

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

---

204 South Hamilton Street • Madison, WI 53703 • 608-255-7060 • FAX 608-255-7064 • [www.wahsa.org](http://www.wahsa.org)

June 24, 2008

To: Pat Benesh  
Quality Assurance Program Spec-Senior  
Division of Quality Assurance  
Department of Health and Family Services  
1 West Wilson Street – Room 1150  
Madison, WI 53701

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

Subject: HFS 129 Comments

Dear Ms. Benesh:

On behalf of the 189 not-for-profit corporate members of the Wisconsin Association of Homes and Services for the Aging (WAHSA), the nearly 20,000 nurse aides they employ, and the 48,000+ elderly and persons with a disability they serve, we would like to take this opportunity to comment on the proposed revisions to HFS 129, relating to certification for training and testing nurse assistants, home health aides, and hospice aides. WAHSA members appreciate the openness with which the Department has developed these proposed rule modifications and this opportunity to comment on those proposed modifications. At the outset, please note our support for expanding the rule to include the training and testing requirements for paid feeding assistants and medication aides, in addition to nurse aides, home health aides and hospice aides.

WAHSA members support most of the proposed revisions to HFS 129. We **generally** support what probably is the most controversial change to HFS 129, increasing of the minimum number of hours required of nurse aide training programs. However, we are not yet prepared to voice our final support for the proposed increase from the current 75 hours to 120 hours (the WAHSA Board of Directors will meet on July 17, 2008 to discuss this issue). WAHSA does ask that the Department consider the following points prior to promulgation of the final rule:



- 1) The minimum nurse aide training requirement of 120 hours is not a panacea. It is an arbitrary number which will not ensure that those completing such training will be prepared adequately to serve our elderly and persons with a disability in a nursing home, a facility for the developmentally disabled, a hospital, or an assisted living facility. Some who come through such programs are more than ready after 75 hours; others won't be ready after 175 hours. Each student has a different aptitude and learning curve; an arbitrary number of mandated training hours won't address such differences;
- 2) Expanding the training requirement to 120 hours won't produce individuals who are prepared adequately to care for residents. No facility with quality as its highest priority would permit a new trainee to provide resident care without first completing facility-specific training through job shadowing, supervised on-the-job-training, or some other form of mentoring program. It's this facility-specific training where the "real" training takes place and where skilled nurse aides are developed; and
- 3) Where in HFS 129 is the student being represented? Will this increased training requirement prove to be the disincentive which drives away quality people from pursuing a career as a nurse aide? Can our health care system and the residents and patients we serve afford such a disincentive?

WAHSA asks that the above issues be fully discussed prior to any final decision to expand the minimum nurse aide training hours.

WAHSA members support/oppose the following modifications to HFS 129:

- **Support for some form of provider notification that a nurse aide or prospective nurse aide is under investigation.** Providers have a moral and legal responsibility to ensure the health, safety, and welfare of their residents/patients. Yet they cannot fully adhere to that responsibility if they are not informed that a nurse aide in their employ or a prospective nurse aide they are considering hiring is under a pending investigation for a crime that is related to the job responsibilities of a nurse aide. We are fully cognizant that it is illegal under s. 111.322, Wis. Stats., to refuse to hire or employ an individual on the basis of arrest record. But in order to better balance the protections of resident safety with those against employment discrimination, providers should have some way of determining if an aide or a prospective aide is under investigation so they can at the very least hear the aide's or prospective aide's side of the story. Providers are not seeking an additional tool to hire or fire; they are seeking legal ways to better protect their residents/patients from unscrupulous individuals who are trying to "game" the system.
- **Opposition to the requirement that a prospective nurse aide must be a full-time trainee.** The goal of all those interested in an effective HFS 129 is to ensure the rule maximizes the opportunities for competent and compassionate individuals to become nurse aides and to tear down any impediments that might keep them from doing so. Family and financial responsibilities could make it impossible for some otherwise quality people from fulfilling those aspirations if full-time training remains a requirement. While

we recognize this provision may fall under federal law, it nonetheless is an impediment which should be removed in the best interests of those we serve.

- **Support the deletion of HFS 129.05(2)(d)6 *Reapplying for Nurse Aide Training Program approval.*** This provision states that if the Department withdraws the approval of a nursing facility's nurse aide training program, the facility may not reapply for program approval for one year from the date of the withdrawal of the program approval. This one-year delay is not required under federal law: why are we requiring it in HFS 129? It needlessly prolongs the elimination of a service which could be vital to the residents/patients we serve, especially in rural areas.
- **Support the deletion of HFS 129.05(2)(e) *Nurse Aide Training and Competency Evaluation Program waiver of prohibition.*** This provision is contained in 42 USC Section 1919 of the federal statutes and does not need to be included in HFS 129 to be enforceable. We are working with our national organization to amend this provision of federal law because we believe it is unfair to penalize a facility with a loss of their nurse aide training program for a non-quality of care violation. We would prefer not to be required to amend HFS 129.05(2)(e) if we are successful in removing this provision from federal law.
- **Support the deletion of HFS 129.07(2)(c)11 *Limitations on clinical instruction programs.*** This provision limits a health care facility which serves as a site for clinical instruction to no more than 2 nurse aide training programs at a time. This language lacks clarity: does it mean "at a time" or "at the same time?" Does a "program" mean the program put on by an individual technical school or a facility or does it mean the three "classes" put on by that technical school or facility? For a nursing facility, this provision is unnecessary because the facility is responsible for its own residents and the survey process will determine if any of those residents were harmed because of the clinical portion of the nurse aide training program.

Once again, thank you for this opportunity to comment on the proposed revisions to HFS 129.