Nov. 12, 2012

Rep. Samantha Kerkman
Sen. Mary Lazich
Co-Chairs, Legislative Council Study Committee on
Permanency for Young Children in the Child Welfare System

Dear Rep.Kerkman and Sen. Lazich:

We are writing to offer some comments on the drafts that were presented at the last meeting of the study committee. These comments do not all relate to the proposed changes, some relate to the current language that would not be changed in the drafts. In general they reflect our concern that the statutes not stigmatize parents who may have a mental illness or substance use disorder. The fact that a person has one of these disorders may or may not impact their ability to parent. The statutes need to be clear that it is this ability to parent and the safety of the child that need to be addressed. Additionally, it is our hope that the committee consider how to ensure that safety issues that existed in the past due to an untreated mental illness or substance use disorder not be a barrier to current custody concerns if the parent has received and benefitted from treatment.

1. **Continuing Parental Disability (Memo 4)**

The language about licensed treatment facilities is inconsistent with the language in 51.01(2), which references approved treatment facilities:

> 51.01 (2) "Approved treatment facility" means any publicly or privately operated treatment facility or unit thereof approved by the department for treatment of alcoholic, drug dependent, mentally ill or developmentally disabled persons.

Licensed facilities are nursing facilities, ICFs-MR, community-based residential facilities or adult family homes. Approved treatment facilities would include community support programs (CSPs), outpatient treatment, etc. We would not want CSP and outpatient included in the definition for continuing parental disability because someone who is involved in an outpatient treatment program may be able to care for their child and the services provided by the program can increase the likelihood that the parent remains functionally able to do so. Including this language might also discourage people from seeking treatment. Additionally, individuals residing in CBRFs or adult family homes may be able to maintain contact with their children and continue a role in parenting. Some homes are dually licensed as adult family homes and foster care homes. Parents and children are together. Foster parents may be involved but the natural parent is involved with the child and learning the skills they will need to effectively parent. So the fact that individuals reside in these facilities should not automatically determine whether their custody should be terminated.

We could support language under (a) that would be limited to state mental health institutes, ICFs-MR and long-term nursing home care (as opposed to rehabilitative stays).

In (b), the language should be clarified. The fact that an individual continues to have a mental illness, is not, in itself, a grounds to terminate parental rights. If by “condition” the statute is referring to the current functional limitations that require the individual to be in a hospital or licensed facility, then you might want to change this to say, “the condition is likely to result in a continuing inability to provide proper care for a child.”

2. **Commission of a Felony Against a Child (Memo 4)**

While the draft is only addressing the evidence that would be admissible in a finding of child abuse, we think this language needs to allow for consideration of whether there are mitigating circumstances, such as the felony act occurred during an acute psychotic or post-partum depression episode and whether, due to the treatment of this condition, the parent is no longer deemed to be a risk to the child. A determination related to child abuse needs to be based on whether the parent poses a risk to the child at this time.

3. **CHIPS Jurisdiction Over a Newborn WLC: 0009/1**

This draft does not appear to allow for the fact that an individual who experienced TPR for behaviors that may have been related to a mental illness or substance use disorder, and who has subsequently received treatment for the disorder(s) would no longer pose a risk to a child. We support comments made at the last committee meeting that would require the court to find probable cause.

4. **Physical, Psychological, Mental, or Developmental Examination and AODA Assessment of a Parent: WLC: 0011/1**

We support this change as it may reduce the time between when the child is removed from the home and when a parent in need of treatment receives an evaluation and initiation of treatment. Our experience is that delay in identifying the need for treatment and initiating treatment is one of the most significant barriers for parents meeting conditions to have their children returned to the home.

We generally support language that prohibits use of the findings of an assessment or examination for providing evidence against a parent at a CHIPS fact-finding hearing. The concern about such use presents a barrier to parents requesting or seeking treatment. However, we recognize that this must be balanced against the safety concerns for the child. We believe that others states have addressed this by specifying certain questions that could be asked of or information requested of individuals who have assessed or treated the parent. These questions would be specific to the risk posed to the child rather than specifics of the mental health or substance used disorder that the individual is experiencing. The statutes might also address the type of information that would be shared in this regard; is the conclusion about risk the only thing that is shared or is some level of content regarding how this conclusion was reached also admissible?

We believe that the court should make a finding that reasonable cause exists to warrant the examination.

It is our understanding that the ability of the court to order these assessments already exists in statutes. The Committee should be careful not to create two references to this that may be inconsistent or lead to confusion. An assessment of risk to the child, needed to determine the child's safety, is different from an assessment of the parent's mental health.

5. **Reasonable Efforts**

While we are pleased to see language that provides the court the ability to order assessments for mental health or substance use disorders, we ask the committee to consider whether this is adequate to ensure that "reasonable efforts" are made to assist the parent to meet conditions to have his/her child returned. The committee heard testimony from counties about the challenges in getting assessments done in a timely fashion, even when ordered at time of the initial custody hearing. More importantly, the committee has also heard that accessing subsequent treatment services through Medicaid can be problematic due to a shortage of providers and the specific burdens associated with prior authorization for these services.

Medicaid payment rates and prior authorization policies, which may save Medicaid money, incur costs on other parts of the human services system, this being one example. At the very least we think that the Legislature needs to demand some accountability from the Department of Health Services with regard to how the Medicaid policies are impacting access to services for these families for whom such services are a critical part of the reasonable efforts required of the State.

Additionally, reasonable efforts includes ensuring that for very young children, those under 3 years of age, adequate time is provided for the parent and child to bond in ways that are critical for young children of this age since most kids do return home. While most do have visits, they tend to be 2 times a week for 2 hours which is not enough time to bond and build attachment. Additionally, they tend to have a visitation worker that only watches the visit, rather than assisting the parent in learning how to bond with their baby. For parents with psychiatric disabilities child welfare workers too often make invalid assumptions about the parent's ability to safely parent the child. These misconceptions can result in lack of contact that significantly affects the long-term parent-child relationship.

6. TPR Ground of Continuing CHIPS WLC: 0012/1

We are concerned that guidance is generally not provided as to how a determination should be made that a parent is substantially likely to continue to fail to meet conditions for return of the child. Our experience is that TPR has been initiated when parents are engaged in treatment and making substantial progress. Discussions among members of the Study Committee suggest this is not their intent. We recommend adding the following language: "a finding that there is a substantial likelihood that the parent will not meet these conditions may not be made if the parent has eliminated one or more safety concerns, and has regular contact with his/her children (assuming that there have been no barriers beyond the parent's control such as transportation issues or reasonable efforts by the system to facilitate contact), and is currently engaged in treatment or other services designed to prepare the parent to meet these conditions, and is making substantial progress towards the goals identified on their plan."

7. Right to Parents to Counsel in a CHIPS Proceeding (WLC: 0010/1)

We support language to ensure the right of parents to counsel. When people are required to request counsel there is a concern that this will be used against them especially if they need to reveal they need assistance due to their disability. This may be seen as an indication of their general competency. However, the child welfare system is complex and these are challenging proceedings for any parent, especially one already dealing with a mental illness or other disability. We believe that automatically providing counsel will expedite the process in many ways and also increase the likelihood that reasonable efforts are made on behalf of parents with mental health or substance use disorders. It makes little sense to provide counsel only at the point when TPR is initiated when such counsel is too late to effect reunification. While we recognize there is a cost to making counsel generally available there is also a cost when we don't do this: it decreases trust in the system, causes parents to pursue all legal means rather than focusing on their mental health, parenting and children's safety. All this increases the number of disputed TPRs with their resultant costs.

We appreciate your consideration of these concerns.

Sincerely,

Shel Gross, Director of Public Policy
Mental Health America of Wisconsin

Hugh Davis, Executive Director
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Copies;

Melissa Schmidt, Legislative Council Staff Attorney
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