Wisconsin Association of Homes and Services for the Aging, Inc.

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December 5, 2007

To: Senator Tim Carpenter, Chair
Members, Senate Public Health, Senior Issues, Long-Term Care and Privacy Committee

From: John Sauer, Executive Director
Tom Ramsey, Director of Government Relations

Subject: WAHSA Opposition to 2007 Senate Bill 283

The Wisconsin Association of Homes and Services for the Aging (WAHSA) is a statewide membership organization of not-for-profit corporations principally serving the elderly and persons with a disability. Membership is comprised of 187 religious, private, fraternal and governmental organizations which own, operate and/or sponsor 196 nursing homes, 20 facilities for the developmentally disabled (FDD), 81 community-based residential facilities (CBRF), 59 residential care apartment complexes (RCAC), 14 HUD Section 202 Supportive Housing for the Elderly apartment complexes, 113 apartment complexes for independent seniors, and over 300 community service programs ranging from Alzheimer's support, child and adult day care, hospice and home care to Meals on Wheels. In our nursing homes alone, WAHSA members employ over 30,000 individuals who provide compassionate care and service to over 20,000 residents.

WAHSA members pride themselves on the quality of the care they provide their residents. Those that provide such care are especially proud of the care they provide their residents with Alzheimer's disease or related dementia. If they believed SB 283 would improve that care, they would support the bill. But until they know what the bill will do and who it will apply to, WAHSA members respectfully oppose SB 283.

When we queried our membership on whether they could support SB 283, they asked what the bill would do. When told it would establish standards for the care and treatment of people with Alzheimer's disease or related dementia, they indicated that sounded like a good idea and asked what those standards would be. But when told we wouldn't know what the standards would be until the Department of Health and Family Services (DHFS) developed them by rule AFTER SB 283 was signed into law, they asked how they could possibly support a bill that establishes caregiving standards without any inkling of what those standards might be or what costs they would be required to incur to comply with those unknown standards.

They asked who the bill would apply to. We indicated nursing homes, CBRFs, RCACs, adult family homes and hospices "which hold themselves out as providing special services" to persons with Alzheimer's disease or related dementia. They asked if that meant them; we stated we weren't certain. They asked how they could possibly support a bill that establishes caregiving standards if they weren't even certain to whom those standards would apply.

They asked what problems existed to warrant the need for SB 283. When told we were not certain what problems SB 283 seeks to address, they asked how they could possibly support a bill which seeks a legislative solution to problems that they aren't even aware exist. And if such problems do exist, they believe current regulations provide the DHFS with an impressive array of enforcement tools needed to address those problems.

They asked if SB 283 were similar to a bill introduced in the 1991 legislative session. We responded that, indeed, SB 283 is virtually the same piece of legislation as 1991 Assembly Bill 864, introduced January 8, 1992 by Representative Peggy Krusick, except that it only applied to nursing homes. When asked what happened to 1991 AB 864, we indicated it died in committee, without even gaining the support of the Alzheimer's Association. It was the belief of those that opposed 1991 AB 864 that additional regulations were not the answer; what was needed was information that would enable consumers to make informed decisions when selecting a long-term care facility for the care and treatment of Alzheimer's disease. So rather than pass a bill, a group of providers and representatives of the Alzheimer's Association, the DHFS and the Board on Aging and Long-Term Care met informally over the next several years and developed a Guideline for Dementia Specific Care Program Disclosure Statement and a Consumer Checklist of "Important Questions to Ask About Dementia Specific Care." Our members suggested that rather than passing 2007 SB 283, convening a similar workgroup might be more productive. WAHSA would welcome the opportunity to refine such a checklist for use by consumers and providers.

Finally, they pointed to the current shift in the care and treatment of Alzheimer's disease from a medical model to a person-centered care model, combined with the fact we are learning more and more every day about this insidious disease and how it best can be treated, and questioned the wisdom of placing care and treatment standards in the administrative code when those standards might actually be obsolete by the time the SB 283-mandated rule is promulgated. We found that argument difficult to counter.

Until SB 283 satisfactorily addresses these questions and concerns, WAHSA members will oppose the bill.

In terms of the bill's specifics, we raise the following points:

On Page 2, line 7 of 2007 SB 283, how is "hold itself out as providing special services" defined? Does the bill apply only to those facilities which refer to themselves as providing Alzheimer's special care units or words to that effect? What "special services" does the bill include? Without clarifying this language, facilities will be unaware if they are required to satisfy the care and treatment standards the DHFS is required to develop by rule under SB 283.

On Page 2, lines 15-17 of the bill, SB 283 requires the DHFS to consult with "residents" of nursing homes, CBRFs, RCACs, adult family homes and hospices before promulgating the care and treatment standards rule. Do these residents have to be stricken with Alzheimer's disease? While we appreciate the input the bill provides, we question the practicality of this provision.

If SB 283 applies specifically to Alzheimer's disease/dementia special care units, we question SB 283's applicability to RCACs and hospices. HFS 89.29(1) states that "no residential care apartment complex may admit any of the following persons, unless the person being admitted shares an apartment with a competent spouse or other person who has legal responsibility for the individual: (a) A person who has a court determination of incompetence and is subject to guardianship under ch. 880, Stats; (b) A person who has an activated power of attorney for health care under ch. 155, Stats; and (c) A person who has been found by a physician or psychologist to be incapable of recognizing danger, summoning assistance, expressing need or making care decisions." RCAC tenants are expected to be capable of negotiating and signing a service agreement and a risk agreement. While there is no doubt some RCAC tenants have Alzheimer's disease or related dementia, very few have the disease upon admission to the RCAC and we would submit that virtually no RCACs in this state hold themselves out as Alzheimer's special care units. The RCAC is not the proper setting for most people with Alzheimer's disease and WAHSA members believe the provisions in SB 283 should not apply to RCACs. The same argument applies to hospices, whose sole function is to provide palliative and supportive care to those with terminal illness, regardless of the cause of that terminal illness.

On Page 5, lines 10-18 of the bill, the DHFS may promulgate the rule establishing care and treatment standards for people with Alzheimer's disease or related dementia as an emergency rule without requiring the Department to provide evidence that an emergency exists. It's been 15 years since a bill similar to SB 283 was last introduced and that bill failed. While there may be some problems with the care and treatment of those with Alzheimer's disease in this state, it seems rather outlandish to now declare the situation warrants the promulgation of an emergency rule.

WAHSA members renew our pledge to work with the authors of SB 283 and its companion bill, AB 493, to address any problems with the care and treatment that our Alzheimer's residents are receiving. We simply don't believe SB 283 is the appropriate vehicle to do so.

Thank you for this opportunity to testify on SB 283.

Attachments:

1991 Assembly Bill 864

A January 23, 1997 memo on the work of the Dementia Specific Care Committee

The Guideline for Dementia Specific Care Program Disclosure Statement

Consumer Checklist: Important Questions to Ask about Dementia Specific Care

HFS 89.29(1), Wis. Adm. Code

Alzheimer's Disease and Dementia Resources from the DHFS Web Site

"Shifting from a Medical Model of Dementia Care to a New Culture of Person-Directed/Centered Care" (from the DHFS Person-Directed Dementia Care Behavior Solutions Advisory Committee)