Wisconsin Legislative Council – Special Committee on Legal Interventions for Persons with Alzheimer's Disease and Related Dementias

July 31, 2012

Presentation by Representative of Care Facility

Introduction

Good afternoon. My name is Mike Pochowski and I am here on behalf of the Wisconsin Assisted Living Association which represents 960 providers and members that serve approximately 13,500 elderly and other populations. My organization, Brookdale Senior Living Inc., is the nation's largest owner and operator of senior living communities throughout the U.S. Brookdale operates 645 senior living communities in 35 states serving approximately 60,000 residents. In Wisconsin, Brookdale operates 17 communities with approximately 500 residents.

Assisted living providers offer housing, support services such as assistance with activities of daily living and health care services to seniors. Many assisted living residents have dementia including Alzheimer's disease or dementia caused by other degenerative brain disorders. Therefore, we have a deep interest in the Wisconsin Supreme Court's Helen E.F. decision.

While we understand the intent of the Supreme Court's ruling, we believe that the Court's decision and the drafting of the Wisconsin's Statutes have left seniors and providers of housing and services to seniors without a viable means of addressing the rare but urgent situation when a resident with Alzheimer's or other similar degenerative brain disorder exhibits self-harming or unmanageable aggressive behaviors.

The Court's decision has resulted in a number of new concerns. Particularly, long term care providers are now leery of accepting individuals from psychiatric/mental health providers because once admitted to the long term care community, the resident may not have access to the psychiatric and behavioral services the resident may require in the future. Further, long term care providers are concerned that families and other health care providers may fail to disclose a prospective resident's aggressive behaviors because long term care providers may be more reluctant to accept such residents after the Court's decision.

To ensure the health and safety of all residents and staff, long term care providers need to be able to access the mental health system to manage the care of the resident exhibiting unmanageable behaviors.

Chapter 51 and 55

One of the problems with Chapters 51 and 55 and the related case law is the focus on diagnosis and whether the underlying disease can be "rehabilitated." We would argue that the focus should be on placing the individual in the best location to address the behaviors being exhibited. Other

states have processes that do not focus on the long term rehabilitation of the underlying disease, but focus on whether the individual would benefit from short term treatment. For example, as I will describe in just a moment, Florida's statutes permit individuals with dementia to be admitted for short-term treatment whereas Wisconsin does not provide a similar avenue for those individuals because of the interplays between Chapter 51 and Chapter 55.

Florida "Baker Act"

Back in 1971 Florida passed a Mental Health Act also known as the Baker Act. When the Baker Act became effective in 1972, it provided long term care communities such as assisted living communities with additional resources to best care for residents who exhibit behaviors that staff cannot manage or that the community is not licensed to provide. I think it is important to note that in some instances, our licensure as long term care communities in states such as Florida prohibits us from caring for certain residents, who exhibit uncontrollable behaviors that are best cared for in another environment. Further, if a resident is refusing services or care, long term care communities cannot force those services upon the resident. Staff are not equipped to provide those services and most state licensure requirements specifically describes that residents have the right to refuse services. In some instances when the resident has a degenerative brain disorder and lacks the capacity to understand what the refusal of services means for them, that resident's needs may be better served by a short-term stay at a psychiatric facility that can appropriately manage the resident's behaviors.

Under the Baker Act, if a resident presents a threat to self or others that cannot be managed by the community and if the resident does not have the mental capacity to voluntarily consent to a psychiatric evaluation because of Alzheimer's or dementia, the community is directed to contact the resident's physician or local law enforcement. At that time, the physician or law enforcement will determine if the resident should be involuntarily admitted into a qualified psychiatric facility for assessment. The Baker Act provides many safeguards to ensure the resident is properly cared for such as how the resident is transferred to the facility, who must be notified, length of stay at the facility, etc. In addition, communities cannot simply transfer the resident to the psychiatric facility with the intention of not allowing the resident to return to the community. The community is required to re-assess the resident once the mental health facility believes the resident can come back to the community and as long as the resident meets the necessary criteria, the resident will be accepted back to the community.

All in all, the Baker Act provides assisted living communities the opportunity to request assistance from a physician or local law enforcement to secure treatment for a resident who exhibits behaviors that the community is not licensed or equipped to handle. In this sense, all residents are provided the opportunity to reside in a safe and habitable environment conducive to the overall intent of long term care. As you may notice, the Baker Act is quite similar to the safeguards and provisions outlined in Chapter 51.

Legislative Recommendation

In order to rectify the distinguishing factors as outlined in the Wisconsin Supreme Court Ruling and to mirror what is taking place in other states such as Florida, we would recommend that the Committee consider modifying the standards for involuntary commitment as addressed in Chapter 51.20(1)(a)1. Particularly, we suggest that this provision be expanded to include persons with degenerative brain disorders who are experiencing unmanageable physical or sexual aggression and/or refusing necessary services that are essential for that individual's well-being.

We believe these provisions would provide protections for residents, staff, and for long term care providers but at the same time provide reassurances to residents and psychiatric facilities that the long term care community will re-admit the resident back to the community provided the long term care provider can properly care for the resident under the community's licensure requirements.

I thank you for your time and look forward to your questions.