



WISCONSIN LEGISLATIVE COUNCIL

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

Room 411 South
State Capitol

July 31, 2012
10:00 a.m. – 4:00 p.m.

[The following is a summary of the July 31, 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.state.wi.us/lc>.]

Call to Order and Roll Call

Chair Knodl called the committee to order. 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 Wirsch; and Public Members Suzanne Bottum-Jones, Kathi Cauley, William Hanrahan, Tom Hlavacek, Gina Koepl, Robert Lightfoot, Rob Mueller, Wanda Plachecki, Brian Purtell, Kenneth Robbins, and Chrystal Rosso.

COMMITTEE MEMBER EXCUSED: Public Member Tom Reed.

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

APPEARANCES: Sen. Fred Risser and Rep. Joan Ballweg, Co-Chairs, Joint Legislative Council; Terry C. Anderson, Director, Legislative Council Staff; Andy Phillips, General Counsel, Wisconsin Counties Association; Dyann Hafner, Corporation Counsel, Dane County; Scott Ethun, Director, Juneau County Human Services; Dr. Sara Coleman, Psychologist, Mobile Crisis Team, and Ramona Williams, Elder Abuse/Adult Protective Services Coordinator, Milwaukee County Behavioral Health Division; Robert Gundermann, Public Policy Director, Alzheimer's and Dementia Alliance of Wisconsin; Kim Marheine, Ombudsman Services Supervisor, Board on Aging and Long-Term Care; Carol Wessels, Shareholder, Nelson, Irvings & Waeffler, S.C, Milwaukee and Former Chair, Elder Law Section, State Bar of Wisconsin; Mark Radmer, Administrator, and Karen

Wagner, Director of Social Services, Harbor Haven Health and Rehabilitation, Fond du Lac; Jerry L. Halverson, M.D., Medical Director for Adult Services, Rogers Memorial Hospital, Oconomowoc; Mike Pochowski, Wisconsin Assisted Living Association, and Manager, Government Affairs & Legal Operations, Brookdale Senior Living Inc., Milwaukee; Dr. Mark Sager, Director, Wisconsin Alzheimer's Institute, University of Wisconsin School of Medicine and Public Health; Mary Salzeider, Training Coordinator, Alzheimer's and Dementia Alliance of Wisconsin; Cagney Martin, Activity Therapist, and Lori Koeppel, Nursing Home Administrator, North Central Health Care, Wausau; and Dr. Robert Smith, Past President and Board Member, Wisconsin Association of Medical Directors, Richland Center.

Opening Remarks

Senator Fred Risser and Representative Joan Ballweg, Co-Chairs, Joint Legislative Council, and Terry Anderson, Director of the Legislative Council Staff, welcomed the members of the Special Committee. They explained the history of the Legislative Council and procedures followed throughout the study process.

Chairperson's Remarks

Chair Knodl welcomed the members of the Special Committee, explained the format of the meeting, and provided other introductory information related to the committee's work.

Introduction of Committee Members

At Chair Knodl's request, the members of the committee introduced themselves and explained their relevant background and interest in the issues to be studied by the committee.

Presentations by County Representatives

[Note: Power Point Slides are available on the Committees Website at: <http://legis.wisconsin.gov/lc.>]

Andy Phillips, General Counsel, Wisconsin Counties Association, presented information on behalf of Wisconsin counties regarding how they may be impacted by the *Helen E.F.* case. According to Mr. Phillips, the memorandum prepared by Dyann Hafner, Assistant Corporation Counsel for Dane County, provided an excellent overview of the practical challenges that counties face in implementing chs. 51 and 55. Counties are less concerned with the specific underlying condition that may cause a person's behavior, than with the behavior itself and any safety risk (to the person or to others) that may be posed by the behavior. Mr. Phillips urged the committee to emphasize practical solutions giving counties the ability to address safety risks presented by challenging behaviors. Following the presentation, Mr. Phillips responded to questions from committee members.

Dyann Hafner, Corporation Counsel, Dane County, expressed concern that when challenging behaviors arise, counties may not have practical solutions or interventions at their disposal to adequately address the situation. Ms. Hafner relayed details of a recent situation from another county, in which police refused to initiate an emergency detention under ch. 51 because they believed the *Helen E.F.* case prevented them from doing so. Ms. Hafner also discussed reasons why ch. 55 is an inadequate alternative to ch. 51. She explained why ch. 55 does not adequately address emergency situations and

recommended that the committee amend ch. 55 to make it easier to use and more suitable for emergency situations. Ms. Hafner also explained that Dane County has one nursing home with a locked unit, Badger Prairie. However, Badger Prairie is not able to address the types of behavioral challenges that presented in *Helen E.F.* Therefore, in Dane County, the only option for addressing such behaviors is a psychiatric unit. At the same time, the county is under pressure to reduce the use of psychiatric units because of the costs involved, which range from \$1,200/day to \$1,800/day. Ms. Hafner again stressed the need for practical solutions at the county level. Following the presentation, Ms. Hafner responded to questions from committee members.

Scott Ethun, Director, Juneau County Human Services, explained that his approach to the decision in *Helen E.F.*, which limited the county's ability to use ch. 51, is to look elsewhere to find "safe options," which are largely unavailable. Mr. Ethun stated his surprise that even in resource-rich Dane County, there is a lack of viable placement options under ch. 55. Mr. Ethun said that the same is true in rural counties. Mr. Ethun emphasized the distinction between short-term and long-term care. He gave examples in which an individual is moved to a psychiatric unit and receives psychotropic medication, and is then able to be moved out of the psychiatric unit after two to five days to be managed in the community. This type of "acute" care can be extremely helpful in some situations, and nursing homes are not currently set up for it. The fact that this acute care option is no longer available does not make sense, according to Mr. Ethun. On the other hand, when undertaking an emergency detention of a person with Alzheimer's Disease or other dementia, the goal is never a long-term stay in a psychiatric unit. He emphasized the role of family homes in providing long-term care for these individuals. Following the presentation, Mr. Ethun responded to questions from committee members.

Dr. Sara Coleman, Psychologist, Mobile Crisis Team, and Ramona Williams, Elder Abuse/Adult Protective Services Coordinator, Milwaukee County Behavioral Health Division, provided information on suggested changes to chs. 51, 55, and 155. These include updates to ch. 51 to highlight how the chapter applies to patients with dementia, and in cases where ch. 51 is inappropriate, to create a clear pathway of referral to an appropriate system of emergency care. They also suggested creating a new procedure under ch. 51 that would allow a clinician to act as "first responder" in appropriate scenarios. These changes are described in the handout distributed to the committee by Dr. Coleman. In addition, they suggested several changes to strengthen ch. 55 for the implementation of emergency protective placement and services. They also suggested changes to ch. 155, including the vesting of authority in a health care agent (under a power of attorney for health care) to consent to admission to an acute psychiatric inpatient unit or the involuntary administration of psychotropic medication. These changes are described in the handout distributed to the committee by Ms. Williams. Following their presentation, Dr. Coleman and Ms. Williams responded to questions from committee members.

Presentations by Patient Advocates

Robert Gundermann, Public Policy Director, Alzheimer's and Dementia Alliance of Wisconsin, indicated a desire for the psychiatric units to be made available for the treatment of persons with Alzheimer's Disease and other dementias. Mr. Gundermann's agency sees individuals with dementia who are in facilities that can no longer deal with them, and the "geriatric psych" unit is often the place that could deal with them the best, especially when medication issues arise. Mr. Gundermann discussed the use of psychotropic medications and cautioned against relaxing the standards for administration of such drugs, which, in his opinion, are widely overused. He also advocated increased training and use of techniques for caretakers to avoid the need for detention or placement under ch. 51 or 55. Mr. Gundermann gave an example of a retired physician with dementia who had resided at Mendota

Mental Health Institute for two and one-half years and was successfully moved to a community-based residential facility, resulting in better care and significant cost savings. Mr. Gundermann also suggested additional changes to current law to improve care of patients with dementia being transported to a facility in a crisis situation as well as the environmental factors of the facilities in which they are housed. Following the presentation, Mr. Gundermann responded to questions from committee members.

Kim Marheine, Ombudsman Services Supervisor, Board on Aging and Long-Term Care, provided information regarding the Wisconsin Long-Term Care Ombudsmen Program, which is a federally mandated advocacy service for residents of long-term care facilities. Ms. Marheine gave examples of typical cases where the ombudsman may get involved, which can include assistance with adjustments to medication, and interventions for residents who have been briefly removed from a nursing home and are told that they cannot return. Ms. Marheine described situations in which nursing homes find excuses to remove difficult residents. She discussed reasons why nursing homes are often not equipped to deal with dementia patients exhibiting challenging behaviors. Ms. Marheine also discussed practical and legal challenges facing surrogate decision-makers seeking to consent to treatment on behalf of a patient with dementia. Ms. Marheine stressed that facilities and providers should not be allowed to avoid caring for difficult patients, but should instead be invested with the tools and training to provide patients with required care and the all-important feeling of a home. Following the presentation, Ms. Marheine responded to questions from committee members.

Carol Wessels, Shareholder, Nelson, Irving & Waehler, S.C., Milwaukee and Former Chair, Elder Law Section, State Bar of Wisconsin, began her presentation with a comment to the committee about “the tsunami that is approaching in terms of the growth of Alzheimer’s” due to demographic changes in society. She urged the committee to review the *2012 Alzheimer’s Facts and Figures* report published by the Alzheimer’s Association. Several of the required legal changes, according to Ms. Wessels, concern the use of a power of attorney for health care for advance planning for dementia. As detailed in the handout submitted to the committee by Ms. Wessels, these proposed statutory changes would: (1) allow an agent to make admissions to an inpatient psychiatric facility under some circumstances; (2) ease restrictions on an agent’s authority in the case of mental illness; and (3) allow instruction to an agent to ignore subsequent objections to treatment in certain cases. Finally, on the subject of involuntary commitments under ch. 51, Ms. Wessels made a case that it is inappropriate for Alzheimer’s patients in all cases, because challenging behaviors are communication related, and ch. 51 does not allow for notice to, or participation by, family members or agents of the individual. Following the presentation, Ms. Wessels responded to questions from committee members.

Presentations by Representatives of Care Facilities

Mark Radmer, Administrator, and Karen Wagner, Director of Social Services, Harbor Haven Health and Rehabilitation, discussed the regulatory environment affecting nursing homes and the difficulties of responding to challenging resident behaviors with limited resources. They explained that successful strategies have been used at their facility, including staff training, effective use of care plans and assessments, effective meetings with family members, and use of a 1:1 staff-to-resident ratio, when necessary. They also described instances in which residents with challenging behaviors have been temporarily removed by law enforcement but were able to come back to the nursing home following acute treatment. In closing, Mr. Radmer and Ms. Wagner emphasized the need for all parties to remain open to all ideas, and that nursing homes need an option to temporarily relocate residents who are dangerous, provided that the nursing home has done everything possible to prevent this from occurring. Following their presentation, Mr. Radmer and Ms. Wagner responded to questions from committee members.

Jerry L. Halverson, M.D., Medical Director for Adult Services, Rogers Memorial Hospital, stated that the goal of the committee should be to ensure that the correct care is delivered to the right patient at the right time. He said it is not correct to assume that if a person has dementia, they do not have a treatable behavioral or psychiatric illness. Rather, the likelihood of a person having both a psychiatric disorder, as well as dementia, is very high. Dr. Halverson discussed reasons that current law, following the *Helen E.F.* case, presents obstacles to providing treatment for a person with dementia when: (1) they require treatment for a psychiatric disorder; or (2) the dementia itself is causing a behavioral disturbance that can be treated. He said that this subset of individuals with dementia are in need of acute psychiatric treatment but, under current law, they may often not receive that care. Dr. Halverson also stated that when treatment in a psychiatric unit is unavailable or inappropriate, many patients who are placed under ch. 55 simply do not have a place to go regardless of the requirements placed on counties to designate a place for them. This also prevents them from getting the correct care. Following the presentation, Dr. Halverson responded to questions from committee members.

Mike Pochowski, Wisconsin Assisted Living Association; Manager, Government Affairs & Legal Operations, Brookdale Senior Living Inc., explained that the Court's decision in *Helen E.F.* has resulted in a number of new concerns for long-term care providers. These include concerns that residents will not have access to psychiatric and behavioral services when required and that families may fail to disclose a prospective resident's aggressive behaviors based on a concern that they will not be accepted for admission. Mr. Pochowski suggested that ch. 51 be amended to allow it to apply to persons with degenerative brain disorders. In addition, Mr. Pochowski pointed to Florida's Baker Act as a model that could be used to address these issues. The Baker Act allows a long-term-care facility to seek removal of a resident to a psychiatric facility under certain circumstances, but obligates the long-term-care facility to reaccept the resident after discharge from the psychiatric facility if certain criteria are met. Following the presentation, Mr. Pochowski responded to questions from committee members.

Presentations by Treatment Professionals

Dr. Mark Sager, Director, Wisconsin Alzheimer's Institute, University of Wisconsin School of Medicine and Public Health, cited the importance of the committee's work given that demographic trends suggest that the incidence of Alzheimer's Disease and dementia is increasing. He also stressed the need to consider issues from the perspective of the large majority of individuals with Alzheimer's Disease or dementia who live at home as opposed to in a facility. Dr. Sager expressed his concern that individuals with dementia who also have treatable psychiatric disorders may not get access to care that is needed to treat those disorders. Dr. Sager discussed ways to encourage behavioral treatments, methods, and training to prevent challenging behaviors from arising, to the extent possible, which may include certifying individuals with specialized training as dementia specialists. Dr. Sager also acknowledged and described the impact of the regulatory framework on nursing homes, echoing many of the comments of Mr. Radmer and Ms. Wagner. Following the presentation, Dr. Sager responded to questions from committee members.

Mary Salzeider, Training Coordinator, Alzheimer's and Dementia Alliance of Wisconsin, explained her work training caregivers to use communication and behavioral techniques to minimize challenging behaviors in patients with Alzheimer's Disease or related dementia. She identified factors that make a person with dementia feel safer or less agitated in his or her environment, such as the use of familiar pictures or objects. Training in using these techniques must be ongoing, according to Ms. Salzeider, in order to be successful. In addition, she emphasized the need to employ these techniques comprehensively, so that they are used by every caregiver, family member, and facility with whom the

patient comes in contact. Following the presentation, Ms. Salzeider responded to questions from committee members.

Cagney Martin, Activity Therapist, and Lori Koepfel, Nursing Home Administrator, North Central Health Care, explained their four-year effort to create a specialized dementia care program in their facility. They emphasized the importance of adopting a resident-centered model. They described the use, with varying degrees of success, of a variety of techniques including assessment tools, environmental changes, staff hiring decisions, creation of specialized CNA positions, the reduction of the administration of antipsychotic medications, and attempts to change the culture of the facility. Outcomes they have seen include a reduction in challenging behaviors and in the use of restraints within the facility, among other options. Ms. Martin and Ms. Koepfel also described their efforts to reach out to other facilities and programs to support increased use of behavioral approaches to address challenging behaviors. This led to the development of a training program called “Stop Starting It” that has been very well received. Following their presentation, Ms. Martin and Ms. Koepfel responded to questions from committee members.

Dr. Robert Smith, Past President and Board Member, Wisconsin Association of Medical Directors, stated that in his view, the population that needs help are those patients with acute behavior incidents that require short-term help, with a goal of returning them to the place they were living prior to the acute treatment. The committee, he said, should therefore focus its efforts on amending the statutes as needed to ensure that this short-term treatment may be provided to those who need it. Dr. Smith provided examples of cases where facilities and providers attempted numerous behavioral interventions and yet a resident continued to have behavioral incidents. In those cases, the resident was removed for short-term intervention and returned to the original facility of residence with significantly improved behaviors. Dr. Smith also emphasized that every dementia is unique, and circumstances and support networks are different in every case, so each case must be evaluated on an individual basis. Many of the innovative behavioral interventions discussed today are very effective, but they will not be effective in all cases, and a short-term acute care option should be retained as an available tool. Following the presentation, Dr. Smith responded to questions from committee members.

Discussion of Committee Assignment

Chair Knodl told committee members that the staff would prepare a paper for the committee summarizing the recommendation made to the committee by the individual speakers. He invited members to contact staff if they wanted to add any specific recommendation to the paper.

Other Business

Chair Knodl reminded members that the next meeting of the committee will be held on September 12th, in the State Capitol.

Adjournment

The meeting was adjourned at 4:00 p.m.

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