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Testimony  
Before the Joint Committee on Audit  
Regarding the Legislative Audit Bureau Report on the  
Regulation of Nursing Homes and Assisted Living  
June 24, 2004

By Sinikka Santala, Administrator  
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I am Sinikka Santala, Administrator of the Division of Disability and Elder Services. Thank you for the opportunity to update the committee on the Bureau of Quality Assurance's oversight of nursing home and assisted living facilities.

With me today is Cris Ros-Dukler, the new Director of the Bureau of Quality Assurance (BQA). She will be taking over the Bureau for any future reports you may require from the Department concerning this audit. In addition, a number of other BQA staff is present to answer any specific questions you may have that I am unable to address. Sue Schroeder is not able to attend today's meeting. I would like to recognize her leadership in directing the efforts of the Bureau to implement the recommendations of the Committee and the audit.

It is my pleasure to be here today to update the Committee on the 2002 LAB Audit of the Bureau's role in the regulation of nursing homes and assisted living. The Department took your concerns very seriously. Your recommendations gave us the vehicle to continuously improve on our obligation of efficiently overseeing nursing homes and assisted living facilities in Wisconsin. Protecting nursing home and assisted living consumers, while also delivering fair, objective and beneficial regulatory reviews, continues to be a high priority for the Bureau of Quality Assurance, the Division of Disability and Elder Services, and for the Department. We appreciate your continued interest and desire in wanting to bring consistency to the regulatory process.

In the months since the audit, BQA has implemented a number of changes to increase the protection of Wisconsin's most vulnerable citizens. We have increased our focus on the growing assisted living communities in Wisconsin. Unlike nursing home oversight, with its primary federal compliance focus, assisted living is primarily state driven. This presents us with the opportunity of being creative and more collaborative with assisted living stakeholders. In addition to responding to your request for an update on assisted living issues, I have also prepared an update to each area on nursing home oversight where there were LAB findings and/or recommendations.

## **IMPROVING THE ASSISTED LIVING SURVEY PROCESS**

In our August 2003 presentation to various Committee members, we informed you of our intent to implement a revised assisted living survey process. This process was designed to focus more bureau resources on problematic providers, while also delivering relief, in the form of a less intensive reviews, to providers with good or outstanding compliance.

By targeting our resources towards facilities with poor compliance histories, providing technical assistance as part of the process, rewarding facilities with a good compliance history and partnering with other agencies, we have had some excellent preliminary results including:

Our presence at assisted living facilities has increased.

- Currently 80% of facilities have had a survey in at least 2 years, up from 67% a year ago.

We focussed on issues that really matter.

- The violations cited have more of an emphasis on quality of life and quality of care, and less on paperwork or the more prescriptive requirements.

Quality in assisted living facilities is improving.

- Cites, or violations, per facility are down from 4.9 citations per survey in CY 2003 to 3.6 thus far in CY 2004.
- 63% surveys completed during the current calendar year with no citations compared to 44% CY 2003.
- Enforcement action has decreased slightly with a significant decrease in revocations. One revocation so far in CY 2004 compared to 18 in CY 2003.

The process maintains a very unique balance for a regulatory agency by protecting the health, safety and welfare of the residents, improving the quality of care and life of residents and allowing for industry creativity and flexibility. (See appendix 1 memo attached for more detailed information)

### **Collaboration**

Very innovative collaborations with other agencies are emerging with positive results. We are providing accurate, up-to-date information to all assisted living community stakeholders. The Department has initiated an aggressive process to get information out to other stakeholders who make decisions about funding persons in assisted living facilities. Counties, DDES program bureaus and advocates receive copies of all on-site reviews of providers in their respective areas. Enforcement summaries are sent to all key stakeholders. This collaborative approach expands the inclusion of all stakeholders responsible for the health, safety and welfare of potentially vulnerable consumers, while de-emphasizing the entire nature of the regulatory process. There have been a number of successes where agencies have used the information of the regulatory agencies to improve overall policies. (See appendix 2 referral memo for additional details)

One example our increased collaboration is the sharing of results with the Brown County Human Services Department. They receive a copy of all the Bureau's survey results for facilities in their county. They take the data and enter it into a database of the facilities where they are funding clients. They then send one of their county nurses to follow up in the facility to assure that services are being provided to their clients and that the facility has followed up and corrected any deficiencies. The county then sends a report back to the Bureau of Quality Assurance.

### Policy Manual

Developing and implementing an enforcement manual that includes specific procedures and policies to support a consistent application of the statutory enforcement options was a major project for the Bureau. It is a comprehensive manual that provides the basis for applying the most appropriate enforcement action based on the situation discovered. We have responded to the audit, to the Committee and to the industry's concern for a standardized method of applying enforcement criteria to the assisted living provider oversight responsibilities. In 2003, this manual received a national award as a "Best Practice" by the Association of Health Facility Survey Agencies (AHFSA) a national body comprised of states' regulatory agencies. (See Appendix 3 for sample details).

### Workload – Complaint Driven

Although complaints remain a substantial workload for BQA, by changing the survey process, adding nurse consultants to the survey team and an aggressive enforcement approach to facilities with significant non-compliance, the Bureau has made significant inroads to the backlog of complaints. This has allowed the Bureau to complete more regular surveys as well.

- We have 279 outstanding complaints as of today compared to over 600 in 2003
- The period on which complaints are outstanding has been reduced from 155 days in 2003 to 97 days thus far in CY 2004.
- Complaints we receive have decreased. In CY 2003, 792 complaints were received compared to 916 for CY 2002.

### Milwaukee County Complaint Data

The Bureau's southeast regional office continues to receive the bulk of serious complaints. The assisted living section has recently restructured the workload to free up more resources to monitor, improve response time and provide increased technical assistance to the southeast region providers, including Milwaukee County. Complaints in Milwaukee County are decreasing. We received 204 complaints in CY 2002, 184 in CY 2003 and, based on current trend, we project to receive about 135 complaints in CY 2004.

<b>Complaints Received Regarding Milwaukee County Assisted Living Facilities</b>									
	CY 2002			CY 2003			January 1- June 15, 2004		
Facility Type	Current Status			Current Status			Current Status		
	Closed	Open	Withdrawn	Closed	Open	Withdrawn	Closed	Open	Withdrawn
ADC	3	0	0	1	0	0	0	1	0
AFH	18	0	0	19	0	0	4	3	0
CBRF	161	0	1	141	13	0	22	27	0
RCAC	19	2	0	9	1	0	1	4	0
TOTAL	201	2	1	170	14	0	27	35	0
						<b>CY 2004 Projection</b>	59	76	0
<b>NOTE:</b>	Milwaukee County continues to receive the highest number of complaints and some of the most complex. Complaints are decreasing CY 2002 204, CY 2003 184 and projection for 2004 135								

### Improving Staff Qualification

Individuals who oversee assisted living providers should have the appropriate educational and professional credentials to conduct these reviews. This was not only a concern during the audit, but also during testimony following the audit. We have responded to these concerns by improving credentials of the field staff who oversee the licensing, monitoring and investigations of over 2,400 assisted living facilities. With the closures and downsizing of nursing homes in the last few years, effective January 1, 2003, internal resources were moved from the oversight of nursing homes to assisted living. Staff brought with them a nursing background to address the growing medical complexity of residents served in assisted living communities. As a result of this internal reallocation, no additional resources were necessary. These staff have been fully trained in the oversight of assisted living, have improved the quality of the oversight and have been viewed as a positive addition to the field team by a variety of stakeholders including provider associations, providers, advocates, residents, families and program bureaus.

Early results of the implementation of the above initiatives indicate a positive response from a variety of stakeholders. As I mentioned, the backlog of complaint investigations and bi-annual surveys have improved, enforcement action taken with facilities with poor compliance history has increased and has been very effective towards improving overall quality, inter-agency collaborations have improved and the good providers are viewing the regulatory agency as part of the plan to improve the industry, not as a barrier to stop innovative and creative ideas.

## UPDATE ON NURSING HOME OVERSIGHT

In addition to providing an update on the Department's oversight of assisted living providers in Wisconsin, the information that follows are updates relating the nursing home oversight. This is presented corresponding to findings and recommendations in the LAB report.

***Finding** (page 26) The number of citations issued to nursing homes varied by region.*

### Update

Appendix 4 of this update report includes various charts depicting the citing patterns of the BQA regional offices. This area was specifically addressed during the audit, as there appeared to be great disparity in how the regional offices evaluated nursing home care. The current data shows a closing of the gap that existed from 1999 – 2001, while the state average remains consistent throughout the five-year period, 1999-2003. The Northern Region, unlike the earlier report, is the outlier. Further review and analysis is necessary to explain why this is occurring.

***Finding** (page 28) More nursing home citations were issued when federal staff accompanied state inspectors.*

### Update

The Department agreed with this finding. Through subsequent discussions with our counterparts in federal Region V (Illinois, Indiana, Michigan, Minnesota and Ohio), as well as through communication with our federal staff in Chicago, this occurs region and nationwide.

Staff from the Centers for Medicare and Medicaid Services (CMS) are aware of these differences but have not evaluated their cause, nor impact. Furthermore, CMS does not appear to be much concerned about these differences.

Appendix 5 of this update includes data showing the results of the Federal Observational and Support Survey (FOSS). During these surveys, BQA staff are monitored and evaluated by federal surveyors. While the audit showed, for the period FY 2000-2001, an average of 12.9 deficiencies issued when state surveyors were accompanied by federal surveyors, versus 5.2 issued otherwise, current data shows a closing of this gap in the numbers of citations issued by BQA. For the period January 2003 to May 2004, the ratio is now 7.8 citations when federal surveyors are present to 3.2 when BQA staff are alone. Therefore, the ratio of citations when the federal surveyors are present is the same, 2.4:1, for both periods. The noticeable difference is the number of citations issued when comparing both periods.

***Finding** (page 42): Nursing home forfeitures are not assessed in a timely manner.*

***{Recommendation}** (page 46) The LAB recommended that the Department of Health and Family Services report to the Joint Legislative Audit Committee:*

- *The number and percentage of FY 2000-2001 and FY 2001-2002 state nursing home citations eligible for forfeiture and awaiting review.*

Update

I am pleased to report to the Committee that there are no outstanding forfeitures from FYs 2001, 2002 or 2003. Further, the current workload, with 9 representing the current backlog, is 131, all 2004 forfeitures. Of these, 94 are citations issued against nursing homes.

The Department's goal continues to be assessing forfeitures within 120 days of survey exit date. As of June 1, all but 9 forfeitures fall within the 120-day timeline. Again, the 9 are from January 2004.

We achieved the reduction by shifting resources to specifically address the previous backlog, while also managing the current forfeiture workload, which continues at its previous pace. Changes we've implemented at the field and central office levels will allow staff to manage the current workload and deliver forfeiture notices within the 120-day goal established by the Bureau. However, we will continue to be vigilant in ensuring that BQA continues its systems' reviews to look for better and more efficient ways of delivering forfeiture notices to nursing homes, including pursuing electronic notification. (See Appendix 6 for related forfeiture information).

***Finding*** (page 50): *Admissions have been restricted in assisted living facilities but not in nursing homes.*

***{Recommendation}*** (page 50) *The LAB recommended that the Legislature amend s. 50.05(4)(d), Wis. Stats., to allow the Department of Health and Family Services to restrict nursing home admissions in a more timely manner.*

Update

The Department is interested in working with stakeholders to pursue a variety of means, including necessary statutory language changes, to provide additional protections for vulnerable nursing home residents. This should be done with the goal of taking action against poor performing facilities, but most importantly, assisting in improving quality of nursing homes services in Wisconsin.

***Finding*** (page 59): *Only 32.5 percent of the Department's Informal Dispute Resolution decisions met its timeliness standard.*

***{Recommendation}*** (page 60) *The LAB recommended that the Department report to the Audit Committee:*

- *the effect on timeliness of returning responsibility for informal dispute resolution decision-making to regional managers;*
- *the number of cases resolved through informal dispute resolution; and*

- *the number of cases resolved through informal dispute resolution that were subsequently appealed.*

### Update

The informal dispute resolution process has undergone significant changes in the months since the audit. Changes made to the process have resulted in a more timely BQA review and decision-making. Regional BQA managers, and select staff, continue conducting all reviews. Current data indicates that 70% of IDR reviews, versus the previous 32% reported in the audit, are completed within 21 days, with the overall average of 18.7 days for all reviews. (See appendix 7 for details).

In addition to addressing the delays in conducting IDR reviews, we have taken action to address the concern for an independent review. Effective July 1, 2004, the Michigan Peer Review Organization will begin conducting IDR reviews, thereby replacing BQA staff. The Michigan Peer Review Organization has an extensive and 15-year background in similar areas and currently conducts the same reviews for the states of Indiana and Michigan. The contract with Wisconsin requires reviewers with the appropriate medical background to conduct the reviews. We have met with and informed the provider associations about this new process and their role. However, under our agreement with the Centers for Medicare and Medicaid Services, we must maintain oversight of the decisions reached by the contractor.

***Finding*** (page 62): *From FY 1998-1999 through FY 2000-2001, 79.1 percent of appeals filed with DHA were closed before hearings were held.*

***Recommendation*** (page 63): *The Legislature modify ch. 50, Wis. Stats., to create a 60-day time frame for providers to file appeals after receiving statements of deficiency for state violations.*

### Update

The Department agreed with this recommendation and continues to be interested in finding ways to make this change.

This concludes the list of specific finding and recommendations. However, I would like to address some additional comments made during the February 5, 2003 Committee hearing. These relate to survey team demeanor and changes to the nursing home survey process.

### Surveyor Team Demeanor

A concern raised by various providers during the February 5, 2003, hearing is the issue of surveyor conduct. To address this area, BQA implemented the "Post Survey Questionnaire" on January 1, 2004 for all providers regulated by BQA. The questionnaire included specific information regarding how the providers experienced the survey, and whether they fully understood how the survey affected them. Specific questions were also included to address the communication between the provider and BQA to address staff conduct concerns.

I am pleased to report that the overall results from the first quarter, the January to March 2004 period, were positive. On a scale of 1 (strongly disagree) to 5 (strongly agree), the average score was 4.46 for the survey process, including BQA staff interactions with providers; and 4.26 for the post survey report. However, while overall ratings were positive, the return rate of 27 percent (108 out of 400) could be improved. To address receiving a greater response rate, BQA continues to encourage provider communities to return the questionnaire. In addition, when surveys are especially difficult or their results especially negative, BQA management staff place a follow up call to the provider to seek feedback directly through dialogue. (See appendix 8 for results and analysis).

### Revised Nursing Home Survey Process

While many states support substantial changes to the nursing home survey process, a number of others do not. As you know, Wisconsin, which supports changes, submitted to the federal government a request to implement a revised nursing home survey process. This request was denied; however, in issuing the denial, the federal government acknowledged this possibility for Medicaid-only participating nursing homes, while indicating that this would violate federal law for Medicare-certified nursing homes. Conducting these reviews at Medicaid-only nursing homes would not yield the necessary information we seek because these facilities do not treat the medically complex residents served by Medicare facilities.

In addition to Wisconsin, Minnesota, likewise, shares our concern and desire to change the federal process. We plan to continue collaborating with our neighbor states to pursue this action further.

The federal government, in its decision to deny the Wisconsin request, indicated to us that unless there were changes to federal law, which only the Congress can enact, the nursing home survey process would remain as is.

We are still interested in pursuing changes to the nursing home survey process. However, we are aware that it may be some time before these changes may be made. We have achieved positive experiences in implementing a revised Assisted Living Survey Protocol, the basis of which we designed in our revised nursing home survey process.

### Closing Remarks

The Department is remains committed to ensuring the health, safety and welfare of our most vulnerable citizens. We also want to ensure that providers receive a fair, objective, and beneficial regulatory review. Our update today provided evidence of significant performance improvements BQA has made in the oversight of nursing homes and assisted living facilities. We will not rest with these results. We continue to move ahead in search of continuous quality improvement in our performance and efficiencies to better evaluate provider compliance with state and federal rules.

We are happy to answer any questions that you may have at this time.