Wisconsin Association of Homes and Services for the Aging, Inc.

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To: Interested Legislators

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

Subject: WAHSA Position Paper on 2009 Assembly Bill 75, the 2009-11 State Budget Bill

The Wisconsin Association of Homes and Services for the Aging (WAHSA) is a statewide membership association of 200 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), 76 community-based residential facilities (CBRF), 60 residential care apartment complexes (RCAC), and 113 senior apartment complexes, as well as over 300 community service programs ranging from Alzheimer's support, child and adult day care, hospice and home care to Meals on Wheels. WAHSA members employ over 38,000 dedicated staff who provide care and services to over 48,000 residents, tenants and clients and are a key component of the Wisconsin nursing home sector which collectively contributes approximately $5.2 billion annually to the State's economy through job creation, tax revenue, and purchased goods and services.

WAHSA members urge your support for the following positions on key provisions in 2009 AB 75:

- **<u>Support</u> for a GPR-funded Medicaid rate increase for nursing homes of <u>at least</u> 3% annually, to be funded <u>without</u> an increase in the nursing home bed tax** (Item #1 "Nursing Home Rates and Bed Assessment Increase" on Pages 360-361 of the March 2009 Legislative Fiscal Bureau *Summary of Governor's Budget Recommendations* of the 2009-11 Wisconsin State Budget)

- **<u>Oppose</u> any cuts in long-term care provider rates as part of the directive to the Department of Health Services (DHS) to reduce Medicaid expenditures by $415 million AF over the next two years** (DHS Division of Health Care Access and Accountability "ForwardHealth Rate Reform Project")

- **<u>Oppose</u> the proposed 27% increase in assisted living biennial certification/licensure fees** (Item #2 "Assisted Living Facilities Certification and Licensing Fees" on Page 390 of the LFB *Summary of Governor's Budget Recommendations)*

- **<u>Oppose</u> the imposition of a $200 "re-inspection" fee on health care facilities** (Item #4 "Re-inspection Fees for Certain Health Care Providers" on Pages 391-392 of the LFB *Summary of Governor's Budget Recommendations*)

- **<u>Oppose</u> the AB 75 provision which would cap Certified Public Expenditure (CPE) payments to county and municipal nursing homes at $37.1 million and virtually eliminate any supplemental payments to those facilities** (Item #8 "County Nursing Homes - Supplemental Payments" on Page 367 of the LFB *Summary of Governor's Budget Recommendations*)

- **<u>Oppose</u> the elimination of the Nursing Home Appeals Board and its $1.3 million annual appropriation** (Item #2 "Nursing Home Appeals Board" on Pages 361-362 of the LFB *Summary of Governor's Budget Recommendations*)

- **<u>Oppose</u> providing long-term care ombudsmen with unlimited access to tenants of residential care apartment complexes (RCAC)** (Item #6 "Services to Residents of Residential Care Apartment Complexes" on Page 111 of the LFB *Summary of Governor's Budget Recommendations*)

- **<u>Oppose</u> "skimming" a portion of the additional federal funds generated by the proposed increase in the bed tax on intermediate care facilities for the mentally retarded (ICF-MR) to fund the ICF-MR Relocation Waiver; <u>Support</u> amending current law to impose the bed tax on <u>occupied</u> ICF-MR beds rather than <u>licensed</u> beds** (Item #7 "ICF-MR Bed Assessment" on Page 366 of the LFB *Summary of Governor's Budget Recommendations*)

The following provides additional information on WAHSA's above-stated positions with respect to AB 75 provisions:

<u>Nursing Home Rates and Bed Assessment Increase</u>

(Item #1 on Pages 360-361 of the LFB Budget Summary Document)

Proposal: AB 75 would fund a 2% MA rate increase for nursing homes in each year of the biennium by raising the nursing home bed tax from the current $75 per licensed bed per month to $150 per licensed bed per month in 2009-10, a $75 doubling of the bed tax. In 2010-11, the bed tax would be increased to $170 per licensed bed per month, up an additional $20, for a biennial increase in the bed tax of $95 per licensed bed per month. **Of the additional $50 million that would be generated by the proposed bed tax increase in 2009-10, <u>68%</u> of those dollars ($34.1 million) would be "skimmed" to fund the Medicaid base and reduce the State budget deficit while <u>only 32%</u> of those funds ($15.9 million) would be used to fund the 2% MA rate increase for nursing homes.** Over the biennium, the $95 per licensed bed per month increase in the nursing home bed tax would generate $113.2 million in new funds; of that total, $46.9 million, or 41.4%, would be used to fund an annual MA rate increase of 2% for nursing homes while $66.3 million, or 58.6%, would be "skimmed" to reduce the State budget deficit. If the increase in the FMAP, or federal matching funds, that was contained in the federal economic stimulus bill is factored in, WAHSA estimates that $148.4 million in new funds will be generated by the proposed bed tax increase, with 31.7% ($46.9 million) going for the 2% nursing home rate increase and 68.3% ($101.4 million) being “skimmed” to reduce the budget deficit.

WAHSA Position: Support for a Medicaid rate increase of at least 3% in each year of the biennium for nursing homes, to be funded by GPR and not by an increase in the nursing home bed tax.

Current Financial Status of Wisconsin's Nursing Homes:

- In a February 25, 2008 PowerPoint presentation *Nursing Home Overview*, the DHS identified the following as "Key Issues for Nursing Homes:" Medicaid rates are insufficient to cover costs; A significant and growing proportion of homes are financially fragile; Buildings are old and poorly designed for cost efficiency and consumer preferences; The acuity level of nursing home residents is increasing; and Nursing homes face difficulties recruiting and retaining capable and high-quality direct care and leadership staff.

- That same DHS PowerPoint presentation concluded that since FY 2000, nursing home rates in Wisconsin have not kept pace with the inflationary index for skilled nursing facilities (SNF). The SNF inflationary index for 2009-10 is 2.9%; AB 75 offers only a 2% MA rate increase. Thus, under the Governor's budget bill, nursing home rates will continue to lag behind inflation.

- Since 1999, 39 Wisconsin nursing homes have closed, eliminating 4,438 beds and resulting in access problems in some parts of the State. A facility in Glendale announced earlier this month that it soon will become the 40th closure, with an additional 84 beds lost. In virtually every instance, inadequate MA reimbursement was cited as a contributory factor.

- According to a national study of Medicaid nursing home payment systems released in October of 2008 (*A Report on Shortfalls in Medicaid Funding for Nursing Home Care*, conducted by Eljay, LLC.), the Medicaid payment losses experienced by Wisconsin nursing homes are more than twice the national average and are **the worst in the nation.**

- A WAHSA analysis of the July 2007-June 2008 Medicaid rates of 373 Wisconsin nursing homes found that only 3.8% of that total, or 14 facilities, are being fully reimbursed for the costs they've incurred caring for the State's Medicaid nursing home population (See www.wahsa.org/medicaidfact.pdf). According to the 2008 DHS PowerPoint presentation referenced above, Medicaid recipients (21,099 residents) comprise nearly two-thirds of the 33,047 residents served in Wisconsin nursing facilities.

- That same WAHSA analysis determined that the difference between the total cost of care these 373 facilities provided their Medicaid residents and the Medicaid reimbursement they received for providing that care (i.e., the "Medicaid deficit") was $280.4 million; direct care costs, the costs to provide hands-on care to residents, represented $163.5 million, or 58.3%, of that total.

- **Wisconsin nursing homes on average lose $37.65 per day for each Medicaid resident they serve, resulting in an annual loss of just under $752,000 for the average facility.**

- Private pay residents, who comprise slightly over 21% of the nursing home population, bear the brunt of this Medicaid underfunding. **The average private pay nursing home resident pays just under $70/day <u>more</u> than the average payment rate of $131 per day that nursing homes receive to care for Medicaid residents, despite the fact they receive <u>exactly the same care</u>.**

- Most private pay residents also pay the nursing home bed tax, which under AB 75 would increase from the current $75/month/licensed bed to $150/month/licensed bed in 2009-10 and to $170/month/licensed bed in 2010-11. **Private pay residents truly are subsidizing the Medicaid underfunding of nursing homes.**

Support for a GPR-Funded 3% MA Rate Increase for Nursing Homes:

- While the DHS both admits and warns that nursing home MA rate increases have not kept pace with inflation over the past decade and are insufficient to cover costs, AB 75 provides a 2% MA rate increase at a time when nursing home inflation is projected at 2.9%.

- While the DHS expresses concerns that "a significant and growing proportion of homes are financially fragile," AB 75 provides a 2% rate increase that falls far short of the projected 2.9% inflationary increase nursing homes are facing, which most certainly will boost the $37.65 average loss Wisconsin nursing homes are experiencing every day for each Medicaid resident they serve.

- If costs continue to go unmet, the $280.4 million nursing home MA deficit is sure to increase. Also sure to increase in that case is the daily rate of the nursing home private pay resident, which already is on average $70/day more than the average Medicaid rate facilities currently receive. In today's economy, with retirement portfolios plummeting precariously, how long will it be until today's nursing home private payor is tomorrow's Medicaid recipient? Will we be able to pay for their future care?

- Many of those same private payors will be asked in 2009-10 to pay the $75/month increase in the nursing home bed tax which is proposed in AB 75. In 2010-11, the tax will increase another $20/month under the budget bill. Without even discussing the fairness of this proposal, the same question must be asked: will those private payors be able to afford this increase or will they themselves be forced on to the Medicaid rolls because of these additional costs?

- It clearly is unfair to continue to call on private pay residents to subsidize Medicaid payments to nursing homes but AB 75 unfortunately continues that trend. What borders on the unconscionable is asking those same private payors to also help balance a State budget that is $5.4 billion in the red. But that is exactly what AB 75 does. Under the budget bill, the State will "skim" nearly 59% of the new funds generated by the bed tax increase those private payors will pay to help balance the budget rather than to increase nursing home rates. The "skim" increases to 68.3% if the federal economic stimulus funds are factored in. Where is the equity in such a proposal? If a bed tax increase must be imposed, shouldn't it at least fund an adequate MA rate increase for the nursing homes generating these additional federal dollars? At least hospitals received two-thirds of the funds their "assessment" generated, "limiting" the State "skim" to one-third of the newly-generated federal funds.

- While the DHS forewarns of unmet nursing home costs and financial shakiness, AB 75 calls on nursing homes and ICFs-MR to fund nearly $111 million in non-nursing home/ICF-MR costs, including the nursing home/ICF-MR bed tax "skims," the elimination of supplemental payments to county and municipally-operated nursing homes, the $200 nursing home "re-inspection" fee, and the elimination of the $1.3 million Nursing Home Appeals Board appropriation. That figure jumps to $157.6 million when factoring in the economic stimulus funding. How does this address the DHS concern that "nursing homes face difficulties recruiting and retaining capable and high-quality direct care and leadership staff?"

- In 2007, Wisconsin nursing homes on average provided each of their residents 3.57 hours of nursing care (RN, LPN and certified nurse assistants) per day. However, facilities only were reimbursed for 2.83 hours of that daily nursing care. In December of 2008, the federal Centers for Medicare and Medicaid Services (CMS) unveiled its Five-Star Quality Rating System for nursing homes. Staffing is one of the criteria measured under the Five-Star rating system. If a nursing facility staffed at the 2.83 hours of nursing care level that the State of Wisconsin reimburses its nursing homes, that facility would receive one star under the CMS quality rating system, the lowest rating the CMS awards.

- The consequences, either unintended or otherwise, of failing to adequately reimburse nursing homes could include the following: 1) Inadequate staffing due to the inability to recruit and retain competent staff; 2) Jeopardized quality due to inadequate staffing; 3) Tightened admission criteria, which especially could cause access problems for prospective Medicaid residents; and 4) Further closures, which only would exacerbate current access problems.

Unspecified Medicaid Expenditure Reductions

Proposal: AB 75 directs the DHS to reduce Medicaid expenditures by $415 million AF over the next two years but does not specify where such reductions should come from. The DHS Division of Health Care Access and Accountability has established eight focus groups of MA providers and consumers to help identify potential MA cuts, savings or efficiencies that collectively would meet the $415 million savings target. Each focus group has been told "The state will have to trim back reimbursement rates for services such as medical care" in order to achieve the required savings (See: www.wahsa.org/dhs.pdf). The focus groups are to make their final recommendations to the DHS by June 1, 2009. The DHS may seek to include some of those recommendations in AB 75.

WAHSA Position: Oppose any cuts in long-term care provider rates as part of the directive to the DHS to identify $415 million in Medicaid expenditure reductions.

For nursing homes, see above. The 2% MA rate increase proposed for nursing homes in AB 75 is insufficient to address either projected inflationary cost increases or a $280.4 million "Medicaid deficit" facilities already face; a cut would be devastating. Assisted living providers and residents would be equally devastated by MA-waiver cuts at a time when they are receiving no increases. The potential loss of federal MA matching funds also must be acknowledged.

Assisted Living Facilities Certification and Licensing Fees

(Item #2 on Page 390 of the LFB Budget Summary Document)

Proposal: AB 75 would increase the biennial certification fee for CBRFs from the current $306 plus $39.60/resident to $389 plus $50.25 per resident. In addition, the biennial licensing fee for adult family homes would be increased from $135 to $171 and the biennial fee for adult day care centers would be raised from $100 to $127. According to the DHS, this 27% increase in fees is needed to partially address a projected shortfall in DHS regulatory activities related to these facilities. AB 75 also would authorize the DHS to increase certification/licensure fees for CBRFs and adult family homes in the future by rule rather than statute.

WAHSA Position: Oppose

Regulatory activities are a responsibility of government and should be funded by GPR, not by facilities which are scuffling to make ends meet in this economy nor by residents who are in no better position to pay these increased fees but inevitably would be asked to do so.

Re-inspection Fee for Certain Health Care Providers

(Item #4 on Pages 391-392 of the LFB Budget Summary Document)

Proposal: AB 75 would authorize the DHS to assess a $200 fee where the Department took an enforcement action against a facility for a violation of state law/code and the DHS conducts an on-site re-inspection to determine whether the provider has corrected the violation. The bill permits the DHS to assess this re-inspection fee on nursing homes, CBRFs, RCACs, adult family homes, adult day care centers, ICFs-MR not operated by the State, hospitals and home health agencies. The Department of Administration estimates that the new fee will generate $109,000 annually, beginning in 2009-10, with approximately 64% of the fees coming from assisted living facilities and the remainder from nursing homes, ICFs-MR and the other impacted providers.

WAHSA Position: Oppose

Once again, the intent of the fee is to help fund regulatory activities, which WAHSA members believe is the role of government, not those being regulated. Once again, scarce resources unwisely would be diverted from patient/resident care. The DHS claims the fee "will promote better regulatory compliance" but the fee is imposed regardless of whether a facility is an acknowledged good performer or an acknowledged poor performer. And for any good performer, the assessment of such a fee is hardly an incentive to the provision of quality care: good performers are going to strive to provide quality care regardless of any financial penalty that might be in play. On the other hand, a $200 re-inspection fee might prove to be less expensive for the poor performer than incurring the expenses truly needed "to clean up their acts." At the federal level, Congress was forced to strike similar fee proposals from the last two Bush Administration budgets.

County Nursing Homes -- Supplemental Payments

(Item #8 on Page 367 of the LFB Budget Summary Document)

Proposal: AB 75 specifies that county- and municipally-operated nursing homes receive $37.1 million annually in Certified Public Expenditure (CPE) payments. Under the CPE program, the nursing home operating losses of governmental facilities are used as the state share to generate additional federal MA matching funds. However, the budget bill modifies current law, which requires the DHS to disburse to governmental nursing homes any federal MA funds the State receives due to the operating deficits of those facilities that exceed budgeted amounts, by directing any federal MA funds in excess of $37.1 million be used to offset general MA expenses in 2008-09, 2009-10, and 2010-11.

WAHSA Position: Oppose

This provision will cost governmental facilities approximately $36 million in much-needed supplemental payments over the biennium. The WAHSA analysis of July 2007-June 2008 MA rates shows that the 47 county nursing homes and 7 municipally-operated nursing homes compiled MA deficits totaling $106.9 million, or 38.1% of the $280.4 million total, despite representing only 14.5% of the facilities. According to the DHS, 85.7% of the 56 governmental nursing homes analyzed in 2006 were operating at a net loss. For many county facilities, the loss of these supplemental payments will result in property tax levy increases; for others, the real possibility of either being sold or closed looms. The county nursing home is often the "facility of last resort" for the hardest-to-care-for nursing home resident. The demise of county nursing homes could prove to be devastating to that client population.

Nursing Home Appeals Board

(Item #2 on Page 361 of the LFB Budget Summary Document)

Proposal: AB 75 would eliminate the Nursing Home Appeals Board and its $1.3 million annual appropriation. The Appeals Board reviews petitions from nursing homes seeking MA payment modifications. Federal law requires a review mechanism to appeal nursing home MA payments but does not require an appeals board. The DHS maintains facilities will have an opportunity to contest reimbursement rates through the annual rate-setting process.

WAHSA Position: Oppose

The Appeals Board was especially beneficial to county nursing homes, which generally received approximately 85% of the appeals awards. The elimination of the Board and its $1.3 million annual appropriation is another blow to county nursing homes.

Services to Residents of Residential Care Apartment Complexes

(Item #6 on Page 111 of the LFB Budget Summary Document)

Proposal: AB 75 would permit a long-term care ombudsman from the Board on Aging and Long-Term Care (BOALTC) to "at any time without notice, enter, and have immediate access to a resident" in a residential care apartment complex (RCAC).

WAHSA Position: Oppose

Attempts have been made in the last four legislative sessions to adopt this proposal but have failed because the unfettered access to RCAC tenants being sought has been viewed as an invasion of privacy. Under DHS 89.11, the Authority and Purpose section of the RCAC rule, it states in part that RCACs are independent apartments in a setting that is "home-like and residential in character . . . and operate in a manner that protects tenants' rights, respects tenant privacy, enhances tenant self-reliance and supports tenant autonomy in decision-making." WAHSA members believe RCAC tenants <u>should</u> have access to services provided by a long-term care ombudsman **but only** "at the request and with the consent of" that tenant. No ombudsman should have access to the private apartment of a RCAC tenant if that tenant does not wish to admit the ombudsman. In addition, it's difficult to discern how the BOALTC will be able to provide ombudsman services to the tenants of the 10,887 RCAC apartments in this State. AB 75 contains no appropriation or position authority to expand ombudsman services to RCACs and the 2009-11 budget request of the BOALTC for a 9.1% GPR funding increase "just to maintain the current Ombudsman service levels" was denied (the budget bill did provide $159,200 PR over the biennium to fund one position for ombudsman services to residents and administrators in long-term care facilities that are in the process of closing or downsizing). It would appear it will be difficult enough for BOALTC ombudsmen to serve their current clientele much less an expanded RCAC clientele.

ICF-MR Bed Assessment

(Item #7 on Page 366 of the LFB Budget Summary Document)

Proposal: AB 75 proposes to increase the monthly bed tax on licensed ICF-MR beds from the current $638 to $678 in 2009-10 and $691 in 2010-11. The additional federal funds generated by this bed tax increase would be used to fund a 2% MA rate increase for ICFs-MR in each year of the biennium. In addition, bed tax revenues also would be used to provide funding to the ICF-MR Relocation Waiver, which funds the care of developmentally disabled clients who have been relocated to the community from ICFs-MR.

WAHSA Position: Support for the proposed increase in the ICF-MR bed tax but opposition to “skimming” a portion of the new revenues generated by the bed tax increase to fund the ICF-MR Relocation Waiver. In addition, support for amending current law to impose the bed tax on occupied, not licensed, ICF-MR beds.

WAHSA members believe the funds generated by a bed tax increase should be used solely to increase the reimbursement rates of the facilities which generated those additional revenues and should not be "skimmed" to support other programs. In this particular instance, additional funds are available through the federal *Money Follows the Person* grant to support any additional funds needed for the ICF-MR Relocation Waiver; the proposed "skim" is not needed. On the other side of the equation, ICFs-MR face elimination: In 1998, there were 38 ICFs-MR with a bed total in excess of 2,200. Today, there are 13 ICFs-MR, with two facilities about to close. The bed total currently stands at 517 but will be reduced to 421 with the closures. Permitting ICFs-MR to utilize all the proceeds of this proposed bed tax increase hopefully will stabilize the ICF-MR sector and at least in the short term ensure that the ICF-MR care setting will remain available to those who need it. Finally, amending current law to impose the bed tax on occupied, rather than licensed, beds will reduce the financial burden on ICF-MR facilities by requiring the ICF-MR bed tax to be paid only on revenue-producing beds.