

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

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October 29, 2009

To: Representative Peggy Krusick, Chair
Members, Assembly Aging and Long-Term Care Committee

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

Subject: WAHSA Response to Proposed Revisions to Assembly Bills 259 and 389

The Wisconsin Association of Homes and Services for the Aging (WAHSA), which represents 190 not-for-profit long-term care organizations, appreciates Representative Krusick's willingness to listen to the concerns we expressed with both AB 259 and AB 389 at the Committee's September 10th public hearing on the bills. WAHSA opposed both bills at the September 10th hearing and opposition must remain our position until our Board of Directors has an opportunity to review and respond to the suggested revisions to both bills at its next meeting on November 19th. Our comments in this memo, therefore, should be taken in that context: until our statewide Board meets and directs us to take a position different from opposition to AB 259 and AB 389, that must remain our official position. Having said that, we believe the changes suggested by Representative Krusick have made bad bills better.

LRBs0148/1 – Draft Substitute Amendment to AB 259, Alzheimer's Special Care Units

The substitute amendment would eliminate the requirement that the DHS promulgate administrative rules creating care and treatment standards for nursing homes, CBRFs and adult family homes which hold themselves out as providing special services for persons with Alzheimer's disease or related dementia. In its place, the substitute amendment requires those facilities to provide a written statement which elaborates on why the services they provide to their Alzheimer's residents are "special." The shift from a care standards mandate to a disclosure statement is definitely a step in the right direction. But a survey of WAHSA members on their views of the proposed substitute amendment to AB 259 split our membership right up the middle: half said they could support the proposed revisions to AB 259 and half said they still opposed the bill even with those revisions. Those who oppose the substitute amendment argue that the written disclosure should be voluntary, not mandatory, citing the voluntary *Guideline for Dementia Specific Program Disclosure Statement* and the *Consumer Checklist* (which were attached to the WAHSA position statement on AB 259 that was distributed at the September 10th hearing) that were developed collaboratively by providers and advocates after 1991 Assembly Bill 864, an Alzheimer's care standards bill, died in committee in 1992.



Even without specific direction from the WAHSA Board, we can state categorically that WAHSA opposes the penalty provisions in Sections 3, 5, 6 and 8 of the bill. The amount of the forfeitures imposed in Sections 5 and 6, though permissive, equates to a nursing home Class “B” forfeiture under s. 50.04 (5)(a)2. Under s. 50.04 (4)(b)2, a Class “B” violation is a violation . . . “which creates a condition or occurrence relating to the operation and maintenance of a nursing home directly threatening the health, safety or welfare of a resident.” Failure to provide a written disclosure statement, which many believe should be voluntary rather than mandatory, certainly does not rise to the level of “threatening the health, safety or welfare of a resident.” For adult family homes under Section 3, the amount of the forfeiture is not even permissive; it is a mandatory forfeiture not to exceed \$5,000. The same argument applies to the resident’s right to an independent cause of action under Section 8 of the substitute amendment if the disclosure statement provision is violated: the “time” doesn’t fit the “crime.”

If an assessment is to be included in the legislation, WAHSA recommends the forfeitures under the substitute amendment to AB 259 be the equivalent of a nursing home Class “C” violation under s. 50.04 (5)(a): a forfeiture of not more than \$500, with that forfeiture only to be imposed if the violation of the disclosure statement requirement either is not corrected or is repeated. In addition, the independent cause of action provision added under Section 8 of the substitute amendment should be eliminated.

LRBa0813/3 – Draft Amendment to AB 389, Nursing Home Violation Reporting

While the suggested changes in the proposed amendment to AB 389 improve the bill somewhat, the bill still would deny nursing homes their due process right to appeal the violation(s). Once again, the bill would convict the nursing home based on the arrest record rather than the finding of the jury. On that basis alone, we feel confident the WAHSA Board will continue to oppose AB 389.

While the amendment to AB 389 would narrow somewhat the scope of violations which would be subject to the notification requirements and would recognize the informal dispute resolution (IDR) process, it ignores the IDR finding. Case in point: A facility is issued a Class “A” violation (s. 50.04 (4)(b)1) and decides to “IDR” the violation. After the IDR, the violation is dropped from a Class “A” to a Class “B” violation (s. 50.04 (4)(b)2). Under the amendment to AB 389, the IDR decision is not taken into account. The amendment states “If the nursing home requests informal dispute resolution, the nursing home shall provide the notice required under par. (b) within 15 days after completion of the informal dispute resolution.” S. 50.04 (4m)(b) of the bill still requires the written notice be sent by the nursing home that it received a notice of a Class “A” violation, even though that Class “A” was dropped to a Class “B” through the IDR process. The bill should be further amended to ensure that the result of the IDR is taken into account before notification of a violation is required.

The penalty provision in AB 389 still remains a problem. The bill determines a violation of the notification requirements established under AB 389 is a Class “C” violation and then imposes a Class “C+” or “B-” forfeiture. Why is this violation any more or less acceptable or unacceptable than any other Class “C” violation? A Class “C” violation is a violation which creates a condition or occurrence relating to the operation or maintenance of a nursing home which does not directly threaten the health, safety or welfare of a resident. Does failure to provide the notice required under AB 389 “kinda” threaten the health, safety or welfare of the resident, especially if

the facility already has notified the family (as the law requires) that a serious change of condition has occurred? A Class “C” violation and forfeiture for a violation of the AB 389 notification requirements is more than sufficient.

A final comment also is warranted. As we travel throughout the state visiting with staff, residents and family members associated with our non-profit long term care providers, their overwhelming reaction to legislation that seeks to impose more regulations or enforcement actions against community-based, mission-driven providers is, frankly, one of frustration and disappointment. They have asked when will legislation be advanced to address Medicaid deficits related to higher direct care staffing and benefits, or to help replace facilities built thirty-plus years ago, and can we look to Madison for help with workforce issues, influenza/H1N1 issues, and the well-documented increases in resident acuity and care needs? We suspect you hear these same questions from these constituents. It is in this context that we offer our above comments on AB 259 and 389. Please know that we understand the purpose and sincerity in which these bills are offered; our point is simply to express to you the daily challenges facing the caregiving community and their frustrations with the current “system.”

Thank you for this opportunity to comment on the proposed changes to AB 259 and 389.