. In response, Ms. Rhoades stated that DHS would support modifications to the draft that would add a sunset provision and that would restructure the proposal as a two-year, stop-gap measure. She suggested avoiding a permanent change to the statute in light of DHS's plan to redesign the entire system in two years. Ms. Rhoades also indicated she felt it would be appropriate to include in the bill a charge to DHS to complete the proposed two-year redesign of the system.

Ms. Cauley asked how DHS will structure its meetings with stakeholders as part of the proposed redesign of the system. Ms. Rhoades said she could not give a specific answer. She noted that DHS will have to designate a team within the agency to lead the effort, and the team would bring counties and other stakeholders into the process.

Vice Chair Bernard Schaber expressed her disappointment that DHS had not submitted its recommendations to the Special Committee until the very end of the committee's process. She said many members of the committee strongly supported ideas included in DHS's recommendations, but they had not included those ideas in the draft because they had understood that provisions requiring an appropriation of state funds would not be approved by the Joint Legislative Council. She also stated that the draft contained important improvements to the statutes which are needed immediately, while, the proposed redesign will take years and a lot of money. Vice Chair Bernard Schaber asked whether it is

necessary to give WLC: 0061/1 a two-year sunset, given the circumstances. A discussion ensued regarding the necessity of a statutory change as well as DHS's proposal for a sunset provision in the draft.

Mr. Bailey stated that DHS's opinion is that, under current law, individuals with dementia who exhibit challenging behaviors may still be subject to ch. 51, Stats., after *Helen E.F.*, in that, the Court left an opening for individuals with dementia to be subject to ch. 51 in the event of a dual diagnosis. In DHS's view, this means individuals may continue to be involuntarily committed for care under ch. 51 until the system is redesigned in two years' time.

Several members of the Special Committee expressed concern that the dual-diagnosis interpretation will not cover all situations. In addition, Mr. Hlavacek stated that the draft's changes to ch. 55 are more in keeping with the spirit of the *Helen E.F.* decision, because the draft contains safeguards specifically tailored for individuals with dementia and adopts an approach that is more appropriate for individuals in need of lifelong care.

Mr. Mueller said that, in looking at the impact of *Helen E.F.*, what matters is not whether a particular legal interpretation is possible but, rather, how state law is actually being applied by the county personnel and law enforcement personnel who are called upon to implement it. He noted that in many cases *Helen E.F.* is being misinterpreted as a directive from the Court that ch. 51 is inappropriate for any individual with dementia under any circumstance. Ms. Rhoades suggested that this confusion would be best resolved through an information and education campaign advising stakeholders how to properly interpret *Helen E.F.*, which she said is necessary.

Vice Chair Bernard Schaber noted that under the proposed draft, emergency protective placements of individuals with dementia are limited to facilities equipped to care for individuals with dementia. The draft places the responsibility on counties to designate facilities that meet the criteria. Vice Chair Bernard Schaber asked whether DHS could assume responsibility for designation of these facilities, and also whether DHS could suggest language for the definition of an appropriate facility. Ms. Rhoades indicated that DHS was not in favor of taking away the counties' role of designating facilities under the draft and that, beyond the materials already provided, DHS had no additional language to provide.

Discussion of Presentation by Representatives from DHS

Following the presentation by representatives of DHS, Ms. Matthias provided an overview of changes recommended by the Subcommittee to WLC: 0061/1 (a compilation of WLC: 0017/5 and WLC: 0015/3) since the last full meeting of the Special Committee. Chair Knodl then asked members to comment on DHS's recommendation to modify WLC: 0061/1 by adding a sunset provision and restructuring the proposal as a two-year, stop-gap measure.

Mr. Mueller stated that it was unlikely that behavioral interventions and treatment in place would ever entirely eliminate the need for a small subset of individuals with dementia to receive short-term care on an involuntary basis in an inpatient psychiatric facility. For that reason, the statutory changes proposed under WLC: 0061/1 will still be needed even if the system is redesigned in two years as proposed by DHS. Several other members of the committee agreed.

Mr. Hlavacek reiterated his support for the redesign of the system as proposed by DHS. Among its best features, he stated, was its potential to address underlying issues such as the inability to find so-called “aftermath placements” in less restrictive settings for individuals with dementia who have undergone short-term psychiatric treatment. He said the work undertaken by the Special Committee has been too narrow in scope to adequately address underlying issues such as the lack of options for aftermath placements. As a representative of the Alzheimer’s Association, he said, he cannot pass up the chance to “hold DHS’s feet to the fire” on a proposed redesign of the system. Mr. Hlavacek added that if including a sunset provision in WLC: 0061/1 would help accomplish that, then the Alzheimer’s Association would support it.

Dr. Koepl and Mr. Purtell indicated that they do not support the inclusion of a sunset provision in the current draft. They said a sunset provision could work better if coupled with statutory changes based in ch. 51, Stats. This is because an approach based in ch. 51, Stats., would be widely viewed as inadequate, and as going against the logic of the *Helen E.F.* decision, so that there would be continued pressure for additional changes to the statutory scheme. The same may not be true, they said, for a sunset provision coupled with an approach based in ch. 55, Stats., as in the current draft.

WLC: 0018/4, relating to authorization of an agent under a power of attorney for health care to consent to the admission of a principal with dementia to an inpatient facility

Chair Knodl next provided an update on the status of WLC: 0018/4, relating to authorization of an agent under a power of attorney for health care to consent to the admission of a principal with dementia to an inpatient facility. He indicated that the Subcommittee was still far from reaching consensus on that draft. Chair Knodl also noted that time was short and that it appeared the proposed changes to ch. 155 under WLC: 0018/4 were not as central to the charge and scope of the committee as the proposed changes to ch. 55 under WLC: 0061/1. After discussion, the committee agreed that it would not take up WLC: 0018/4 in order to continue to work on WLC: 0061/1 for the time that remained available.

WLC: 0061/1, relating to psychiatric and behavioral care and treatment for individuals with dementia

The Special Committee continued to discuss proposed revisions to WLC: 0061/1, relating to psychiatric and behavioral care and treatment for individuals with dementia.

Mr. Hlavacek suggested adding the following language to line 2, pg. 22, after the word premises: “, but the capacity to provide diagnosis and treatment for medical conditions must be available.” After a discussion, the committee agreed to the change.

Ms. Bottum-Jones asked whether the draft should specify what occurs when an emergency protective placement is necessary but the facility or facilities designated by the county are full. A discussion ensued, regarding the merits of the county designation process, which did not lead to changes to the draft.

Chair Knodl asked the members to consider what a “charge” to DHS to complete a two-year redesign of the system would look like and whether it should be included in the draft.

Mr. Hlavacek cited DHS’s own written recommendations, and specifically the bullet points on page 5, as a good summary of what a charge to DHS would be. However, Mr. Hlavacek added that the

reference to “best practices” could be changed to refer only to “best practices in Wisconsin”. Also, based on Ms. Rhoades’s comments, it seemed possible that she was proposing to redesign services for a broad population of individuals that would include not only those with dementia but also those suffering from mental illness or other issues. Mr. Hlavacek stated that any charge from the Special Committee to DHS would have to be limited to individuals with dementia. Several other committee members agreed.

Mr. Reed suggested that DHS should be provided with more specific details about the types of data collection that should occur. Also, he suggested providing a list of the agencies that would be included in an inter-agency work group. With input from various committee members, the following list was compiled of agencies that should be involved in a working group set up by DHS: long-term care providers, mental health professionals, other appropriate professions, elder care advocates, DOJ, law enforcement, first responders, adult protective services, corporation counsel, mobile crisis teams, Care Management Organization, benefits specialists, a data analyst (for tracking costs), Virtual Program of All-Inclusive Care for the Elderly (PACE), and National Alliance on Mental Illness.

A lengthy discussion followed of whether to include in the draft a charge to DHS to redesign the system of delivering services to individuals with dementia. Chair Knodl suggested an alternative to the inclusion of a charge to DHS in the draft. He circulated, as an example, a draft letter prepared by staff that could be signed by him on behalf of the committee. The letter would express the committee’s support for the system redesign proposed by DHS, but it would explain that the committee was unable to include DHS’s recommendation for a system redesign in WLC: 0061/1, due to time constraints and concerns over revenue neutrality. Other members of the committee voiced support of the letter as a way to provide direction to DHS without a need to amend WLC: 0061/1.

Ms. Bottum-Jones asked how the timeframe in which the committee was asked to complete its work compared to timelines given to other committees with similar charges over the years. A discussion ensued regarding the timeframe in which the committee was asked to complete its work.

Mr. Hlavacek expressed support for the idea of allowing each committee member to identify remaining issues of importance in the draft. He requested a change of the term “inpatient facility” in the draft to “dementia crisis unit”. Ms. Plachecki expressed support and asked whether hospitals should be carved out of the definition as proposed by the Wisconsin Hospital Association. After a discussion, the committee agreed by consent to change the term “inpatient facility” to “dementia crisis unit” in the draft, but the committee did not agree to carve hospitals out of the definition.

Mr. Reed pointed out four places in WLC: 0061/1, on pages 39, 40, 47, and 51, in which a 90-day extension is allowed for an emergency protective placement or a transfer of protective placement to an inpatient facility, which has been renamed a dementia crisis unit (DCU), as discussed above. He expressed concern that in practice the 90-day timeframe would become a default timeframe, instead of a maximum timeframe. Mr. Reed suggested changing the draft so that extensions could be provided for up to 60 days, as opposed to 90 days, but there would still be no cap on the number of extensions. After discussion, the committee agreed to the change.

Ms. Cauley asked whether it would be possible to receive a flowchart depicting the new processes in ch. 55, Stats., under the draft. Chair Knodl directed staff to include a flowchart in the final report submitted by the committee to the Joint Legislative Council, which will also be provided to the members of the committee.

Dr. Koepl asked the committee to consider whether to change certain language in the draft related to the involuntary administration of psychotropic medication. On page 29, line 14, the draft includes a requirement that a physician has prescribed psychotropic medication. Dr. Koepl asked whether this should be broadened to include other types of prescribers. After discussion, the committee determined to leave the provision unchanged so that it would match s. 55.14, Stats., upon which it was modeled.

The committee next discussed the requirements on page 32, starting at line 6, which specify five elements that are required to be met before an individual may be taken into custody and transported to a DCU under an emergency protective placement. The five elements, labeled (a) to (e), are included as provisions of s. 55.59 (1), Stats., as created by the draft. Dr. Koepl suggested that, at a minimum, it would be necessary to change par. (c), starting on page 32, line 10, because it could not occur until after the individual had already been detained. After discussion, the committee agreed to amend WLC: 0061/1 so that only pars. (a), (b), and (d) would be requirements for taking an individual into custody under an emergency protective placement. Meanwhile, all five elements, pars. (a) through (e), would be requirements for admitting an individual to a DCU under an emergency protective placement.

Mr. Reed suggested that the committee consider changes to the timing requirement for a probable cause hearing on page 33. Under the draft as currently written, the probable cause hearing must occur within 72 hours, but the draft specifies that the individual is considered to be detained upon arrival at the DCU. Mr. Mueller stated that whereas medical clearance is required in this provision of the draft, under ch. 51 there is no requirement for medical clearance. Mr. Larson reported that the Special Committee on Review of Emergency Detention and Admission of Minors Under Ch. 51 had agreed to recommend changes to ch. 51 clarifying that an individual is considered detained when he or she is taken into custody for purposes of an emergency detention. After discussion, the committee agreed to the following change on page 33, line 17: change 72 hours to 96 hours. Also, the committee agreed to the following change on page 33, line 20: change “when he or she arrives at the dementia care unit” to “when he or she is taken into custody for the purpose of emergency protective placement.”

The committee next discussed the topic of a conversion from a ch. 51, Stats., proceeding to a ch. 55, Stats., proceeding or vice-versa. Several members of the committee indicated that at any probable cause hearing or final hearing on a petition under either chapter, the court should have the ability to convert to a proceeding under the other chapter in the appropriate circumstances. Staff indicated that they would review the draft to ensure that this was possible and make changes as necessary.

Mr. Hlavacek expressed his support for the letter regarding DHS’s proposed redesign of the system. He suggested that instead of including a link to the website, the letter could just include DHS’s recommendations as an attachment. The committee agreed to this suggestion.

Other Business

Ms. Bottum-Jones raised the issue of educating county stakeholders and law enforcement officers about the impact of *Helen E.F.* and the pending statutory changes to chs. 51 and ch. 55, Stats., as applied to individuals with dementia. She asked whether the committee could write a letter to DHS and DOJ asking them to take charge of the educational effort. The committee agreed to this idea and Chair Knodl directed staff to prepare a draft of the letter for the committee to approve by mail ballot.

Chair Knodl informed the members that they would receive a mail ballot allowing them to vote on WLC: 0061/1 and the two letters described above. He thanked the members of the committee for their work and invaluable insight, which contributed meaningfully to the legislative process.

Adjournment

The meeting was adjourned at 3:00 p.m.

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