



To: Representative Peggy Krusick, Chair, and Members of the Assembly Aging and Long Term Care Committee

From: WHCA/WiCAL, Brian Purtell and Jim McGinn

Re: 2009 AB 259

Date: September 9, 2009

While we support, encourage, and facilitate the continued education and training of staff members providing care and services to nursing home and assisted living residents, the undefined mandates contained in AB 259 do not address the current and looming demands that Alzheimer's and related dementias will have on Wisconsin's elders and long term care provider community. For reasons expressed below the Wisconsin Health Care Association and its assisted living division, the Wisconsin Center for Assisted Living, respectfully must register their opposition to AB 259.

The development of the regulatory standards anticipated under the bill are redundant, unnecessary, and will needlessly contribute to increase cost of care with no corresponding benefit to consumers or the quality of care they receive. The conduct with which the bill is seemingly concerned is already subject to extensive regulations which more than adequately address the issues which are the focus of AB 259.

Admittedly, the bill is somewhat vague in depicting the nature or extent of the problem for which it seeks a regulatory solution. However, an examination of the nature and scope of current law supports the fact that no regulatory void exists that would support or necessitate development and enforcement of new standards of practice for care and treatment of individuals with Alzheimer's disease or related dementia. Indeed, existing law requires that all facilities impacted by the bill must train their staff and provide care and treatment to a residents that meets their needs consistent with existing standards of practice applicable to the specific condition of that resident. The current expectation is not static. It is dynamic in the sense that as new standards of practice evolve, the staffing, training, care and treatment provided by nursing homes, CBRFs, and AFHs must recognize and reflect those standards.

To the extent there is a need to enhance and improve upon the most effective implementation of existing standards, WHCA/WiCAL is committed to achieving this

goal and will continue to promote efforts that have been proven more effective than prescriptive, enforcement-based, regulatory dictates such as those found in AB 259.

The Standards and Expectations Anticipated By AB 259 Already Exist.

Rigidly enforced state and federal nursing home regulations presently mandate that nursing homes staff, educate, and develop resident specific care plans to meet the needs of the individual residents served by the facility. The regulations already explicitly require that nursing homes provide care and services consistent with standards of practice applicable to the condition of the specific resident. To the extent that a nursing home provides care and services to an Alzheimer's resident, the facility is expressly required and rigidly monitored to assure care provided the residents is consistent with recognized, evidenced-based standards of practice.

No standard that DHS is charged with developing under AB259, could or should deviate from the clinical standards of practice that currently exist for nursing home providers, which unlike standards codified in Admin. Code, will continue to evolve and change.

It is also important to note that last year DHS made extensive revisions to DHS 129, the regulations dictating requirements for Nurse Aide Training programs. These modifications have added and updated training requirements for that significant workforce sector that serves in nursing homes.

Similarly, CBRFs and AFHs are already under regulatory expectations that make the standards called for under the bill unnecessary. Both regulations for CBRFs and AFHs include expectations as to training, resident service plans, physical design, etc., that already dictate that providers must provide services, care and housing, consistent with the needs of the client population served. Notably, the DHS 83 has recently undergone significant revisions to reflect the changing needs of the clients served, and the oversight of AFHs will be significantly modified by provisions contained in the most recent State budget.

Current law also already requires CBRF and AFH licensees to specifically (1) define who they will provide services to, (2) describe to DHS as part of the application how the facility will provide the services to those clients, and (3) provide this information to a prospective placement at the facility *before* entering into an agreement. To the extent a facility is determined to have not met their licensure standards or its obligations to the client, DHS possesses an arsenal of enforcement tools to compel immediate compliance.

It would therefore appear that both the purpose and intent of the AB 259 has already been satisfied by current law. A redundant repackaging of current law will merely create a new body of regulation that serves no productive purpose in deterring or preventing the concerns on which AB 259 is focused.

What Providers are intended to be covered by AB 259?

Beyond the redundancy discussed above, there is an absence of clarity as to which providers this bill would apply. The bill references that any provider that "holds themselves out" as providing special services would be expected to meet the new

standards. If “holding out” is broadly interpreted, and the yet defined standards require extensive expectations, many providers may have to close their doors to individuals with Alzheimer’s and related dementia.

Surely the legislature does not intend to limit the options available to individuals seeking services for varying degrees of Alzheimer’s or related dementias, yet the natural consequences of this bill will be that providers, particularly those providing needed treatment to early stage Alzheimer’s residents, may find that the expectations associated with the new standards will not be operationally practical or functionally possible. If these standards include staffing increases, mandates as to qualifications, and/or physical plant modifications, providers will have to determine whether these can be achieved within the limited resources available or whether residents can bear the increases that will be the likely consequences of these standards.

“Resident Right to Know”: Facility Reports

In addition to the concerns above, we further oppose the amendment and addition to 50.095 that would make additions to the current nursing home consumer information reports, and further add this requirement to CBRFs and AFHs.

This “Consumer Information Report”, is developed and provided by DHS to providers. It is then offered and available to anyone upon request. The report is an outdated means of communication and is of limited utility compared to information available elsewhere. Continuing and adding information to a form to be provided upon request is an antiquated method to provide consumers with relevant information. Such reports require the submission of data and information (yet to be defined) which is then collected by DHS and provide to the facility on an annual basis, meaning, the limited information to be gleaned from such a sheet is not current and can be two year old information when it is finally provided to individuals. Nursing Home Compare and the DHS Facility Profiles, are both maintained on prominent websites and contain far more comprehensive and timely information.

The continuation and expansion of this outdated mode of information delivery comes at a cost to the DHS and providers, while shorting the consumers of useful information. Rather than continue a practice that may have had some utility years ago, the Committee should consider deleting 50.095 in its entirety, rather than amending it. If the Committee is interested in providing timely information to consumers, there are far better paths that can be taken than maintaining a paper-compliance expectation in a digital world.

For the above stated reasons, we request that the Committee members oppose AB 259, and instead work collectively with stakeholders towards better methods and means to provide the highest level of care and services to today’s and tomorrow’s elders.