WISCONSIN LEGISLATIVE COUNCIL
STAFF MEMORANDUM

Memo No. 4

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

FROM: Mary Matthias, Senior Staff Attorney

RE: Issues Pertaining to WLC: 0017/5 and WLC: 0015/3

DATE: November 30, 2012

This Memo identifies provisions to be reviewed and issues to be resolved by the subcommittee in its discussions pertaining to WLC: 0017/5, relating to inpatient psychiatric treatment for individuals with dementia, and WLC: 0015/3, relating to involuntary administration of psychotropic medication as a protective service to a person with dementia. This Memo is meant to aid the subcommittee in its discussion; subcommittee discussion is not limited to the items set forth in this Memo.

WLC: 0017/5

Definition of " Inpatient Facility" and Description of Units to Which Placements may be Made

Under the draft, "inpatient facility" is defined 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.

Also under the draft, placements for behavioral or psychiatric evaluation, diagnosis, services, or treatment may be made only to a unit or part of a unit that provides a therapeutic environment that is appropriate for the individual and is designed to minimize mental and physical harm.

The subcommittee may wish to review these provisions to determine if any further changes are desired.

Limit on Length of Initial Placement in an Inpatient Facility

The draft authorizes emergency protective placement of an individual with dementia in an inpatient facility for behavioral or psychiatric evaluation, diagnosis, services, or treatment. The draft also allows the temporary transfer of a protectively placed individual with dementia to an inpatient

One East Main Street, Suite 401 • P.O. Box 2536 • Madison, WI 53701-2536
(608) 266-1304 • Fax: (608) 266-3830 • Email: leg.council@legis.state.wi.us
http://www.legis.state.wi.us/lc

facility for the same purposes. An initial placement may be extended by court order as provided in the draft.

The draft limits the length of an initial placement in an inpatient facility, under either of the procedures described above, to 45 days. The committee discussed whether the 45 day limitation is appropriate, and it was suggested that the draft be modified to limit initial placements to 30 days.

The subcommittee may wish to discuss and resolve this issue.

Process for Designating Inpatient Facilities; Data Collection and Reports

At the November 14th meeting, the committee agreed with a suggestion made by Mr. Hlavacek that the draft be revised to add a procedure for public input regarding the county designation of one or more "inpatient facilities" under s. 55.02 (2) (b) 5., Stats., as created in the draft. The committee also agreed to add a requirement for counties to collect data regarding the capacity of counties to provide appropriate facilities and settings for psychiatric and behavioral care for individuals with dementia, and to provide this data to the Department of Health Services (DHS) for the purposes of long-term planning and capacity building. The committee also directed staff to add a provision requiring DHS to collect this information from counties and provide an annual report to the Legislature regarding this information.

The subcommittee may wish to review the modifications made to the draft in response to these suggestions to determine whether they achieve the intent of the committee.

Clarification Regarding Protective Placement in a Facility with a Unit or Area Designated as an Inpatient Facility

Section 55.12 (2), Stats., identifies the types of facilities to which protective placements may be made. It has been stated that long-term care facilities might, in the future, develop specialized units or other areas within their facilities to provide behavioral or psychiatric evaluation, diagnosis, services, or treatment for individuals with dementia. A unit or area of this type could potentially be designated by a county as an "inpatient facility" under s. 55.02 (2) (b) 5., Stats., which is created in the draft.

At the November 14th meeting, it was mentioned that it might be advisable to amend s. 55.12 (2), Stats., to state that protective placement in a long-term care facility is not prohibited solely because a unit or area of the facility has been designated as an "inpatient facility."

The subcommittee may wish to discuss whether the draft should be revised to address this issue.

Issues Relating to "Aftermath" Placements

At the November 14th meeting, the committee discussed the difficulties encountered in arranging protective placements for individuals with dementia at the time of their discharge from a treatment facility. This type of placement was referred to as an "aftermath" placement.

It was stated that efforts should be made to preserve an individual's original placement when the individual is temporarily transferred to an inpatient facility; however, no specific suggestions to require a facility to readmit an individual were provided. Under current law, if a resident is transferred, the nursing home is required to hold a resident's bed for a maximum of 15 days. [s. DHS 132.53 (5), Wis. Adm. Code.]

It was also suggested that DHS be required to collect information from counties regarding aftermath placements and include this information in an annual report to the Legislature; however, the committee did not direct staff to include this provision in the draft.

The subcommittee may wish to discuss whether the draft should be revised to address these issues.

Medication Orders

The subcommittee should review and discuss the provisions of the draft pertaining to medication orders. For informational purposes, the attachment to this Memo summarizes provisions of current law pertaining to the administration of psychotropic medications without consent.

WLC: 0015/3

WLC: 0015/3 establishes a procedure for involuntary administration of psychotropic medication (IAPM) as an emergency protective service for an individual with dementia. The draft also changes the standards for obtaining an order for IAPM as a non-emergency protective service for an individual with dementia. The subcommittee should review this draft and discuss whether any changes are desired.

Evidence Required to Prove the Probability of Physical Harm, Impairment, Injury, or Debilitation in a Petition for IAPM as a Protective Service

Under current law, a petition for IAPM as a protective service must allege that unless psychotropic medication is administered involuntarily, the individual will incur a substantial probability of physical harm, impairment, injury, or debilitation or will present a substantial probability of physical harm to others. The substantial probability of physical harm, impairment, injury, or debilitation must be evidenced by one of the following:

> 1. The individual's history of at least two episodes, one of which has occurred within the previous 24 months, that indicate a pattern of overt activity, attempts, threats to act, or omissions that resulted from the individual's failure to participate in treatment, including psychotropic medication, and that resulted in a finding of probable cause for commitment under s. 51.20 (7), a settlement agreement approved by a court under s. 51.20 (8) (bg), or commitment ordered under s. 51.20 (13).
>
> 2. Evidence that the individual meets one of the dangerousness criteria set forth in s. 51.20 (1) (a) 2. a. to e.

WLC: 0017/5 specifies that the procedures under ch. 51 may not be used for an individual with dementia. Thus, the evidence described item 1., above, would not be applicable to an individual with dementia because it requires that the individual was subject to a previous legal disposition under ch. 51. Therefore the draft, for a petition involving an individual with dementia, deletes that item as a type of evidence that may be provided in a petition pertaining to an individual with dementia.

The draft also deletes item 2. as a type of evidence that may be provided in a petition involving an individual with dementia, because it contains specific references to ch. 51, which would no longer be appropriate if WLC: 0017/5 were to become law.

The draft replaces item 2. with a provision that allows evidence of some of the types of behavior and conditions that are included in the statutory provisions referred to by item 2. to be used in a petition. Specifically, the draft incorporates the behavior and conditions described in s. 51.20 (1) (a) 2. a and b., but it does not incorporate the behavior and conditions described in s. 51.20 (1) (a) 2. c., d., or e., Stats. Those statutory provisions are set forth in the attachment, under the heading *Involuntary Administration of Psychotropic Medications as a Protective Service.* The subcommittee may wish to review s. 51.20

(1) (a) 2. c., d., or e., Stats., to determine whether any of the elements of the behavior or conditions contained in those provisions should be incorporated into the draft as evidence that may be provided to support the allegations in a petition pertaining to an individual with dementia, or whether entirely different evidence than that set forth in the draft should be required.

MM:ty

Attachment