

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

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To: State Representative Jean Hundertmark, Chair
Members, Assembly Aging and Long-Term Care Committee

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

Subject: 2003 Assembly Bill 644: RCAC Fees and Regulations

The Wisconsin Association of Homes and Services for the Aging (WAHSA) is a statewide membership organization of 193 not-for-profit long-term care providers. Our members own/operate 185 not-for-profit nursing homes, of which 47 are county-operated facilities, 72 community-based residential facilities (CBRF), 50 residential care apartment complexes (RCAC), 13 HUD Section 202 Supportive Housing for the Elderly apartment complexes, and 98 apartment complexes for independent seniors. WAHSA members offer over 300 community service programs ranging from home care, hospice, Alzheimer's support and adult and child daycare to Meals on Wheels. Our members employ over 38,000 dedicated caregiving and support staff.

Assembly Bill 644

2003 Assembly Bill 644, authored by State Representatives Peggy Krusick (D-Milwaukee) and Gregg Underheim (R-Oshkosh), would do the following:

- Permit the long-term care ombudsman or his or her designated representative to enter a residential care apartment complex (RCAC) at any time, without notice, and have access to tenants of the facility (similar to their ability to access nursing homes and CBRFs);
- Impose an assessment of \$12 per year on each occupied RCAC apartment, with the funds generated by this assessment to support one additional ombudsman position in the Board on Aging and Long-Term Care (BOALTC); and
- Apply the nursing home and CBRF resident rights provisions under s.50.09, Wis. Stats., to RCACs as well.



WAHSA Opposes AB 644

WAHSA opposes AB 644 for the following reasons:

- S.50.01(1d) defines a “residential care apartment complex” to mean “a place where 5 or more adults reside that consists of independent apartments, each of which has an individual lockable entrance and exit, a kitchen, including a stove, and individual bathroom, sleeping and living areas, and that provides, to a person who resides in the place, not more than 28 hours per week of services that are supportive, personal and nursing services.”
- RCAC residents and providers wish to stop efforts to “institutionalize” this residential care option. The intended regulatory distinction between a RCAC and other health care settings was clearly delineated in a May 17, 1995 issue paper (Paper #533 “Assisted Living Initiative”) written by the Legislative Fiscal Bureau. The issue paper states in part: “The Administration states an objective in establishing the assisted living (RCAC) initiative...is to avoid creating another highly-regulated type of facility in the long-term care industry. Since assisted living would involve independent residential units controlled by residents with services individually established by a private contract, the Administration notes that it is not necessary to impose a highly-regulated structure.” We wish to preserve the original philosophy and intent of RCACs.
- AB 644 would not simply give the state ombudsman the authority to investigate complaints from residents in RCACs, as stated in Representative Krusick’s October 22, 2003 co-sponsorship memo. Under s.16.009(4)(b)1a and b, the ombudsman or designated representative may at any time without notice, enter, and have immediate access to a client or resident in a long-term care facility (which under AB 644 would include a RCAC) and communicate in private, without restriction, with a client or resident. These are private apartments. It is one thing to permit the ombudsman to respond to a complaint; it is an entirely different matter to permit unrestricted access to private apartments. At the very least, prior tenant consent should be granted before the ombudsman is allowed direct tenant access.
- Representative Krusick’s 10/22/03 co-sponsorship memo indicated the number of RCACs in the state “has skyrocketed by over 1,000%” since they first opened in Wisconsin over six years ago. We’re not sure of the percentage but we are certain the RCAC rule, HFS 89, went into effect on March 1, 1997 (as the “Assisted Living Facility” rule; the name was changed to residential care apartment complex as of December 1, 1998) and in that time, the number of RCACs has grown from zero to 150, totaling 6,174 apartments. However, we cannot concur with the statement in Representative Krusick’s memo that the most significant increase in assisted living complaints between 1995 and 2002 involved services provided by RCACs (“Assisted living” includes CBRFs, RCACs, adult family homes and adult daycare). In fact, according to the DHFS Bureau of Quality Assurance, CBRF complaints totaled 187 in 1995 and 1,173 in 2002. RCAC complaints were not even documented until 2001; there were 2 complaints in 2001 and 43 in 2002; of the 43

complaints in 2002, 20 were substantiated. Twenty substantiated complaints covering approximately 5,000 apartments (at that time) is not a cry for greater regulation.

- The Board on Aging and Long-Term Care was very instrumental in ensuring that HFS 89 included a tenant rights section. The BOALTC successfully led the charge to adopt Subchapter III of HFS 89, Tenant Rights. This subchapter was specifically crafted for RCAC tenants. We are somewhat perplexed that the BOALTC now appears to want to scuttle Subchapter III of HFS 89 and replace it with s.50.09, Wis. Stats., the resident rights provisions which apply to nursing homes and CBRFs. Perplexed, not only because of this seeming shift of position, but because some of the rights outlined in s.50.09 don't apply or aren't relevant in a RCAC. As examples: The privacy rights in a nursing home or CBRF are significantly different than the right to privacy in one's own RCAC apartment; S.50.09(1)(j)2 prohibits the discharge of a resident for non-payment of charges if the resident's Medicaid funding is reduced or terminated; Medicaid funding is not available in RCACs. The tenant rights in Subchapter III of HFS 89 are tailored for the needs of RCAC tenants; the rights under s.50.09, Wis. Stats., are not. The tenant rights in HFS 89 amply protect tenants of RCACs; the Chapter 50 resident rights are unneeded and, in some instances, inappropriate.
- The 1997 state budget appropriated \$114,300 GPR to fund 3 FTE ombudsmen positions over the 1997-99 biennium for activities related to RCACs. Governor Thompson vetoed that provision, stating in his veto message: "I object to the expansion of the ombudsman program to residential care apartment complexes since these facilities are designed as home-like environments for the elderly and disabled." We strongly concur with Governor Thompson's sentiments.
- Elderly RCAC tenants should not have to pay for the privilege of a service most have not requested. If expanding the responsibilities of the ombudsman is good public policy, state funds, and not tenant funds, should pay for that expansion.
- The role of the ombudsman should remain focused on the challenges facing nursing home and CBRF residents and the provider community. Expanding the domain of the Board on Aging's ombudsman program to include RCACs would divert their limited staff away from the areas most in need of their services.

Thank you for this opportunity to provide testimony on AB 644.