

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

June 24, 2004

To: State Senator Carol Roessler, Co-Chair
State Representative Suzanne Jeskewitz, Co-Chair
Members, Joint Legislative Audit Committee

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

Subject: Follow-up to Audit Report 02-021, Regulation of Nursing Homes
and Assisted Living Facilities

The Wisconsin Association of Homes and Services for the Aging (WAHSA) is a statewide membership organization of 186 not-for-profit corporations principally serving the elderly and persons with a disability. WAHSA members own/operate 190 nursing facilities, including 45 county-operated facilities, 19 facilities for the developmentally disabled (FDD), 65 community-based residential facilities (CBRF), 48 residential care apartment complexes (RCAC), 12 HUD Section 202 Supportive Housing for the Elderly apartment complexes, and 103 apartment complexes for seniors who are able to live independently. WAHSA members offer over 300 community service programs ranging from homecare, hospice, Alzheimer's support and adult/child daycare to Meals on Wheels. Our members employ over 38,000 dedicated caregivers and support staff.

For background purposes, we have attached a February 5, 2003 memo providing WAHSA's response to Audit Report 02-21, which we presented to this Joint Committee at its 2/5/03 public hearing on this audit report. In addition, we have attached a March 18, 2003 letter to Representative Jeskewitz which we wrote jointly with the Wisconsin Health Care Association, that offers a list of suggested statutory changes which both organizations believe would improve the quality of care in our state's nursing homes and assisted living facilities.

Much has taken place since the legislative Audit Bureau (LAB) released its report on the regulation of nursing homes and assisted living facilities in December of 2002. And much of that has been positive. For instance:

- Responding to the demographics of elderly services and to the findings contained in Audit Report 02-21, the Bureau of Quality Assurance (BQA) in late 2002 created a new section whose primary focus is the oversight of assisted living providers (CBRF, RCAC, adult family homes and adult daycare).



- BQA Assisted Living Section Chief Kevin Coughlin and his staff meet every other month with assisted living providers, advocates and staff trainers to discuss issues of mutual interest. The BQA uses the participants of the Assisted Living Forum as a sounding board for future policy directives.
- With the creation of an Assisted Living Section in the BQA and the transfer to that section of eight nurses who formerly served as nursing home surveyors, many assisted living providers feared that the new assisted living section would be tainted with nursing home enforcement attitudes, philosophies, processes and regulations. In an effort to alleviate those fears, Kevin Coughlin agreed in 2003 to permit the new assisted living nurse surveyors to tour various assisted living facilities throughout the state and sit down with staff to discuss the differences they perceive between the nursing home regulatory environment and that found in assisted living.
- On January 1, 2004, the BQA Assisted Living Section began to implement a new survey process, one which focuses the Section's limited resources on poor performing facilities without neglecting the BQA's responsibility to residents in all assisted living facilities. This approach, we believe, could be invaluable on the nursing home side.
- WAHSA assisted living providers continue to cast a skeptical eye on any actions which might be construed as seeking to impose the nursing home regulatory environment on assisted living. We don't see those actions or efforts coming from the BQA; rather, they are being suggested by some within the Department of Health and Family Services (DHFS) who are working on reforming the overall long-term care delivery system. Some individuals believe many people currently living in nursing homes could be served effectively and more economically in assisted living. Most WAHSA not-for-profit members provide both nursing care and assisted living care so their concern in this possible shift is not based on fear of competition. Their fear is that many assisted living facilities are not equipped to adequately care for that higher acuity resident and if breaches in care follow, so, too, will nursing home-like regulations.

On the nursing home side, most of the changes suggested in the 3/18/03 letter to Representative Jeskewitz and sought by members of both nursing home trade associations were contained in 2003 Assembly Bill 842, authored by Representatives Pettis and Rhoades. They worked painstakingly for over a year with representatives from the two nursing home associations and the DHFS to craft a bill which each ultimately was able to support. (A copy of a February 19, 2004 WAHSA memo in support of AB 842 is attached). Some argued that AB 842 (a copy of the bill is attached) "deregulates" nursing homes and would weaken state regulations. However, that drew this response from Linda Dawson, deputy chief legal counsel of the DHFS, who told members of the Assembly Aging and Long-Term Care Committee at its 2/19/04 hearing on AB 842:

"We don't think it undermines our regulatory authority in any way."

Although AB 842 failed to reach the Assembly floor, we eagerly anticipate working on similar legislation with Representatives Pettis and Rhoades and with Linda Dawson and other representatives of the DHFS in the next session of the Legislature.

AB 842 really is a small example of a much larger issue, an issue where we may be on opposite sides from the LAB. And that is whether monetary penalties, whether called forfeitures, civil monetary penalties or the term of your choosing, can compel compliance or provide the necessary disincentive to ensure quality. WAHSA members argue they are not, especially at a time when over half the state's nursing homes are in some form of financial distress. How can a notice of a forfeiture assessment which arrives at a facility anywhere from 6 months to 2 years after the notice of violation has been received compel compliance? The vast majority of nursing home violations are based on human error. And, as was clearly pointed out by a number of caregivers at the February 19th hearing on AB 842, good care comes from people who care, not by those who are motivated by fear of sanctions.

Thank you for this opportunity to discuss once again Audit Report 02-21.

{Note: Attachments to this testimony are available from the WAHSA office. Please contact Yvonne Mick at ymick@wahsa.org to receive these attachments }