

WISCONSIN HOSPITAL ASSOCIATION, INC.



December 17, 2012

To: Members of the Special Committee on Legal Interventions for Persons with Alzheimer's Disease and Related Dementias

From: Matthew Stanford, Wisconsin Hospital Association, Vice President Policy & Regulatory Affairs, Associate General Counsel

**Cc: Mary Matthias, Senior Staff Attorney, Legislative Council
Brian Larson, Staff Attorney, Legislative Council**

Re: Opposition to County Regulatory Authority Over DHS Approved Hospitals and Proposed Alternative Language

WHA appreciates the opportunity to provide input on the drafts being considered by the Special Committee, and offers these comments and suggestions specifically on the "inpatient facility designation" provisions of WLC: 0061/1.

WHA opposes Section 26 of WLC: 0061/1 which will give 72 county governments regulatory authority to determine whether hospitals that provide care to individuals with dementia meet qualifications and competencies determined by county governments.

Hospitals and their psychiatric units are already regulated and monitored by state and federal agencies. Giving new regulatory authority to county government over the operation of hospitals that provide care to individuals with dementia is wholly unnecessary given the existing regulation of hospitals. Further, granting regulatory authority to counties will create a patchwork of county-specific hospital regulations that differ across Wisconsin's 72 counties. This will result in inconsistent regulations and increased administrative expenses for those hospitals that choose to provide dementia care, thus discouraging hospitals from providing necessary inpatient psychiatric services for individuals that have dementia.

If there is insufficient regulatory oversight for non-hospital facilities that provide psychiatric care for individuals such as community based residential facilities, the committee may wish to consider the following amendments which would "carve out" hospitals from the county oversight requirements in Sections 24, 25, and 26 and also enable individuals with dementia that have psychiatric needs to receive care in a facility that is not a hospital.

WHA also opposes the hospital "designation" mechanism in WLC: 0061/1 because it appears to permit a county to designate a hospital without an agreement by the hospital to be a "designee." The "designation" provisions of the draft appear to be a significant deviation from ch. 51 which explicitly provides that hospitals that provide psychiatric services are not required to admit an individual under an emergency detention or involuntary commitment unless the hospital agrees to detain the individual. Further, permitting a county to involuntarily designate an inpatient facility would also give an inpatient facility no bargaining power with the county to ensure that the county provides adequate reimbursement to the inpatient facility for individuals protectively placed at the inpatient facility. Again, this would will likely result in reduced access to beneficial psychiatric care for individuals with dementia by discouraging hospitals from creating or maintaining inpatient psychiatric units that will provide services for individuals with dementia under a protective placement. The proposed change to Section 10 provided below would specifically fix this problem.

Further, the hospital “designation” mechanism also does not provide flexibility for situations in which a sole designated facility is at capacity or is unable to safely care for an individual due to their acuity. It is not unusual for an inpatient unit to be full or be unable to admit a patient whose acuity is such that the unit could not safely care for the individual. If the county’s only designated inpatient facility or facilities are unable to admit a patient with dementia in need of psychiatric care, the draft appears to make no provision for how such individual could receive care elsewhere. The proposed change to Section 10 provided below would specifically fix this problem.

1) REPLACE THE LANGUAGE IN SECTION 26 SECTION WITH THE FOLLOWING AMENDMENT TO S. 55.02(2) AS FOLLOWS:

55.02 Protective services and protective placement: duties.

(1) DEPARTMENT DUTIES.

(a) The department shall do all of the following:

- 1.** Cooperate with county departments to develop and operate a coordinated, statewide system for protective services and protective placement. The protective services and protective placement system shall be designed to encourage independent living and to avoid protective placement whenever possible.
- 2.** Monitor and supervise the implementation and operation of the protective services and protective placement system.
- 3.** Provide technical assistance to county departments providing protective services and protective placement.
- 4.** Evaluate the protective services and protective placement system.

(b) The department may provide protective services and protective placement directly or contract for the provision of protective services or protective placement.

(2) COUNTY DEPARTMENT DUTIES.

(a) The chairperson of each county board of supervisors shall designate a county department under s. 46.215, 46.22, 46.23, 51.42, or 51.437 that is providing services in the county on its own or through a joint mechanism with another county department or county to have the responsibility for planning for the provision of protective services and protective placement and for directly providing protective services, protective placement, or both, or entering into a contract under s. 46.036 with a responsible agency for the provision of protective services, protective placement, or both.

(b) In addition to the responsibilities specified in par. (a), the county department shall:

- 1.** Monitor and evaluate protective services and protective placements, including protective services and protective placements under Subchapter II of this section.
- 2.** Prepare and submit reports required by the department, or by a court if protective services or protective placement are ordered by a court.
- 3.** Develop requirements for submittal by guardians of the person of reports to the county department under s. 54.25 (1) (a).
- 4.** Designate at least one appropriate medical facility or protective placement facility as an intake facility for the purpose of emergency protective placements under s. 55.135.
- 5.** Ensure that an appropriate range of protective placement and protective services options, including protective services and protective placements under Subchapter II of this section, are available and accessible for individuals with dementia.

2) **AMEND THE LANGUAGE IN SECTION 10 AS FOLLOWS:**

SECTION 10. 55.01 (3) of the statutes is created to read:

55.01 (3) "~~Inpatient facility~~Dementia crisis unit" means either of the following:

(a) ~~A~~ a public or private facility that is not a hospital that has been designated by a county department as qualified and equipped to provide, and competent in providing, diagnosis, evaluation, and treatment of dementia and medical, psychiatric and behavioral care to individuals with dementia under s. 55.55, and that has a unit or part of a unit that provides a therapeutic environment that is appropriate for, and designed to prevent harm to, individuals with dementia. Medical facilities need not be located on the premises.

(b) A hospital approved by the Department pursuant to the Hospital Regulation and Approval Act in Subchapter II of ch. 50. that agrees to accept the subject individual as an inpatient for psychiatric evaluation, diagnosis, services or treatment.

3) **AMEND THE LANGUAGE IN SECTION 24 AS FOLLOWS:**

55.50 Department reports to the legislature. (1) By June 30 of each even-numbered year, the department shall submit to the legislature under s. 13.172 (2) a report that includes all of the following:

1. Identification of the ~~inpatient facilities~~ dementia crisis units designated by counties under s. 55.55 and the bed capacity of those facilities, as provided in reports submitted by counties under s. 55.53 (1).
2. A summary of the procedures used by counties to solicit information and advice from the public when making facility designations under s. 55.55, as provided in reports submitted under s. 55.53 (1).
3. A summary of the information provided to the department by counties under s. 55.53 (2).

4) **AMEND THE LANGUAGE IN SECTION 25 AS FOLLOWS:**

55.53 County reports. The county department shall prepare and submit a report to the department that identifies ~~the inpatient facility or facilities~~ those dementia crisis units that it has designated under s. 55.55 and the bed capacity of each designated facility. The report shall include a description of the process utilized to solicit information and advice from the public and a summary of the information and advice received. The report shall be updated whenever the county makes a new designation or revokes a designation from a dementia crisis unit.

(2) The county department shall annually prepare and submit a report to the department that states the total number of petitions filed in the county under 55.59 and 55.65 and the total number of those petitions that resulted in a placement in an ~~inpatient facility~~ dementia crisis unit.

5) **AMEND THE LANGUAGE IN SECTION 26 AS FOLLOWS:**

55.55 County designation of inpatient facility. The county department shall designate at least one facility that is a dementia crisis unit under s. 55.01(3)(a) to provide as an inpatient facility for the purpose of emergency and temporary protective placement of individuals with dementia for psychiatric evaluation, diagnosis, services, or

treatment. The county may not designate ~~an inpatient facility~~ a dementia crisis unit under s. 55.01(3)(a) under this subdivision unless it finds that the facility is qualified and equipped to provide, and competent in providing, the diagnosis, evaluation, and treatment of dementia and medical, psychiatric, and behavioral care to individuals with dementia and has a unit or part of a unit that provides a therapeutic environment that is appropriate for, and designed to prevent harm to, individuals with dementia. The county department shall solicit information and advice from the public, including family caregivers of individuals with dementia, organizations concerned with Alzheimer's disease and dementia, the treatment of mental illness or the provision of long-term care, and any other appropriate individuals or organizations, to aid it in carrying out its responsibility to designate one or more facilities under this subdivision. The county department shall implement a procedure to periodically review and update the designation of one or more facilities under this subdivision as necessary and appropriate.