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Re: Milwaukee County's Treatment Director Supplement Requirement and the Impact of *Delores M.*

Treatment Director Supplement Requirement

Under Wis. Stats. § 51.15(4)(b), "Upon delivery of the individual the treatment director of the facility, or his or her designee shall determine within 24 hours whether the individual shall be detained, or shall be detained, evaluated, diagnosed and treated." This section of the statute only applies to counties having a population of greater than 500,000 people (Milwaukee County). This requirement is commonly referred to as the treatment director supplement requirement or TDS.

Milwaukee County is the only county in the state to have a 24-hour psychiatric crisis service center (PCS) where most people who are detained by law enforcement agencies in Milwaukee County in need of mental health treatment are initially brought. PCS serves as the point of entry into the hospital and allows staff to triage the people coming and determine what, if any, action needs to be taken to treat that person. People who are taken to a private medical hospitals are seen by a psychologist employed by Milwaukee County within 24 hours to fulfill the TDS requirement. The goal of the County is to ensure that everyone who is detained is seen within that first 24 hours to ensure compliance with the statute. People who are not seen within 24 hours routinely have their cases dismissed by the court commissioner at the probable cause hearing.

This year we are projecting that Milwaukee County will treat more than 8000 people brought to the County facility under an Emergency Detention. PCS is generally a very busy area of the hospital. To require doctors to fill out the TDS form in the midst of what is at times a very chaotic environment is almost punitive. In Milwaukee County the courts do not provide any room for error. For example, when filling out the TDS form, if the doctor does not circle a.m. or p.m. the TDS is deemed to be facially insufficient and the case is dismissed. There is no opportunity to rehabilitate the document with information from the chart or from testimony. The case is dismissed and often times the County loses an opportunity to treat someone in need of inpatient mental health treatment.

The County is required to spend additional resources to employ the mobile psychologist to travel around to various private medical hospitals. Milwaukee County currently has a psychologist who travels from hospital to hospital five days a week to evaluate people to determine if they are an appropriate subject for mental health treatment. When someone is detained late Friday afternoon or Saturday many times these cases are lost for a failure to comply with the TDS requirement. Having the doctor travel throughout the county pulls resources away from the mental health hospital and requires the doctor to evaluate people who many times are in intensive care units or under sedation as a result of the incident that led to their admission to the private medical facility. The mobile psychologist must then try to review records, contact case managers, etc. to try to gather enough information to properly diagnose the individual.

Often times the TDS requirement is redundant. Redundancy is good in some instances; however, when you have time restrictions imposed like those in CH. 51 and the number of cases we process in Milwaukee County there is no time for redundancy. CH. 51 requires that the County conduct a probable cause hearing within 72 hours from the time of detention (not including weekends and holidays). During that hearing the County must establish that a person is mentally ill, treatable and an appropriate subject for treatment. To do that the person has to have been evaluated by a doctor who is able to testify and render an expert opinion in the case regarding the person's mental condition. When people are transferred from PCS to an acute ward of the hospital they are evaluated to determine which ward is appropriate for that person. There are various steps in the process that require a psychological evaluation to be conducted which results in the TDS requirement being superfluous and redundant.

It also seems punitive that the county with the largest population, and by the far most cases has to maneuver extra hurdles in the process in order to treat patients. It does not seem prudent and it has clearly had a negative impact on many cases in the CH. 51 process.

Impact of *Delores M.*

In ***Milwaukee County v. Delores M.***, 217 Wis.2d 69, 577 N.W.2d 371 (Ct. App. 1998), the court of appeals held that "the time limits established by § 51.15, Stats., are triggered when a person taken into custody under that provision is transported to any of the facilities designated by § 51.15(2), irrespective of whether the facility to which the person has been brought is one specifically chosen by the county for receipt of persons taken into custody under § 51.15." This ruling has had a huge impact on Milwaukee County's ability to treat people upon discharge from private medical facilities.

The people who are taken to private medical facilities for medical treatment are usually the people who have engaged in the most dangerous behavior. Cases involving serious suicide attempts or other behavior that has led to serious injuries are often dismissed in Milwaukee County because of *Delores M.* Since the 24 hour and 72 hour

time requirements are not tolled during an inpatient stay at a private medical facility the County is many times unable to proceed in the most serious cases.

Probable cause hearings are held 5 days per week in Milwaukee County. The number of cases on any given day ranges anywhere from 15 – 65. We are currently up to more than 4,340 new adult (ME) case numbers so far this year and more than 680 juvenile (JM) case numbers so far this year. Milwaukee County averages more than 100 cases scheduled for probable cause hearings in any given week and several times per month we have cases involving people who were taken to private medical facilities and were not able to be returned to the county hospital because of their medical condition.

There are in instances when the court actually goes to private medical hospitals to conduct probable cause hearings, but that is not the norm. Accomplishing this task leads to a logistical nightmare. Without notice the court commissioner, court reporter, deputy, court clerk, attorneys, fact witnesses, doctor (usually the doctor who completed the TDS), and the patients chart have to make their way to the private medical facility before the expiration of the 72-hour time requirement. The hearings are usually conducted in the patient's room or if possible some other room in the private medical facility. All of this happens in addition to the 15 – 65 probable cause hearings scheduled for court that morning.

The typical case of someone who is not able to be returned to the hospital is as follows: a person engages in some type of self-injurious behavior (e.g. overdose, self-inflicted gunshot or knife wound), that person is taken to a local private hospital. The officer who arrives on the scene processes a CH. 51 Emergency Detention on the person involved. The person is taken to the private medical facility and requires some sort of emergent medical attention or surgery. Once that is completed the mobile psychologist goes to the hospital to complete the TDS requirement. 72 hours from the time the person arrived at the private medical hospital the person is scheduled to appear in court for their CH. 51 probable cause hearing. Often times the person is still recovering in intensive care and unable to be brought to the County facility for their probable cause hearing. The private hospital will not allow a hearing to take place in an intensive care unit so the County does not have the option of going to the private hospital for the hearing. The defense attorney moves to dismiss the case so the court dismisses the case based on the injured persons non-appearance. At that point the private hospital is notified that the legal hold has been lifted and the person can leave their facility upon request. If there has been some type of aggressive or threatening behavior since the person has been in the private hospital maybe a new CH. 51 Emergency Detention can be filed but not usually. Generally at this point the County must rely on the individual to seek voluntary mental health treatment upon discharge.

Under ***State ex rel. Sandra D. v. Getto***, 175 Wis. 2d 490, 499, 498 N.W.2d 892 (Ct. App. 1993) and ***Kindcare, Inc. v. Judith G.***, 250 Wis. 2d 817, 640 N.W.2d 839 (Ct. App 2002) the court established that the County can not keep refilling the same petition over and over again in an attempt to seek involuntary inpatient treatment for the patient. In order to continue to hold the person involuntarily there must be some new dangerous

behavior. If there has been some type of new dangerous behavior and the person can be legally be transported to the County Hospital or one of a facility that contracts with the County, the doctor can consider filing a Treatment Director's Affidavit or Treatment Director's Hold under Wis. Stat. § 51.15(10), and the County can try to proceed under the new facts.

If the person is in the hospital and the case is not calendared and called within the 72 hour time period, then the case is dismissed for that 72-hour violation. When a case is dismissed for a time violation the Court of Appeals held in ***Dane County v. Stevenson L.J.***, 320 Wis.2d 194, 768 N.W.2d 223 (Ct. App. 2009), that a Treatment Director's Affidavit can not be filed and the person has to be released upon request. In these cases there is nothing the County can do to rehabilitate the case.

It could not have been the intent of the legislature to have the cases regarding the people who engaged in the most serious behavior be dismissed in this manner. The continued expansion of Delores M. has led to the County's hands being tied in many instances and people desperately in need of treatment being released from the county mental health hospital. *Delores M.* and the cases mentioned above that have further expanded CH. 51 and skewed the interpretation of the statute in such a way as to put people and the community at risk.

Language in the statute limiting or tolling the 72-hour clock when someone is inpatient at a private medical hospital would not be unreasonable and would ultimately lead to better care of the individual involved. Something needs to take place to balance the court's interpretation of Wis. Stats. § 51.15(2).