WISCONSIN HOSPITAL ASSOCIATION, INC.

October 4, 2010

To: **Members of the Special Committee on Review of Emergency Detention and Admission of Minors Under Chapter 51**

From: **George Quinn, WHA Senior Vice President**
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Cc: **Laura Rose, Deputy Director, Legislative Council**
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Re: **WHA Recommendations for the Special Committee on Emergency Detention and Admission of Minors Under Chapter 51 Study Committee (the "Special Committee")**

After incorporating the work of WHA's Behavioral Health Task Force, the work of the Chief Justice's Task Force on Criminal Justice and Mental Health, the testimony and discussion during the August 31 meeting of this Special Committee, and other discussions and insights, WHA offers the following recommended solutions to several emergency detention related problems.

Primary recommendations

Problem 1 – Lack of coordinated distribution of emergency mental health services. Wisconsin does not have a coordinated, efficient distribution of emergency mental health services. This often leads to significant expenses for transportation to a facility to stabilize a person in crisis, especially in rural areas. A lack of regional coordination also has led to an over-reliance on inpatient beds for emergency mental health stabilization. While Wisconsin's county based system for emergency mental health services has its strengths, one of its weaknesses is that it can be difficult to initiate statewide improvements in coordination.

Solution 1.1 - Develop a regional system for emergency mental health services. WHA recommends that the study committee consider the following ideas to provide more efficient emergency mental health services throughout Wisconsin:

- Using the Wisconsin Trauma System as a model (http://www.dhs.wisconsin.gov/Trauma/index.htm) develop a Statewide Emergency Mental Health System to better coordinate emergency mental health services throughout Wisconsin and make the best use of available facilities and expertise throughout Wisconsin.

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- Encourage lower cost emergency detention facilities. Many persons in need of emergency detention likely do not need an inpatient bed. Counties should be encouraged to work together to develop lower-cost regional Community Based Residential Facilities that serve as emergency detention facilities for less acutely ill patients.
- Consider whether some or all state monies spent to maintain non-forensic services at the Mendota and Winnebago Mental Health Institutes could be better allocated to provide smaller, regional emergency detention facilities and involuntary inpatient psychiatric units or facilities. Also, could such monies be reallocated in such a way to capture federal funds?

Problem 2 –County 51.42 Boards are not set up to best ensure intra-county collaboration on emergency mental health services. All recognize that collaboration between county agencies, law enforcement, and hospitals is necessary for the best outcomes for individuals. However, Wisconsin law does not reinforce this concept in its requirements for s.51.42 Boards. Pursuant to s. 51.42 of the Wisconsin Statutes, each county must establish a governing and policy-making board charged with governing the county's community mental health, developmental disabilities, alcoholism and drug abuse program. (Note that either single county or multi-county Boards and programs are permitted.) The law requires consumer representation on s.51.42 Boards, however, there is no requirement for representation of other key entities such as hospitals and law enforcement.

Solution 2.1 – Facilitate intra-county collaboration by ensuring hospitals and law enforcement are represented on county 51.42 boards. WHA recommends that the study committee develop a proposal to ensure that s.51.42 boards have hospital and law enforcement representation to help ensure better coordination of county mental health services.

Problem 3 – Inconsistent emergency detention practices leads to inconsistent care. Inconsistent emergency detention practices and interpretations lead to inconsistent care for patients across Wisconsin and makes it more difficult for regional coordination of emergency mental health services.

Solution 3.1 – Proceed with new rulemaking and guidelines to increase consistency. WHA recommends that the study committee consider legislation that would require DHS and DOJ to collaborate to promulgate rules and/or best practices guidance on emergency detention procedures. Rulemaking and enforceable guidelines on emergency detention procedures would help to increase the consistency of care provided to individuals needing emergency mental health services.

Solution 3.2 - Create and report county-based quality and process measures related to emergency detention. WHA recommends that the study committee work with the Wisconsin Counties Association to develop voluntary quality and process measures for counties related to emergency detention. Such measures should be used to help counties and their citizens identify whether services are being appropriately and efficiently provided and that their services are moving towards providing improved outcomes for patients. Such information is critical for identifying where scarce resources should be used to improve care.

Solution 3.3 (secondary recommendation) – Review the enforcement of DHS 34. DHS 34 provides certification requirements for county and multi-county emergency mental health service programs. Subchapter II provides minimal certification requirements for basic emergency mental health services. Subchapter III provides additional certification requirements that must be met if the emergency mental health service program is to be eligible for Medicaid reimbursement third−party payments under Wisconsin's parity law. During the first meeting of the Study Committee, Mr. Easterday testified that 54 counties have subchapter III certification.

- We recommend that the Study Committee review the following:
    - Are the certification requirements in DHS 34 appropriately tailored to ensure emergency mental health services programs throughout Wisconsin are providing efficient and appropriate emergency mental health services to individuals in need of such services?
    - How is DHS ensuring that programs certified under DHS 34 continue to meet the requirements of DHS 34? Do the processes listed in DHS 34 provide an appropriate level of state supervision of emergency mental health services programs? Is the right information being gathered to ensure a minimal level of service throughout all certified programs?
    - What data is available to identify whether subchapter III certified programs are providing necessary involuntary and voluntary hospital care to stabilize an individual experiencing a mental health crisis? Anecdotes suggest that some counties will provide involuntary care but not voluntary care for persons in mental health crisis.

Problem 4 – Emergency detention decisions are sometimes not made in the best interest of patients or the public. By definition, decisions on whether a person does or does not need involuntary emergency stabilization are life and death decisions. However, Wisconsin's policies on emergency detention do not seem commensurate with the gravity of the acuity involved. Pursuant to the last budget bill, county crisis services agencies hold exclusive control over approval of transports to emergency detention facilities. While a benefit of this policy decision is the reduction of some inappropriate emergency detentions, consolidating this power solely on a county agency often responsible for the cost of the emergency detention can also lead to inappropriate underutilization of emergency detention necessary for the stabilization of a vulnerable, acutely ill individual. Another scenario in which an individual does not get needed stabilization can occur when, contrary to the judgment and input of hospital physicians (including sometimes psychiatrists) and/or county crisis services, a law enforcement officer determines that an individual is not in need of an emergency detention and refuses to carry out an emergency detention. Without appropriate oversight and checks and balances to ensure that necessary emergency stabilization is being provided, there is an increased likelihood that some individuals may not get the stabilization they need to protect themselves and others.

Solution 4.1 - Ensure that individuals making emergency detention decisions have appropriate expertise. Under DHS 34, persons such as "specialists in specific areas of therapeutic assistance, such as recreational and music therapists…who have at least one year experience in a mental health setting," are permitted to make decisions about whether a person should or should not be transported to an emergency detention facility. By definition, decisions on whether a person does or does not need involuntary emergency stabilization are life and death decisions. For persons making emergency detention decisions within county crisis services agencies, Wisconsin should increase the required expertise of such persons capable of making emergency detention decisions to a level commensurate with the level of acuity involved.

Solution 4.2 - Identification/creation of an on-call Statewide Emergency Detention Ombudsman. The purpose of a Statewide Emergency Detention Ombudsman would be to encourage the more uniform application of Wisconsin's emergency detention law by serving as an impartial and expert arbiter at the state level capable of immediately reviewing and, if necessary, overruling difficult and questionable emergency detention decisions made at the county-level. Additional detail for such a program would need to be resolved, but key features of the program would include:

- One or more persons could be identified as a Statewide Emergency Detention Ombudsman. We propose that the Statewide Emergency Detention Ombudsman program either be within the Department of Health Services or the Department of Justice. We recommend that a Statewide Emergency Detention Ombudsman be a psychiatrist. For budgetary purposes, it may be beneficial to add the responsibility of being a Statewide Emergency Detention Ombudsman to the existing responsibilities of one or more qualified psychiatrists currently employed by the State of Wisconsin.

- A Statewide Emergency Detention Ombudsman would have the power to immediately resolve disagreements between health care providers, law enforcement, and/or county crisis services regarding the need for an individual's emergency detainment. That power would include the power to immediately overrule decisions relating to emergency detention by county crisis services, law enforcement, or treatment directors.

- Thus, for example, if a county crisis agency chooses not to approve an individual's transport to an emergency detention facility, and either the physician treating the individual or law enforcement disagrees with the denial for transport, either the treating physician or officer could contact the on-call Statewide Emergency Detention Ombudsman and request that the Statewide Emergency Detention Ombudsman immediately overrule the crisis agency's decision.

Solution 4.3 - Permit qualified hospital physicians to overrule emergency detention decisions. In some cases, decisions regarding emergency detentions are being made by law enforcement or county crisis agencies that are contrary to the standard of care/reasonable professional judgment. To help ensure that acutely ill individuals receive the stabilization they need, we propose that qualified physicians be allowed to overrule decisions regarding emergency detention made by law enforcement or county crisis agencies that are contrary to the standard of care/reasonable professional judgment. However, such an authority should not impact county obligations under Chapter 51 or DHS 34.

Other Recommendations

Problem 5 – Gaps in coverage and uncoordinated care can lead to expensive emergency stabilization and detention.

Solution 5.1 - Suspend, rather than terminate Medicaid coverage for inmates. WHA agrees with the recommendation of the Wisconsin Counties Association that existing Medicaid coverage for short-term inmates be suspended rather than terminated. For inmates with mental illness, this will increase continuity of care and medications and reduce the likelihood of need for future emergency detention or incarceration.

Solution 5.2 - Improve discharge/release planning for jail and prison inmates with mental illness. To improve coordination of care for released inmates with mental illness and reduce the likelihood of re-incarceration or emergency detention of the individual, WHA recommends that the study committee consider improvements in discharge/release planning for inmates with mental illness that immediately links that inmate with available resources and provides access to medications provided during incarceration.

Problem 6 – It is difficult to identify provisions of the children's mental health statute that are intermixed with the adult mental health statute. WHA agrees with Wisconsin Family Ties that it can be difficult to parse out the Ch. 51 provisions relating to children's mental health from the general adult provisions. The current structure of the statute provides an opportunity for an individual to unintentionally misinterpret or overlook special laws relating to children's mental health.

Solution 6.1 - Separate the children's mental health statute from the adult mental health statute. In order to make it easier for all stakeholders to understand and appropriately apply Wisconsin's children's mental health laws, we would recommend that a non-substantive bill be developed that makes the technical changes needed to create separate adult and child mental health statutes.

Problem 7 – Emergency detentions may be used even if an individual is truly voluntarily agreeing to stabilization. Most agree that emergency detentions should not be used for patients that will voluntarily accept stabilization services. However, some read Wisconsin's emergency detention statutes as technically permitting the emergency detention of an individual even if the person is voluntarily accepting stabilization services.

Solution 7.1 – As part of other reforms to Wisconsin's emergency detention laws, consider revisions that would better ensure that individuals truly voluntarily agreeing to stabilization are not emergently detained. WHA proposes that the committee consider exploring the following concept to revise Wisconsin's emergency detention law:

- If the county's emergency mental health services program provides voluntary services capable of stabilizing the person in crisis and the person agrees to the voluntary services, and there is a reasonable likelihood, based on past and present behavior and diagnosis, that the person will be stabilized through such voluntary services, then the county may not initiate an emergency detention. However, if before or during stabilization such person in crisis does not consent to medically necessary stabilization services, an emergency detention may be initiated.