

January 27, 2010

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: January 28, 2010 Executive Session on Assembly Bills 259 and 389:  
**AB 259/LRBs0148/2: Not Oppose – AB 389 with/without LRBA0813/3: Oppose**

The Wisconsin Association of Homes and Services for the Aging (WAHSA) is a statewide membership association of 184 not-for-profit corporations which provide long-term care services to the elderly and persons with a disability. For purposes of AB 259 and 389, WAHSA members own, operate and/or sponsor 183 not-for-profit nursing homes, of which 41 are county-owned/operated and 7 are municipally-owned/operated, as well as 77 community-based residential facilities (CBRF) and 4 adult family homes (AFH).

The WAHSA position on AB 259 and 389 is as follows:

**Assembly Bill 259** – The substitute amendment to AB 259 (LRBs0148/2) which we anticipate will be voted on by the committee at its January 28, 2010 executive session would require nursing homes, CBRFs and AFHs which advertise or market themselves as providing special care or services to persons with Alzheimer’s disease to produce an Alzheimer’s special care disclosure statement which would outline just what is “special” about the care they provide residents with Alzheimer’s disease or related dementia.

WAHSA members believe there is no need for AB 259. They believe an AB 259-type disclosure statement should be voluntary, rather than mandatory. They suggest a better approach would be to direct or suggest to the Department of Health Services (DHS) that it produce (or have the Alzheimer’s Association produce) a guide for choosing an Alzheimer’s special care unit or a facility providing special care services for Alzheimer’s residents similar to the consumer guide the DHS produces for choosing a nursing home (“Guide to Choosing a Nursing Home” at [www.medicare.gov/Publications/Pubs/pdf/02174.pdf](http://www.medicare.gov/Publications/Pubs/pdf/02174.pdf)) and an assisted living facility (“Choosing an Assisted Living Facility” at <http://dhs.wisconsin.gov/publications/p6/p60579.pdf>).

**Having stated that, however, if a bill must pass, WAHSA would not oppose the adoption of LRBs0148/2 as offered by Representative Krusick.** We greatly appreciate Representative Krusick’s willingness to address the concerns WAHSA members had with the provisions contained in AB 259. That does not change, however, their belief that such a bill is not needed.



**Assembly Bill 389** – AB 389 would require nursing homes which receive a Class “A” notice of violation (NOV) or a statement of deficiency (SOD) with a finding of immediate jeopardy (IJ) to provide written notification to residents impacted by these violations and their legal representative, if any, within 15 days of receipt of the NOV/SOD. That written notification would be required to include a copy of the NOV/SOD, the resident’s personal identifier, contact informational for the regional office of the DHS Division of Quality Assurance (DQA), and a notice that the DQA will provide the resident upon request a statement of the final disposition of the Class “A”/IJ allegations.

Representative Krusick has drafted a simple amendment to AB 389 which would lessen the required contents of the written notification, clarify that the written notification only would be required of an IJ that identifies a substandard quality of care or occurrence of actual harm, and require the written notification to be sent 15 days after informal dispute resolution (IDR) if the facility chooses to take these allegations to IDR. **These modifications make a bad bill better but even with these proposed changes, AB 389 remains a bad bill.**

AB 389 ignores DHS 132.60 (3)(a), which requires a nursing facility to promptly notify a resident’s physician, guardian, if any, and any other responsible person designated in writing by the resident or guardian of any significant accident, injury, or adverse change in the resident’s condition. That is the most pertinent notification requirement relating to the resident’s well-being.

Instead, the bill requires nursing homes to issue written notifications which provide information they may very well disagree with and does so before the facility has an opportunity to invoke its due process right of appeal. This lack of due process is unfair to nursing homes and potentially misleading to residents if future appeals overturn earlier allegations.

**For these reasons, WAHSA opposes AB 389 with or without simple amendment LRBa0813/3.**