



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

Memo No. 3

TO: MEMBERS OF THE SPECIAL COMMITTEE ON LEGAL INTERVENTIONS FOR PERSONS WITH ALZHEIMER'S DISEASE AND RELATED DEMENTIAS

FROM: Brian Larson, Staff Attorney

RE: Physical Separation Requirement in WLC: 0017/4

DATE: November 12, 2012 (Revised November 13, 2012)

The Subcommittee of the Special Committee on Legal Interventions for Persons with Alzheimer's Disease and Related Dementias, at its meetings on November 2 and 5, 2012, discussed proposed changes to bill draft WLC: 0017/4, relating to inpatient psychiatric treatment for individuals with dementia. The subcommittee reached an impasse with regard to the following language appearing on ll. 22 and 23, p. 21 of the draft, and again on ll. 11 and 12, p. 31 of the draft (the "physical separation requirement"):

The individual is placed in a unit or setting that is physically separate from any unit or location in which acutely mentally ill individuals are located.

To provide context for further discussion, this Memo briefly describes the two provisions in the draft where the physical separation requirement appears. Also included are suggestions for alternate language contributed by participants in the subcommittee meeting.

Physical Separation Requirement for Emergency Protective Placement of an Individual With Dementia in an Inpatient Facility (ll. 22 and 23, p. 21)

Under current law, protective placement (emergency, temporary, or permanent) may not be made to a unit for the acutely mentally ill, and no individual who is subject to an order for protective placement or services may be involuntarily transferred to, detained in, or committed to a treatment facility for care except under s. 51.15 or 51.20, Stats.

WLC: 0017/4 allows an individual to be taken into custody and transported to an inpatient facility for emergency protective placement. Currently, the draft defines "inpatient facility" as "a public

or private facility that has been identified by a county department as qualified and equipped to provide, and competent in providing, diagnosis, evaluation, and treatment of dementia and medical, psychiatric and behavioral care services, and treatment to individuals with dementia under s. 55.02 (2) (b) 5., Stats.”

Under the draft, emergency protective placement of an individual with dementia may only occur under this procedure if the existing requirements for emergency protective placement are met and if certain additional requirements are met. One of these additional requirements is that the individual be placed in a unit or setting that is physically separate from any unit or location in which acutely mentally ill individuals are located.

Physical Separation Requirement for Temporary Transfer of an Individual Under Protective Placement with Dementia (Il. 11 and 12, p. 31)

Under current law, an individual under a protective placement order may not be transferred to any facility for which commitment procedures are required under ch. 51, Stats.

WLC: 0017/4 authorizes a court to order the transfer of an individual with dementia who is under a protective placement order to an inpatient facility (as defined above) for behavioral or psychiatric evaluation, diagnosis, services or treatment, for a period not to exceed 45 days. In determining whether to approve a proposed transfer, the court must consider whether there is probable cause to believe all of the allegations in the petition. One of the allegations required in the petition is that the individual is placed in a unit or setting that is physically separate from any unit or location in which acutely mentally ill individuals are located.

Suggestions Contributed by Participants in the Subcommittee Meeting

Below are the suggestions for alternate language to the physical separation requirement contributed by participants in the subcommittee meeting. This list of suggestions may be incomplete and is included as a basis for further discussion.

Robert Mueller: Mr. Mueller stated, as an alternative to the physical separation requirement the following language:

“The individual is placed on a unit or part of a unit designated and certified by the County Department of Health and Human Services as appropriate to treat the medical, behavioral and psychiatric needs of dementia patients.”

Ken Robbins: Mr. Robbins stated that Mr. Mueller’s language made good sense, and he hoped this language could serve as a middle ground.

Tom Hlavacek: Mr. Hlavacek stated that he supported Mr. Mueller’s suggestion, but with the following italicized addition:

“The individual is placed on a unit or part of a unit designated and certified by the County Department of Health and Human Services as appropriate to treat the medical, behavioral and psychiatric needs of dementia patients, *and that to the extent possible is physically separate from any unit or part of a unit in which acutely mentally ill individuals are located.*”

Brian Purtell: Mr. Purtell suggested the following language as an alternative to the language in the draft:

“The individual is placed on a unit or part of a unit that is operationally and programmatically appropriate to treat the medical, behavioral and psychiatric needs of dementia patients.”

He stated that this language is an attempt to give some teeth to the requirement for physical separation of dementia patients, without being too prescriptive.

Adam Plotkin (with Tom Reed and Dennis Purtell): Mr. Plotkin, Mr. Reed, and Mr. Purtell suggested the following alternative language:

“The placement for medical, behavioral, and psychiatric needs of a dementia patient shall be in an inpatient facility that has a unit or part of a unit that provides an appropriate therapeutic environment which includes a physical setting designed to minimize mental and physical harm.”

Kathi Cauley: Ms. Cauley proposed the following alternative language:

“The individual is placed in a unit that is competent in assessment and treatment of individuals with dementia and has not, within the last [___] years, received a citation for immediate jeopardy in connection with the care of a resident with dementia, and that is one of the following:

- A specialty unit [defined to include Stoughton and other geriatric psychiatric units].
- A general hospital with a psychiatric unit.
- Another facility capable and willing to address individual needs of residents with dementia.”

BTL:ty