

September 16, 2009

To: Senator Jon Erpenbach, Chair  
Members, Senate Health, Health Insurance, Privacy, Property Tax Relief and Revenue  
Committee

From: John Sauer, Executive Director

Subject: **Opposition to 2009 Senate Bill 108, Health Care Worker Mandatory Overtime**

The Wisconsin Association of Homes and Services for the Aging (WAHSA) is a statewide membership association of 184 not-for-profit long-term care organizations. WAHSA member corporations own, operate, and/or sponsor 183 not-for-profit nursing homes, of which 41 are county-owned and operated, 9 facilities for the developmentally disabled (FDD), 77 community-based residential facilities (CBRF), 63 residential care apartment complexes (RCAC), and 116 senior apartment complexes/retirement homes for the aged, as well as over 300 community service programs ranging from Alzheimer's support, homecare, child and adult day care, and hospice to Meals on Wheels. WAHSA members employ over 38,000 dedicated staff which provide care and services to over 48,000 residents/ tenants/ clients.

**Although 2009 Senate Bill 108 is an improvement to similar legislation that has been introduced as far back as the 2001 session, WAHSA members oppose SB 108.**

No one "supports" mandatory overtime; if possible, it is something to be avoided at all costs. But in instances where a shortage of staff could jeopardize the health, safety and welfare of a resident, mandatory overtime is a necessary evil. SB 108 falls short of recognizing that fact.

WAHSA members oppose SB 108 because we believe it is based on a false premise: that mandatory overtime is a cause of the shortage of health care workers in this State, not a symptom of the shortage. The biggest battle nursing homes and other long-term care providers face is the lack of available, qualified staff and a shortage of the Medicaid funding necessary to recruit and retain needed staff. Legislation such as SB 108 cannot will away that fact.

WAHSA members also oppose SB 108 because they don't view mandatory overtime as a nursing home/long-term care problem. Very few WAHSA members have mandatory overtime policies or utilize mandatory overtime and most that have such policies in effect have them as a result of a collective bargaining agreement. Since mandatory overtime is not a nursing home/ long-term care



problem, the applicability of the bill to nursing home/long-term care providers is viewed as unnecessary and unwarranted. The elimination of the applicability of the mandatory overtime limitations to assisted living facilities in the substitute amendment to SB 108 is recognition of that fact: it simply needs to be extended to include nursing homes.

The bill's inclusion of the language which treats "unanticipated or unavoidable disaster that substantially affects . . . the need for health care workers" as an "unforeseeable emergency" is a significant improvement from past versions of this legislation as long as it applies to weather-related emergencies such as tornados or blizzards, which are the circumstances where mandatory overtime most often comes into play in nursing homes/long-term care facilities.

Although WAHSA members oppose SB 108, we offer two suggested revisions to the substitute amendment which we believe would improve the bill:

- 1) We support the decision in SSA 1 to SB 108 to eliminate community-based residential facilities (CBRF), residential care apartment complexes (RCAC), adult family homes and assisted living facilities from the definition of "health care facility." However, without deleting the reference to s. 50.02 and s. 50.03 on Page 4, Line 18 of the substitute amendment, CBRFs still would fall under the definition of "health care facility" and would be required to meet the mandatory overtime limitations under s. 146.999 (2) of the bill.
- 2) WAHSA members also suggest a second modification to the bill which would further prioritize resident care in times of emergency: We suggest the language be deleted on Page 6 of the substitute amendment beginning with "through" on Line 8 and concluding with "engaged" on Line 10. This basically would permit mandatory overtime when it is essential to the health and safety of a patient(s). **Nursing homes, and most of the other providers defined as a "health care facility" under SSA 1 to SB 108, don't provide "ongoing medical or surgical procedure(s):" they provide care and treatment. If nursing homes and other long-term care providers are truly part of the mandatory overtime "problem" SB 108 seeks to address, why is one of the key "solutions" to that problem not even applicable in the nursing home/long-term care setting?**

In addition, it is still unclear what a health care facility must do "to exhaust all other options" before mandatory overtime can be invoked.

**WAHSA members appreciate and share the concerns which drive this legislation. However, we cannot support the inconsistency of a bill which limits mandatory overtime for the sake of safety but continues to permit consensual overtime. In addition, WAHSA members cannot support SB 108 until it fully embraces three exceptions to the mandatory overtime prohibition: 1) To protect the health, safety and welfare of facility patients/residents; 2) To comply with federal or state licensure or certification requirements, specifically staffing requirements; and 3) To adhere to provisions in a collective bargaining agreement.**

Without those requested modifications, we urge members to please vote to oppose SSA1 to SB 108.

Thank you for your consideration of these suggested changes to the bill.