1997-98 SESSION COMMITTEE HEARING RECORDS

Committee Name:

Joint Committee on Finance (JC-Fi)

Sample:

Record of Comm. Proceedings … RCP
- 05hrAC-EdR_RCP_pt01a
- 05hrAC-EdR_RCP_pt01b
- 05hrAC-EdR_RCP_pt02

- Appointments … Appt
- **

- Clearinghouse Rules … CRule
- **

- Committee Hearings … CH
- **

- Committee Reports … CR
- **

- Executive Sessions … ES
- **

- Hearing Records … HR
- **

- Miscellaneous … Misc
- 97hrJC-Fi_Misc_pt199

- Record of Comm. Proceedings … RCP
- **

Issue:
Adequacy of Nursing Home Budget Funding

BACKGROUND:

At first blush, the Governor's budget proposal would appear to provide significant increases in the Medical Assistance nursing home appropriation over the next biennium. However, when one looks through form to substance, it becomes readily apparent the nature and scope of the recommended increases are less than that required to keep pace with even the most conservative inflationary projections. Indeed, aggregate funding proposed for nursing facilities in the next fiscal year represents an increase of less than one percent over current-year base funding.

"Aggregate funding proposed for nursing facilities in the next fiscal year represents an increase of less than one-percent over current-year base funding."

The budget proposes to increase the Medicaid nursing home appropriation by the lesser of a 6.1% or a $50.1 million increase in FY98.* However, the appropriation increase is to be used for a required adjustment to facility base rates as well as a proposed increase in 1997-98 payment rates. Indeed, the bulk of increased funding is earmarked to rebase nursing home costs to recognize legitimate increases in resident care costs that have been ignored in prior Medicaid payment formulas.

Impact of Rebasing of the Medicaid Payment Formula: Current Medicaid payment parameters are based on 1993 nursing home costs. While those costs have been indexed forward by the state, the budget acknowledges the indexing factors it has employed have been substantially below that necessary to acknowledge resident care cost increases nursing homes have actually experienced over the past four years. The budget allows DHFS to utilize audited 1995 nursing home cost reports as the basis for establishing payment medians that will be utilized to determine 1997-98 nursing home payment rates.

The Department of Administration projects $29 million of the FY98 appropriation increase will be necessary to rectify past indexing flaws and rebase the payment formula. Indeed, DOA budget analysts admit that after allowance for funds necessary for rebasing, remaining funds may be sufficient to allow up to a 2.56% funding increase for purposes of establishing 1997-98 nursing home payment rates. However, such an increase will be insufficient to meet projected inflation, which for Wisconsin nursing homes is anticipated to be approximately 5.5% in FY98.

Impact of Budget Adjustments to Formula Payment Methodology: Since budgeted amounts for payment of nursing home care will be insufficient to keep pace with cost increases nursing homes are projected to experience in FY98, the budget recommends that a wide range of changes be made in existing nursing home payment standards. It recommends the payment formula be modified "to change the standards of payment for allowable direct care costs, increase the direct care increment payment, increase the high MA utilization adjustment, reduce the capital cost sharing payment and classify all Medicare funded days at an intensive level of care." As depicted in the following chart, the proposed formula changes will have the net effect of reducing the FY98 nursing home payment by $26.8 million.

1997-98 Formula Reductions	All Funds
Direct Care	-$24,100,000
Support Services, Administrative, and General, Fuel and Utilities	-3,100,000
Property Cost Share	-1,825,000
Reclassify Medicare Days as ISN Days	-9,900,000
Sub-total	**-$38,925,000**

1997-98 Formula Increases	
Direct Care Increment	$10,050,000
Support Services Increment	600,000
High Medicaid Utilization Adjustment	1,500,000
Sub-total	**$12,150,000**

1997-98 Net Formula Reductions:	-$26,775,000

* The budget proposes an FY99 appropriation of no more than 3.5% over that paid in FY98, or $30,322,500 AF, whichever is less. Most of the concerns WHCA has with the FY98 appropriation apply with greater force and effect to the FY99 increase. WHCA will provide a more specific expression of those concerns as more information becomes available.

Net Impact of Budget on State Funding of Nursing Home Care: Although the budget advances a recommendation for increasing funding for MA reimbursement of nursing homes by 6.1% (or $51 million), it also embraces cuts in base funding and Medicaid formula standards that essentially result in no increase over current Medicaid funding levels. The following chart illustrates the combined effect of the budget's proposed increases, base reductions, and formula cuts on FY98 Medicaid funding of nursing home care.

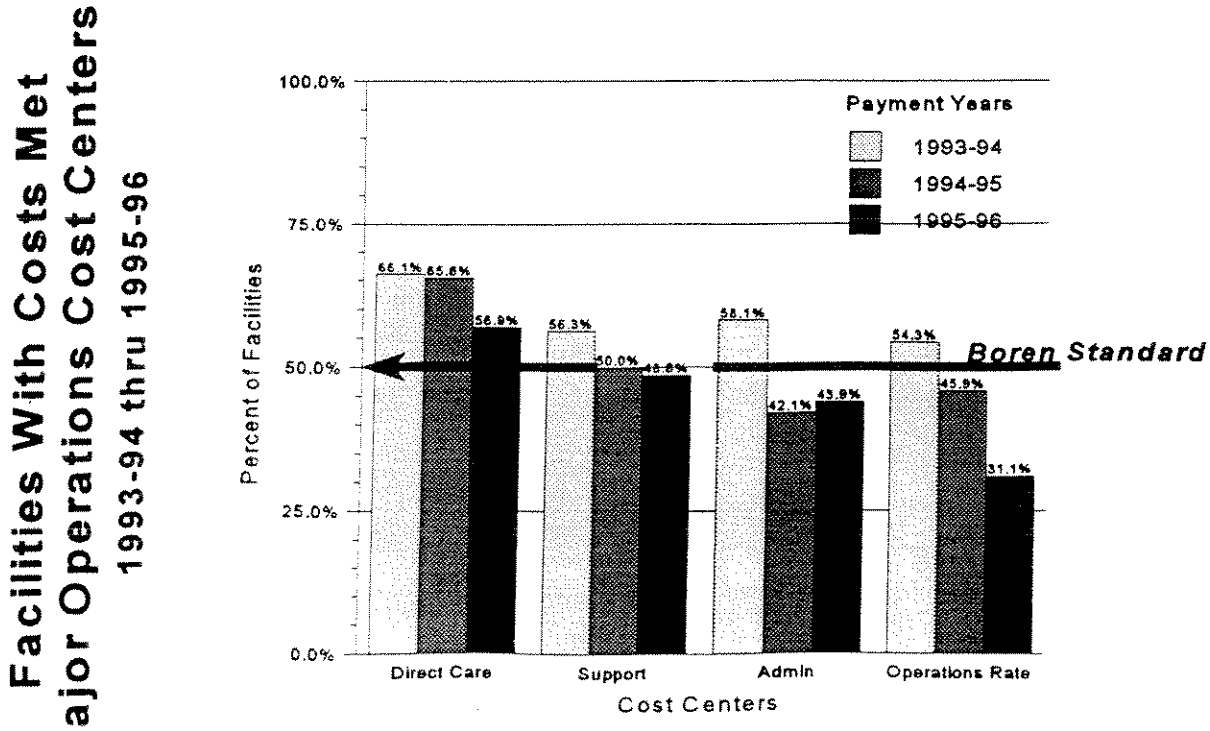
Nursing Facility Funding Adjustments	*All Funds Amounts (in millions)*
Medicaid Appropriation Base for Nursing Facilities	$885.5
Changes in Nursing Home Utilization /Intensity	-18.0
Rebasing the Nursing Home Formula	29.0
Facility Rate Increase	22.0
Net Formula Reductions	-26.8
Adjusted Base	$891.7

As is evidenced by the above, after allowance for base and funding cuts, the 6.1% nursing home appropriation increase will serve to increase current state funding of nursing home care by $6.2 million or seven tenths of one-percent (.7%).

WHCA POSITION:

WHCA supports the Governor's recommendation for a 6.1% appropriation increase necessary to provide base rate adjustments and percentage increases over adjusted base rates. The base adjustment is critically necessary to permit reimbursement of costs that facilities have incurred over the past three years but have not been recovered through prior payment formulas. However, if such an adjustment is to retain any fiscal integrity, it cannot be funded through imposition of other formula cuts. As illustrated in the chart below, the combined effect of the state's existing formula parameters and deficient inflationary indexing has created a situation where less than 31% of the state's 445 Medicaid-certified nursing facilities receive payment rates which allow them to recover the cost they incurred in providing care to the residents they served.

If the budget's recommendations for further cuts in formula parameters are adopted, the circumstances of the industry, depicted below, will substantially worsen. Even fewer facilities will recover their costs, and the degree of losses facilities currently experience will be significantly increased. Indeed, the range and depth of the budget's proposed cuts in current payment standards will essentially eliminate any potential that FY98 Medicaid rates will more closely approach the actual cost of providing the care required by the 30,189 MA recipients residing in Wisconsin nursing facilities. Any movement toward greater cost recognition attributable to the budget's proposed updating of formula base rates will be negated by the budget recommendations for further cuts in current payment standards.



Issue:
Classification of Medicare Days

BACKGROUND:

DHFS cost reporting requirements for all Medicaid certified nursing facilities mandate that they must classify and report all patient days of service according to acuity levels specifically defined and funded by the Medicaid program. Specific clinical criteria has been established by the Department for the four care levels for which Medicaid coverage exists. The care levels, in descending order of acuity, are Intensive Skilled Nursing (ISN); Skilled Care (SNF); Intermediate Care - Level 1; and Intermediate Care - Level 2.

As a result of action taken by the legislature in the last biennial budget, Medicare patient days meeting the Medicaid ISN level of care criteria are required to be reported as ISN days on the nursing home cost report. This is both an appropriate and accurate method for assuring a facility's Medicare patient costs are not understated in determining the extent of its Medicaid patient costs.

"By maintaining the policy it approved in the last state budget, the legislature can assure that the cost of Medicare patients is neither under- nor over-stated in making Medicaid rate determinations."

The 1997-99 budget now recommends that for purposes of future cost reporting and rate setting, all Medicare patient days will be at the ISN level of care, regardless of whether the Medicare patient's condition meets clinical criteria for ISN coverage.

The effect of the wholesale reclassification of Medicare days is to understate costs attributable to Medicaid patients, thereby reducing the Medicaid payment rates that facilities receive. The proposal is projected to reduce total Medicaid expenditures by $9.9 million in each year of the biennium.

An across-the-board characterization of Medicare patient days as the equivalent of ISN represents an indefensible deviation from the system that has been established for uniform clinical classification of patient care. The proposed treatment for classification of Medicare patient days is discriminatory and inconsistent. Indeed, while DHFS proposes to consider Medicare patient days the equivalent of ISN for purposes of allocation of facility patient care costs, Medicaid patient days meeting Medicare coverage criteria will not be eligible for ISN qualification and payment. Thus, an MA patient whose medical circumstances satisfy Medicare clinical standards for coverage will not be considered as qualified to receive the ISN payment rate unless his or her condition meets the Department's ISN clinical standards.

The proposed formula adjustment in essence establishes a separate and distinct patient classification and cost allocation process for Medicare patients that is different from that which applies to all other payer sources. We are unaware of any legal, clinical, or accounting principle which would support such a distinction.

WHCA POSITION:

As noted earlier, the appropriate approach to classification of Medicare patient days was specifically discussed and resolved by the legislature in the last biennial budget. The following recommendation appeared in the 1995-97 DOA budget papers describing proposed adjustments for future Medicaid payment formulas:

> "Classification of Medicare Days: Classify Medicare days by the actual level of care provided. It is estimated that about 15% of Medicare funded days are at an Intensive Skilled Nursing (ISN) Level." DIN 5110 Nursing Home Formula Adjustments, SBO, dated 2/14/95 *(Emphasis Added)*.

Further analysis by the Fiscal Bureau provided the following discussion:

> In setting MA nursing home rates, the Department currently does not collect information about other revenues such as Medicare and private pay which offset nursing homes' costs. In order to estimate nursing homes' cost attributable to Medicare patients, the Department classifies Medicare-funded days as skilled nursing facility (SNF) days.

However, some Medicare patients need a high level of care, since these patients are often released from a hospital to a nursing home for short-term, rehabilitative care. By classifying all Medicare patients as SNF, the cost attributable to Medicare patients is understated.

The Governor's proposal would require Medicare patients who meet the level of requirements for intensive skilled nursing (ISN) to be reclassified as ISN rather than SNF..." Legislative Fiscal Bureau, Paper #404, "Nursing Home Reimbursement" *(Emphasis Added).*

The above expressed rationale and resolution for Medicaid treatment of Medicare patient days is both proper and just. It was reviewed and jointly supported by the industry, DOA, DHFS, the Governor's Office, and the legislature.

The budget proposal now before the legislature is neither proper nor just. By maintaining the current policy of classifying Medicare days by the actual level of care provided, the legislature will assure that the cost of Medicare patients is neither under- nor over-stated in making Medicaid rate determinations.

WHCA

Wisconsin Health Care Association

Issue:
Further Reduction of Payment For Property Costs

BACKGROUND:

A separate cost center within the current Medicaid nursing facility payment formula exists to provide reimbursement for necessary facility ownership or property costs. Payments made through this cost center are intended to address the following: interest on debt incurred to acquire and improve land, buildings and equipment; depreciation on buildings, fixed and movable equipment; property and mortgage insurance; and building and equipment lease costs.

Currently, the Medicaid payment formula provides that the state will recognize property- related costs up to a certain target (7.5% of facility-appraised value) and 40% of costs in excess of that target up to an established ceiling of 15% of appraised value. A $1.4 million funding cut made in the last biennial budget resulted in dropping the target/cost shares to their current levels. The prior target and cost share were respectively 8.5% and 50%.

This year's budget proposal seeks to extract another $1.8 million from the state Medicaid payment towards property costs by reducing the property cost share from 40% to 20%. If adopted as proposed, the consecutive budget bills will have effected a 60% reduction in the cost share component of this critical cost center.

"We defy the state to find a commercial financial market that would provide nursing facilities with capital financing on terms that would fall within its Medicaid formula's proposed or present property payment parameters. If it exists, our facilities will beat a path to its door."

WHCA POSITION:

WHCA adamantly opposes the proposed reduction and will seek legislative support for maintaining the formula's current property payment parameters.

Every budget initiative calling for cuts in the property component of the Medicaid formula has attempted to defend the reductions as an incentive to "reduce debt or re-finance at lower rates." However, every budget funding proposal has correspondingly expanded the gap between cost and MA payment for care, thereby making reduction of debt a financial impossibility for facilities which serve Medicaid residents. Indeed, we defy the state to find a commercial financial market that could, or would, provide nursing facilities with capital financing on terms falling within the Medicaid formula's proposed or present property payment parameters. If it exists, our facilities will beat a path to its door.

The budget's proposed eradication of the potential for recovery of legitimate property costs comes during a time when a reasonable and realistic policy is most needed. Over the past several years, unparalleled escalation of regulatory demands, consumer expectations, and patient acuity have dictated that facilities upgrade their aging physical plants. Both federal regulations and consumers have demanded an improved physical environment for residents; greater privacy, more services and technology; increased space; and transformation of facilities to a less institutional and more home-like environment.

Providers have responded by adding or renovating space to provide improved resident rehabilitative, subacute, activity, and dining services for their residents. They have constructed new wings and units for care of high acuity residents and specialty populations such as dementia patients. They have increased room size to enhance resident privacy and quality of life programs. They have purchased specialized and expensive state-of-the-art medical equipment necessary to treat an increasing medically complex resident population whose acuity levels and needs continue to escalate.

And, in the face of this timely response to the consumer and regulatory marketplace, the budget now proposes to cut back parameters for recognition of payment of these costs to a level that could not be met by today's, yesterday's, or

tomorrow's financial marketplace.

Since the proposal's alleged incentive of effecting reduction of debt or more favorable refinancing cannot be realized in today's world, the real-world consequences of the proposal are:

- Severe and perhaps fatal financial consequences for facilities who have recently upgraded their facilities, services, and equipment.
- Consideration of cost-cutting measures in other components of the facility operations necessary to reduce losses occasioned by the reduced payment for property costs. Such measures will impact the scope and quality of resident care and life, as well as employee staffing and wage and benefit levels. It must be remembered that facilities must keep their doors open in order to provide services. Indeed, they are legally bound to fully honor their existing property payment obligations, irrespective of the fact the Medicaid program chooses to arbitrarily lower the level of its contribution toward those legitimate and necessary costs.
- Delay or withdrawal of future plans for maintenance, remodeling, or renovation of property assets or replacement of equipment.

WHCA recognizes that many of the cuts proposed to the Medicaid payment formula are not, in fact, motivated by a belief that existing payment parameters are too liberal. Indeed, they are primarily motivated to reduce Medicaid expenditures to generate funding for other budget initiatives. But these budgetary exercises in robbing Peter to pay Paul will work only as long as Peter remains solvent. With the shocking low number of nursing homes recovering their costs under the Medicaid program, any legitimate financial capacity of our industry to fulfill Peter's state budgetary role has been extinguished.

We support the state's commitment to education, technology, the environment and enhancements of the criminal justice system. However, in pursuing those initiatives the legislature should not lose sight of the fact the public has an equally strong interest in assuring the proper administration of the Medicaid program and assuring its elderly and disabled citizens experience the quality of life and level of care to which they are entitled.

Currently, less than 30% of the state's facilities receive a payment rate that allows them to meet the costs of providing care to their Medicaid residents. The proposed cuts to the property cost center and other aspects of the budget will accordingly have a detrimental effect on the future scope and quality of the care and environment nursing facilities can provide all of their residents.

WHCA

Wisconsin Health Care Association

Issue:
Nursing Home "Bed Banking" Proposal

BACKGROUND:

Since 1976, the Department of Health and Family Services has possessed statutory authority to impose minimum occupancy standards for purposes of making per-patient day rate determinations. Between 1977 and 1993, DHFS applied an 85% occupancy standard only in Medicaid formula cost centers embracing facility fixed costs. In 1994, DHFS summarily raised the standard to 91%. The following year it extended the 91% occupancy standard to facilities' variable Direct Care and Support Service costs, which account for 77% of a facility's resident care costs. DHFS projected the expansion of the 91% standard would, over the biennium, reduce Medicaid payments in these critical areas of resident care by $30 million.

"The Governor's "bed banking" concept appears to be a positive step toward tempering the devastatingly unjust effect of further perpetuation of the 91% occupancy standard."

Direct Care costs include nursing services, therapy, medical supplies, and non-billable pharmacy items. Supportive Service costs primarily embrace dietary, housekeeping, and laundry. The costs a facility experiences in these variable cost centers are not impacted by its unoccupied beds and are almost exclusively a function of the number and acuity of the patients that reside within a facility.

While unoccupied beds arguably result in inefficiencies in the area of fixed costs (e.g., Administrative, Property, and Utility costs), the same cannot be said for their effect on a facility's variable patient care costs. Indeed, the imposition of occupancy penalties in the area of hands-on care places facilities at substantial risk of not receiving sufficient revenues to fulfill their professional and federally mandated responsibility to provide care necessary "to attain the highest practicable physical, mental, and psychosocial well-being of each resident."

Cognizant of these risks, the Governor's budget bill includes a measure which would permit facilities to avoid occupancy penalties by voluntarily taking beds off-line and "banking" them with DHFS. Beds deposited in the DHFS bed bank would be considered "delicensed" and would not be included in determining a facility's per-patient-day Medicaid cost. While the facility would retain ownership rights to deposited beds, it could not use or sell any beds that were placed in the bank. The bill also imposes a "docking" or "service fee" that will permanently reduce a facility's deposited beds by 10% (or .25% of one bed, whichever is less) every 12 months. The bill also provides that a facility may withdraw and reinstate licensure and use of "banked" beds by providing DHFS 18 months' advance notice. It may not, however, relicense any bed, or fraction of a banked bed, that has been delicensed by application of the aforementioned "service fee."

WHCA POSITION:

WHCA remains firmly opposed to the Medicaid formula's application of the 91% occupancy standard to the Direct Care and Support Service cost centers. The logic and effect of such application is entirely irrational, unreasonable, and indefensible.

The Governor's "bed banking" concept appears to be a positive step toward tempering the devastatingly unjust effect of further perpetuation of the policy. However, the budget language utilized to give birth to the concept does not offer sufficient specifics regarding the actual administration, operation, and effect of the initiative. Administration officials have indicated the proposal was intended to provide facilities with reasonable access to a "safe harbor" from the unintended patient care consequences of application of the occupancy standard. To achieve that end, WHCA recommends the "bed banking" proposal, and the underlying occupancy standard to which it relates, be refined as follows:

- **Pre-existing Legal Restrictions on Modifications to Licensed Bed Capacity:** A significant segment of state nursing home licensees are subject to leases and mortgages, including HUD mortgages, which contractually prohibit them from reducing their facility's licensed bed capacity. An exclusion from the occupancy penalty should be provided for facilities that are legally precluded from "banking

beds" due to the existence of such pre-existing contractual restrictions. The exclusion would apply only if the licensee's lease or mortgage was executed the 1995 effective date of the formula change which expanded the occupancy penalty to the Direct Care and Support Service cost centers. The exclusion would exempt the facility from application of the occupancy standard only in those two cost centers.

- **Determining Occupancy:** Criteria for application of the occupancy penalty should be refined to assure that only facilities which have a demonstrated track record of excess capacity are subject to the penalty. One year of facility occupancy below the 91% state-wide average should neither trigger application of the penalty nor force a facility to engage in bed banking to achieve penalty avoidance.

  While the state-wide average occupancy rate has remained at 91% for the past 15 years, the number of annual nursing home admissions has increased in the past 5 years by more than 44%. The dramatic increase reflects that today's nursing facilities are increasingly engaged in providing subacute and intensified rehabilitative services that integrate residents back into the community. Since the average length of stay for such individuals is less than 30 days, it is not uncommon for facilities to occasionally experience occupancy levels below 91%. By myopically imposing occupancy penalties on such facilities the state creates a disincentive for achievement of program cost savings through subacute/rehab services and a fiscal incentive for extending resident length of stay.

- **Notice Requirement for Reinstatement of Banked Beds:** The budget proposal requires that facilities give 18 months' advance notice of intent to relicense banked beds. This protracted notice requirement will deny facilities an ability to timely respond to a change in community need for access to long term care services. WHCA recommends a minimum 90-day advance notice be required for facilities to effect relicensure of their banked beds.

- **Elimination of Banking "Service" Fee:** Relicensure of banked beds will automatically trigger imposition of rate reduction penalties if a facility cannot demonstrate and sustain a 91% occupancy level following the beds' reinstatement. The potential rate penalty which served as the catalyst for a facility's original banking of the beds will stand as an equally effective financial disincentive to relicensure of beds for which there is no use or demand. Accordingly, WHCA seeks elimination of the proposed "service fee"penalty by which 10% of a facility's banked beds would be eliminated every twelve months. It is worthy of note that DHFS, as a component of its long-term redesign initiative has declared an intention to eliminate the current cost-based nursing home reimbursement methodology and adopt a capitated or price-based payment system. With adoption of either of these systems, any state concerns for the cost of a facility's excess capacity becomes moot. Indeed, with system reform and a dramatic increase in demand of long-term care services on the immediate horizon, it is both unnecessary and unwise to promote the eradication of the current supply of licensed nursing home beds.

WHCA

Wisconsin Health Care Association

Issue:
Criminal Background Checks/Nurse Aide Registry

BACKGROUND:

A recent series of articles in the *Milwaukee Journal Sentinel* intensely examined the nature, scope, and potential causes of resident abuse occurring in nursing homes and other health care settings. The articles identified the absence of employee criminal background checks, comprehensive reference checks, and an effective nurse abuse registry reporting system as major problems that may potentially place residents in jeopardy of employee abuse. The articles vividly reported numerous instances of resident abuse that might have been avoided if employers had engaged in more comprehensive hiring practices and precautions.

WHCA does not take exception to the facts provided in the *Journal Sentinel* articles but is concerned that their selective portrayal of facts may have misled the public, caused unnecessary anxiety for residents and families, and demoralized dedicated staff at nursing facilities across the state. Not "many," not "some," not a" majority," not "a vast majority," but virtually all of our employees are dedicated, compassionate, and caring people who perform arduous and often thankless work. While we are proud of the consistent care and compassion provided by our staffs we, at the same time, do not and will not tolerate patient abuse by any employee and support statutory and regulatory changes necessary to effect enhanced patient security.

The *Journal Sentinel* series is expected to prompt introduction of legislation requiring criminal background checks for health care employees. It is also expected to generate legislative action to remove glaring inconsistencies in current statutory expectations for the administration, jurisdiction, and effect of the state's nurse aide abuse registry.

WHCA has long advocated that all health care providers should be subject to uniform requirements for performing criminal background checks, uniform abuse investigation and reporting standards, and uniformity in sanctioning of employees found to have engaged in patient abuse. As early as 1992, WHCA formally petitioned federal and state regulators to establish "uniformity and sanity" in their respective regulatory approaches to investigating, reporting, and sanctioning situations of abuse. As recently as January 1997, the WHCA Board of Directors reiterated its prior support for legislation to mandate criminal background checks for all employees with direct patient care responsibilities in any health care setting.

While we take exception to the tenor of the *Journal Sentinel* series, we believe that most of the remedial action the articles suggest coincide with the reforms we have sought and supported for the past five years.

WHCA POSITION:

A. CRIMINAL BACKGROUND CHECKS

WHCA supports legislation that requires criminal background checks for all health care employees who provide care or come in direct contact with patients. This support anticipates and recommends that such legislation would consider the following:

- **The Requirement Will Extend to Employment in All Health Care Settings.** Public and employer concerns for employment of caregivers with criminal backgrounds apply with equal force and effect to all health care settings. While it is appropriate for nursing homes, it is equally appropriate for other settings such as home health, group homes, adult day care, hospice, hospital, and assisted living.

- **The Legislature Should Consider and Specify Criminal Offenses that Would Automatically Disqualify an Individual from Providing Patient Care in a Health Care Setting.** Such an approach has been adopted in Minnesota. In essence the legislature would be declaring that certain criminal convictions are clearly "substantially related" to activities the individual would perform in a health care environment and, therefore, disqualify the individual from employment in that setting. Protections are, however, necessary to assure that the existence of a criminal conviction will not stand as a permanent barrier to an individual's ability to work in the health care arena.

- **Nurse Aide Background Checks on Certified Nurse Assistants Should be Conducted by the Registry.** Background checks for disqualifying convictions should be conducted through, and as part of, the DHFS's Nurse Aide Training and Registry Unit. In order to be listed on the nurse aide registry, individuals must complete the nurse aide training program, pass a competency exam, and apply to be registered. For efficiency and consistency, as a pre-

requisite to CNA certification, the NATRU should conduct a criminal background check to assure applicants for certification have no convictions for disqualifying offenses the legislature has identified.

- **Background Checks for Licensed Health Care Professionals Should Be Conducted by the State Licensing Boards.** The existence of criminal records that would disqualify individuals for employment in health care settings should similarly impact their professional licensure. The licensing boards should assume responsibility for assuring individuals under their jurisdiction do not possess criminal histories which would disqualify them from licensure or the ability to provide direct patient care.

- **The State Court System Should Be Required to Timely Notify the Registry or Licensing Boards of Any Disqualifying Convictions That Would Render Individuals Within Their Jurisdiction Unsuitable For Continued Certification or Licensure.** In the alternative, the Registries and Licensing Boards should, using today's technology, be able to match individuals under their jurisdiction against criminal conviction records maintained by the Department of Justice's Crime Information Bureau.

- **Health Care Providers Will Be Required to Conduct Criminal History Checks for Non- licensed Personnel Who Will Have Direct Contact With Patients.** Prospective and existing employees who are the subject of a criminal conviction for a disqualifying offense would be required to be discharged. An employer's discharge of an individual due to the existence of a disqualifying conviction will not count against the employer's unemployment compensation experience and will not subject the employer to liability for payment of benefits to the discharged individual. The Department of Justice shall establish a standard fee that shall apply to all health care providers who are, by law, mandated to perform criminal background checks.

B. NURSE AIDE TRAINING AND REGISTRY UNIT

- **There Must Be Uniformity in Application of Sanctions For CNA Patient Abuse.** As a result of inconsistencies in the state statutory and regulatory framework, the implications of a substantiated finding of patient abuse differ according to the setting in which the individual is employed. If the CNA is employed in a nursing home or ICF-MR, employment must automatically be terminated, and the individual may never again work in any capacity in a nursing home or ICF-MR. However, the same finding with respect to an aide employed in a home health agency, CBRF, assisted living facility, hospital, or hospice will precipitate absolutely no sanction relative to their continued employment in those settings.

- **Identical Investigative, Reporting, and Enforcement Standards Should Apply to All Health Care Providers Employing Certified Nurse Assistants.** Currently, only nursing homes are required by law to investigate, and report to the registry, all allegations of patient abuse by a Certified Nurse Assistant. Similarly, BQA investigative staff are not authorized to investigate or initiate action against CNAs who are alleged to have abused patients in settings other than nursing homes.

- **Alternative Registry Sanctions Should Be Developed.** Currently, the only sanction the Registry may apply to address a substantiated finding of abuse is to deny the offending CNA the right to work in a nursing home in any capacity for the rest of his/her life. WHCA believes the extreme severity of the penalty often causes investigators and adjudicators to be reluctant to make a registry finding against an individual. As a result, unacceptable conduct may go unsanctioned. Accordingly, WHCA recommends that a graduated scale of lesser enforcement penalties be considered to address less severe, but sanctionable, conduct.

C. OTHER RECOMMENDATIONS

Legislative action to mandate criminal background checks and extend the authority and reach of the Nurse Aide Registry will not totally resolve the problem. One of the greatest obstacles to screening out potential abusers is the reluctance of former employers to provide candid information about a past employee's job performance. While recently enacted legislation offers employers protection from civil liability for providing good faith responses to reference checks, employers still lack faith in the adequacy of those protections. Accordingly, we suggest the legislature consider strengthening those protections and that public officials work with WHCA and other trade associations to generate private-sector awareness and faith in the law.

We would specifically request consideration of providing specific protection to a health care employer that would allow them to advise in a reference check that a past employee was the subject of a report filed with the nurse aide abuse registry. Affording protection for this specific circumstance will assist in alleviating two problems that currently exist: (1) the Registry only indicates if a substantiated finding has been made against an individual and does not indicate if the CNA is the subject of a pending investigation, and (2) the extensive amount of time inherent in performing a proper investigation, adjudication, and entry of abuse on the Registry.

Issue:
Tax Incentives for Purchase of Long-term Care Insurance

BACKGROUND:

Two separate bills have been introduced this session which enable long-term care insurance to play a more significant role in the financing of long-term care.

Assembly Bill 120 creates a 100% deduction of the amount paid by an individual for the purchase of long-term care insurance for individuals or their spouses. The Legislative Fiscal Bureau estimates that allowing senior citizens to fully deduct the cost of long-term care health insurance premiums from their Wisconsin income taxes will reduce state taxes for seniors by $2.4 million annually. Senate Bill 56 also provides a tax deduction for the purchase of long-term care insurance but limits the deduction to 25% of premium costs.

"...it is important the government play an active and visible role in providing incentives for private sector purchase of long term care insurance."

WHCA POSITION:

Given the never-more apparent limits of current and future government resources, long-term care insurance represents one of the greatest potential viable sources for financing of long-term care services. Expanding the role and affordability of private long-term care insurance helps prevent Wisconsin citizens from becoming impoverished due to their long-term care needs. It will also assist in reducing the burden on the state Medicaid program which currently serves as the source of payment for 67% of the state's nursing home residents.

Indeed, the state's long-term care system which steers people toward impoverishment and reliance on Medicaid simply for growing old and becoming ill does not make sense. Long-term care insurance is a more sensible and compassionate way to meet the state' long-term care needs.

WHCA accordingly supports the use of tax incentives to create a more favorable environment to facilitate the purchase of long-term care insurance.

WHCA supports any legislative effort to enhance the role of private long-term care insurance in helping the federal and state governments, families, and senior citizens meet the growing need for long-term care services. As sponsors of this legislation have noted, advances in medical technology are allowing people to lead longer and fuller lives, resulting in a growing need for long-term care. With a rapidly escalating elderly population and a limited amount of tax dollars available, it is important that government play an active and visible role in providing incentives for private sector purchase of long-term care insurance.

WHCA is hopeful that when the legislature considers the tax expenditure cost of providing tax treatment for long-term care insurance that health insurance presently enjoys, it will also consider the great potential for private insurance to decrease Medicaid expenditures over the long term. Action this session can plant the seed for significant savings in government long-term care spending in the future.

Assembly Bill 120 is a reasonable and straight forward measure that affords Wisconsin citizens inspiration and easier access to financial protection from the high cost of long-term health care.

Issue:
Revisions to Chapter 150 - Resource Allocation Program

BACKGROUND:

The Resource Allocation Program (RAP) was established by 1983 Wisconsin Act 27, which repealed and recreated Chapter 150, Wis. Stats. The 1983 Act repealed the former Certificate of Need Program.

Under the RAP Program, the Department of Health and Family Services (DHFS) is authorized to review and approve or disapprove the following:

- The construction or total replacement of a nursing home
- An increase in the bed capacity of a nursing home
- A capital expenditure that exceeds $1 million by or on behalf of a nursing home
- An expenditure that exceeds $600,000 for clinical equipment by or on behalf of a nursing home

The Governor's proposed budget bill, SB 77 / AB 100, substantially revises the Department's authority to review nursing home projects. Specifically, the Governor has proposed the Department review only the following projects:

- The construction of a "new" nursing home (new is not defined)
- An increase in the bed capacity of a nursing home
- A capital expenditure, other than a renovation or replacement, that exceeds $1 million by or on behalf of a nursing home
- An expenditure, other than a renovation or replacement, that exceeds $600,000 for clinical equipment by or on behalf of a nursing home

Finally, the Governor has recommended that the Department shall decrease the statewide bed limits in Chapter 150 to account for any reduction in the licensed bed capacity of a nursing home that has relinquished the use of beds, as specified in the proposed "bed banking" program advanced by the Governor in his budget bill.

WHCA POSITION:

WHCA strongly supports the Governor's recommendations which revises certain sections of Chapter 150, the RAP Program. In the past, WHCA has advanced that federal regulations and consumer expectations demand that nursing homes present a more home-like environment to temper the historical institutional medical model. The movement to provide more spacious facilities, innovative design, and extended resident services has been limited by the Department's outdated application of 1983 administrative codes to the 1997 long-term care industry which provides an increasing medical service to residents with increasing acuity levels.

"...the proposed revisions to Chapter 150 are necessary, will improve the focus of the RAP program, and better serve the public interest."

As a result of the higher acuity residents, the nursing homes of today are significantly different from those of 10 or even 5 years ago. To address the needs of our residents, it is necessary for facilities to undertake significant renovation or replacement projects. Since the nursing home reimbursement formula limits the number of dollars a facility will receive as a result of capital expenditures and will not pay for any costs above an established target, the RAP program's review of capital projects for cost containment is not necessary.

Indeed, actual operation of the RAP program has increased, rather than decreased, costs to the Medicaid program. The program has delayed but never denied a RAP application. Most often it demands extensive and expensive modifications to original project proposals before it will officially approve project applications. In addition, according to a Legislative Fiscal Bureau memo dated June 8, 1993, merely completing the RAP application form entails additional facility expenditures for professional services that range between $8,000 - $13,000.

WHCA believes the proposed revisions to Chapter 150 are necessary, will improve the focus of the RAP program, and will better serve the public interest. It is our hope the legislature will approve the Governor's recommendations regarding the RAP process.

Issue:
Economic Impact of a Nursing Facility On Its Community

Wisconsin's 468 nursing facilities and their 58,500 employees are generally recognized for the vital role they serve as cost and clinically effective health care providers within the long-term care continuum. What is often not realized by elected officials, policymakers, citizens, and even the facilities themselves is the dramatic economic impact nursing homes have on their states and communities.

A nursing home brings a community more than access to quality health care for its elderly residents - it stimulates the surrounding community. The economic effect of the presence of the nursing home impacts not only its employees and their families but the entire community.

> ***". . . Wisconsin's nursing facilities must not only be recognized as key participants in the state's health care delivery system, but as major contributors to the economic health of the state and its communities."***

Its employees provide more payroll dollars flowing through the area. They and the facility need the services provided by the community; they need to buy or rent housing; they need stores in which to shop; they need government services and places to spend their leisure time. The local economy is expanded and more workers are needed. More workers mean, on the one hand, a greater population to provide services for and, on the other, more people to fill those service jobs.

Increases in other sectors of employment, plus increases in population, school enrollment, tax revenues and overall growth are all directly and indirectly linked to the presence of the nursing facility within the community.

To measure the economic impact of its respective member facilities, WHCA enlisted health service-specific data published by the Economic Policy Division of the U.S. Chamber of Commerce and guidance from the Wisconsin Department of Development. The attached charts depict the magnitude of impact the nursing homes have on household earnings and jobs in their respective communities.

The health service-specific economic multipliers were developed by the U.S Department of Commerce from a study based on regional input-output multipliers, which account for interindustry relationships within regions.

Earnings multipliers show the earnings that the nursing facility pays both directly and indirectly to households employed in the regional industry in order to generate $1 million in care revenue (see Figure 1).

Employment multipliers are the number of jobs created in either a county, region, or state both directly or indirectly as a result of generating $1 million in care-giving revenues (see Figure 2). We have also depicted the number of jobs generated in all industries as a result of 100 jobs in the health services setting (see Figure 3). The employment multipliers are estimates of the total direct and indirect jobs that occur in a geographic area for 100 jobs in a specific area.

The job multiplier includes the jobs created both directly and indirectly to the households, including jobs created by the nursing home and from the secondary demand and regional production required to meet the consumer demand generated by payments from nursing homes to employees for their labor input.

The U.S. Department of Commerce advises that multipliers for each specific area could vary significantly. Accordingly, although the numbers portraying the individual and collective impact of WHCA member facilities are precise, they must be viewed as estimates and not exact measurements of economic impact.

Nonetheless, it is readily apparent Wisconsin's nursing facilities must not only be recognized as key participants in the state's health care delivery system, but also as major contributors to the economic health of the state and its communities.

Figure 1 *Household Earnings Generated From $1 Million in Revenue For Health Services (Thousands of Dollars)*

	Industry	County	State
	Construction	2.3	3.8
	Manufacturing	40.9	43.5
	Transportation, Communications and Utilities	23.5	47.0
	Wholesale and Retail Trade	56.8	81.3
	Finance, Insurance and Real Estate	29.1	36.7
	Health Services	577.8	659.4
	Other Services	76.1	103.4
Other	Other	11.0	18.5
Total	Totals	818.0	993.6

Figure 2 *Number of Jobs Created From $1 Million in Revenue For Health Services*

Industry	County	Metro Area	State
Construction	0.3	0.5	0.5
Manufacturing	1.6	2.0	2.0
Transportation, Communications and Utilities	0.7	1.0	1.1
Wholesale and Retail Trade	2.5	3.6	3.
Finance, Insurance and Real Estate	0.9	1.1	1.1
Health Services	17.9	20.5	20.4
Other Services	3.9	5.2	5.3
Other	0.1	0.3	0.3
Totals	27.9	34.2	34.3

Figure 3 *Number of Jobs Created By 100 Jobs In Health Services*

Industry	County	Metro Area	State
Construction	1.68	2.44	2.45
Manufacturing	8.94	9.76	9.80
Transportation, Communications and Utilities	3.91	4.88	5.39
Wholesale and Retail Trade	13.97	17.56	17.65
Finance, Insurance and Real Estate	5.03	5.37	5.39
Health Services	100.00	100.00	100.00
Other Services	21.79	25.37	25.98
Other	0.56	1.46	1.47
Totals	155.88	166.83	168.14

WHCA
Wisconsin Health Care Association

Background Paper:
The Mechanics of "Bed Banking"

Since 1976 the state statutes have provided the Department of Health and Family Services (DHFS) with authority "to establish minimum patient-day occupancy standards for determining per-patient-day costs." The statutes are silent as to what costs such standards may apply. However, from 1977 to 1995, DHFS imposed an occupancy standard only in formula cost centers embracing facility fixed costs (Administration, Property, and Utilities). Commencing in the 1995-96 rate year, a 91% occupancy standard was extended to the Direct Care and Support Services cost centers which collectively account for 77% of a facility's patient care costs.

Concurrent with the 1995 expansion of the standard, the Department afforded affected facilities the opportunity to reduce or avoid otherwise applicable rate reduction penalties by formally downsizing their licensed bed capacities during limited time "windows." For the 1995-96 rate year, this "window" ran from July 1, 1995, through November 31, 1995. Another "window" was again provided in the 1996-97 rate year from July 1, 1996, through October 31, 1996. Beds that facilities gave up during these window periods were permanently removed from their licensed bed capacity.

The Governor's proposed budget includes a measure which would allow facilities to temper or avoid imposition of occupancy penalties in future rates by taking beds off-line and "banking" them with DHFS. (A copy of the budget language is attached.) It represents a vast improvement over past expectations that a facility permanently delicense beds in order to obtain relief from application of the 91% occupancy standard.

The following provides the specifics of what is known to date regarding the mechanics of the Governor's "bed banking" proposal:

- DHFS would be required to declare a "bank window" or timeframe during which a facility could "deposit" unoccupied beds in order to avoid imposition of penalties in any given rate year. Beds, approved by DHFS for deposit during the window, would not be considered as unoccupied beds for purposes of the Department's calculation of the facility's cost per patient day under the minimum occupancy standard.
- The enabling language indicates the Department "may approve" facility requests to deposit beds in the bed bank. Administration officials have indicated the bed banking measure is intended to provide affected facilities a "safe harbor" from application of rate reductions attributable to the 91% occupancy standard. However, the budget's language does not address, and agency personnel have not indicated, under what, if any, circumstances DHFS may deny approval of a facility's request to deposit beds. This key issue remains to be resolved.
- Beds, approved for deposit, would be considered "delicensed" and not included in determining a facility's cost per patient day. However, the facility would retain ownership rights to those beds and could later resurrect their licensure.
- Every 12 months following a deposit of beds, any remaining balance shall be reduced by 10% or 25% of one bed, whichever is greater. For example, a facility banking two banked beds would lose one-quarter of a bed after 12 months; a facility with three beds on deposit would lose 30% of one bed after 12 months; and a facility with ten beds on deposit would lose one bed.
- The statewide maximum number of licensed beds shall be reduced by the number of beds eliminated by application of the bank "service" or "docking" fee.
- Beds on deposit cannot be used or sold by the depositor.
- A facility may resume licensure, and its corresponding right to sale or use of deposited beds, by providing DHFS 18 months' advance written notice. If a facility resumes licensure of deposited beds, the beds will be counted in calculating the facility's per-patient-day costs. A facility cannot resume any bed or fraction of a bed that has been eliminated by application of the aforementioned "service" or "docking" fee.

For WHCA's position on the bed banking measure and the 91% occupancy standard, please see WHCA Issue Paper: "Nursing Home Bed Banking Proposal."

State of Wisconsin
1997 - 1998 LEGISLATURE

LRB-1683/P1
DAK:mfd:kat

DOA:.....Geisler – Nursing home bed banking

FOR 1997-99 BUDGET — NOT READY FOR INTRODUCTION

AN ACT ...; **relating to:** the budget.

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

PUBLIC ASSISTANCE

Under current law, under the formula for payment for care received in nursing homes and certain community–based residential facilities by medical assistance recipients, the department of health and family services (DHFS) may establish minimum patient day occupancy standards for determining costs per patient day for each of these facilities. DHFS determines payment by dividing total allowable facility costs by the actual adjusted patient days or patient days based on 91% of occupancy, whichever is higher. If a facility has an occupancy rate less than 91%, the allowed rate per patient day is inadequate to recover all of the facility's costs when applied to the actual number of patient days. Also under current law, the maximum number of licensed nursing home beds statewide is 51,795, as adjusted under various criteria by DHFS.

This bill permits nursing homes for which the bed occupancy is below the minimum patient day occupancy standards (91%) to request DHFS to delicense a licensed bed. If DHFS approves the request, DHFS must delicense the bed and may not include the bed in determining costs per patient day for the nursing home. The nursing home may not sell or use a bed that is delicensed. Every 12 months after a bed is delicensed, DHFS must reduce the licensed bed capacity of the nursing home by 10% of all the nursing home's delicensed beds or by 25% of one bed, whichever is

greater, and must also reduce the statewide maximum number of licensed nursing home beds by this number. However, the nursing home retains the right to resume use and licensure of a delicensed bed 18 months after the facility notifies DHFS that the facility intends to resume licensure of the bed, except that the nursing home may not resume licensure of a bed for which the licensed bed capacity of the nursing home has been reduced or of a fraction of a delicensed bed.

OTHER HEALTH AND HUMAN SERVICES

Under current law, the department of health and family services (DHFS) must give prior approval to the construction or total replacement of a nursing home; an increase in the bed capacity of a nursing home; a capital expenditure that exceeds $1,000,000 by or on behalf of a nursing home; an expenditure that exceeds $600,000 for clinical equipment by or on behalf of a nursing home; and the partial or total conversion of a nursing home to a facility primarily serving the developmentally disabled.

This bill eliminates the requirement for prior approval by DHFS of the total replacement of a nursing home, capital expenditures that exceed $1,000,000 for renovation or replacement of a nursing home and expenditures that exceed $600,000 for renovation or replacement of clinical equipment of a nursing home.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION **1.** 49.45 (6m) (a) 3. of the statutes is amended to read:

49.45 **(6m)** (a) 3. "Facility" means a nursing home ~~as defined under s. 50.01 (3)~~ or a community–based residential facility that is licensed under s. 50.03 and that is certified by the department as a provider of medical assistance.

SECTION **2.** 49.45 (6m) (a) 5. of the statutes is created to read:

49.45 **(6m)** (a) 5. "Nursing home" has the meaning given under s. 50.01 (3).

SECTION **3.** 49.45 (6m) (ap) of the statutes is created to read:

49.45 **(6m)** (ap) If the bed occupancy of a nursing home is below the minimum patient day occupancy standards that are established by the department under par. (ar) (intro.), the department may approve a request by the nursing home to delicense

any of the nursing home's licensed beds. If the department approves the nursing home's request, all of the following apply:

1. The department shall delicense the number of beds in accordance with the nursing home's request.

2. The department may not include the number of beds of the nursing home that the department delicenses under this paragraph in determining the costs per patient day under the minimum patient day occupancy standards under par. (ar).

3. The nursing home may not use or sell a bed that is delicensed under this paragraph.

4. Every 12 months following the delicensure of a bed under this paragraph, for which a nursing home has not resumed licensure under subd. 5., the department shall reduce the licensed bed capacity of the nursing home by 10% of all of the nursing home's beds that remain delicensed under this paragraph or by 25% of one bed, whichever is greater. The department shall reduce the statewide maximum number of licensed nursing home beds under s. 150.31 (1) (intro.) by the number or portion of a number of beds by which the nursing home's licensed bed capacity is reduced under this subdivision.

5. A nursing home retains the right to resume licensure of a bed of the nursing home that was delicensed under this paragraph unless the licensed bed capacity of the nursing home has been reduced by that bed under subd. 4. The nursing home may not resume licensure of a fraction of a bed. The nursing home may resume licensure 18 months after the nursing home notifies the department in writing that the nursing home intends to resume the licensure. If a nursing home resumes licensure of a bed under this subdivision, subd. 2 does not apply with respect to that bed.

SECTION 4. 150.21 (1) of the statutes is amended to read:

150.21 **(1)** The construction ~~or total replacement~~ of a new nursing home.

SECTION 5. 150.21 (3) of the statutes is amended to read:

150.21 **(3)** A capital expenditure, other than a renovation or replacement, that exceeds $1,000,000 by or on behalf of a nursing home.

SECTION 6. 150.21 (4) of the statutes is amended to read:

150.21 **(4)** An expenditure, other than a renovation or replacement, that exceeds $600,000 for clinical equipment by or on behalf of a nursing home.

SECTION 7. 150.31 (5t) of the statutes is created to read:

150.31 **(5t)** The department shall decrease the statewide bed limits specified in sub. (1) to account for any reduction in the licensed bed capacity of a nursing home that has relinquished use of a bed, as specified in s. 49.45 (6m) (ap) 4.

SECTION 8. 150.35 (3m) (a) 3. of the statutes is amended to read:

150.35 **(3m)** (a) 3. All applications for activities that are specified in s. 150.21 (3)~~, that are renovations with capital expenditures which do not exceed $1,500,000 and that do not include additions, the replacement of a nursing home or an increase in the bed capacity of a nursing home~~.

SECTION 9. 150.39 (2) of the statutes is amended to read:

150.39 **(2)** The cost of ~~renovating or~~ providing an equal number of nursing home beds or of an equal expansion would be consistent with the cost at similar nursing homes, and the applicant's per diem rates would be consistent with those of similar nursing homes.

(END)

WHCA
Wisconsin Health Care Association

Background Paper:
Nursing Home Fines and Forfeitures

The March 5th article in the *Milwaukee Journal Sentinel's* recent series targeted the Bureau of Quality Assurance's track record in assessing, enforcing, and collecting nursing home forfeitures under state law. It was critical of BQA delays in notification of facilities of fines that the Bureau intended to pursue for alleged non-compliance with state licensure requirements. It was highly critical of the lengthy delays experienced in resolution of administrative appeals filed by facilities challenging the appropriateness of the fines and the underlying allegations of non-compliance. Lastly, the article publicly questioned the manner and degree to which forfeitures initially proposed by BQA were subsequently reduced in a "binge" of 1995 settlements designed to reduce the backlog of cases.

Based upon the reporter's assessment of the appeal process and policies administered by the BQA during 1995 and 1996, the article prominently expressed the following "key findings:"

> *"State neglect of its system for fining nursing homes for poor care has meant big breaks for hundreds of Wisconsin homes."*
>
> *"Wisconsin nursing homes cited for violating basic care standards have routinely avoided punishment for years."*
>
> *"State lawmakers gave nursing homes a generous appeal right that existed in no other state."*

While WHCA takes legitimate exception to much of what was either expressed or implied in the *Journal Sentinel* article, we are more disturbed by what was not said.

First, and foremost, the article fails to adequately communicate one of the basic and inflexible requirements of the nursing home survey and enforcement process: both state and federal law demand that facilities immediately take and achieve corrective action to remedy any surveyor allegation of non-compliance. Corrective action must begin immediately, irrespective of the facility's belief that the surveyor's findings are erroneous. In this respect, the state and federal survey processes implement a "guilty until proven innocent" concept. In fact, in many cases facilities are not given any due process rights to prove their innocence.

A facility's limited rights to contest alleged compliance violations may only be exercised after corrective action has been taken. The exercise of an appeal right does not in any way impact or delay the facility's obligation to correct the non-compliance which has been alleged to exist. Indeed, a facility will be subject to additional citations and more severe sanctions if it does not correct an alleged problem in a manner and timeframe acceptable to surveyors. On many occasions, corrective action is taken at considerable time and expense to the facility and the underlying allegations are subsequently ruled or determined to be without merit. While the facility may avoid the imposition of fines as a result of adjudications, it cannot recover the cost it incurred in correcting a problem that never existed.

Our second major concern with the *Journal Sentinel's* presentation is that it promotes a perception that any resolution of an appealed violation that results in a reduction of the fine that the BQA originally proposed constitutes an undeserved and unjust financial windfall for facilities. Such a portrayal ignores:

- That a significant portion of forfeiture reductions are attributable to the fact the surveyor's original judgment was in error, or failed to take into account relevant documents and information that would have mitigated or eliminated their original compliance concerns. Surveyors, like facility staff, are not infallible and make judgment errors. Indeed, their judgments are often subjective and made on the basis of a limited review of selected patient records that neither accurately nor comprehensively present the actual nature of the events or circumstances which may have occurred. The existence and exercise of due process rights stand as a safeguard against facilities being subject to inappropriate application of sanctions attributable to erroneous surveyor assessment of relevant fact or law.

- Settlements oftentimes include an agreement that a facility will commit additional funds toward securing outside consultants, providing staff training, or making facility enhancements to improve future compliance and quality of resident care. Such settlements recognize that the imposition of fines only benefits the state's school fund and detracts from a facility's financial ability to make the corrections necessary to achieve and maintain compliance.

- In some settlement situations, portions of fines are "held over." They will not be imposed if the facility

maintains a "clean record" of compliance in the area that was originally cited.

- Fines should not be imposed against facilities which are infrequently out of compliance. Rather, they should be levied against facilities which refuse to correct or maintain compliance after incidents of non-compliance are identified. Under state law, fines may be imposed on facilities solely on the basis of a single incident of alleged non-compliance. Under federal law, fines are generally applied only to penalize those facilities which fail to correct an alleged violation.

- Under both state and federal law, the BQA possesses authority to propose a variety of sanctions other than fines to effectively address alleged regulatory non-compliance. Alternative sanctions include state imposed plans of correction, ban on payment for new admissions, denial of payment for all resident care, state-monitoring of facility operations, directed in-service training, temporary appointment of new facility management, transfer of residents, facility closure, and termination of a facility's Medicare and Medicaid certification.

The Bureau of Quality Assurance readily admitted that its settlement actions in late 1995 were intended to effect a reasonable resolution of an unreasonable backlog of appeals. The backlog was not created as a result of nursing homes' routine filing of meritless appeals. Rather, it was due primarily to the fact that BQA lacked personnel sufficient to be able to manage its former responsibilities and, at the same time, assume its new and expanded obligations under the new federal survey and enforcement process.

The focus of the *Journal Sentinel* article should not be perceived as an attack on the appropriateness of the current system but, rather, as a questionable expression of concern for the appropriateness of the system's past administration. The timeframe which was the primary focus of the article was one of change and confusion attributable to the adoption of and transition to a new and highly complex federally mandated survey and enforcement system. The resources the state possessed at that time may have been insufficient to facilitate smooth transition to the new federal system without impacting the degree of attention it had previously given its other licensing and survey obligations. The problems Wisconsin encountered during this period of upheaval were typical of those experienced by all other states in attempting to understand and implement the new federal system.

Finally, one particular "key finding" made by the *Journal Sentinel* article is deserving of attention. The article submits that "State lawmakers gave a generous appeal right that existed in no other state." The "generous" appeal right referenced, but not identified in the article, applied to facilities' former statutory right to appeal "federal deficiencies" under s.50.04(4)(e) Stats. (As a result of a provision included in the last state budget, the long-standing right was repealed effective July 1, 1995.) Fines and forfeitures never applied to federal deficiency citations. While a facility appeal challenging a federal deficiency may have created additional workload for state agency personnel, the appeal process had absolutely no impact on, or relevance to, forfeitures assessed or collected by the state.

Our bottom line assessment of the *Journal Sentinel* article is that it focuses attention on administrative problems that are a part of the past and that have since been addressed and resolved by DHFS. Indeed, the policies and practices that were portrayed as questionable were temporary responses to unique circumstances that no longer exist.

WHCA

Wisconsin Health Care Association

MOTOR PROPANE SERVICE, INC.

P.O. Box 393, 5050 Center Rd., Manitowoc, WI 54221-0393, Phone 414-758-2479

NPGA
National PROPANE GAS Association

April 16, 1997

State Capital
Barbara Linton
State Representative
74th Assembly District
Madison, WI

Good afternoon Representative Linton,

My name is Julie Schaus, owner & operator of an independent propane gas company in Manitowoc, WI. My letter today to you is written in opposition of the proposed meter licensing fee that is presently on the table for the 1998 budget. It is my understanding that the joint finance committee, of which you hold a position on, will be holding a public hearing on this issue, Thursday, April 17th in DePere.

As a propane marketer, I am very concerned with the proposed tax on propane meters included in the 1998 budget. As I understand it, the purpose of this proposal is to raise $20,000 in additional revenue for the Department of Agriculture, Trade, and Consumer Protection (DATCP) while insuring accurate measurement of propane delivered to Wisconsin consumers.

My husband Greg, President of Motor Propane Service will be at the public hearing in DePere; he is a board member on the Wisconsin Propane Gas Association committee which strongly opposes the proposed meter licensing fee. The members of our state association view this fee as an additional tax which will indirectly be passed on to our consumers. If the states objective is to protect our consumers from being overcharged on the measurement of liquid propane this objective has already been met.

Propane companies such as mine pay for semi-annual & annual meter proving fees to private, state certified testers. These private testers have been certified by the states DATCP. They provide propane companies with documentation of test results and any corrections. Please allow me to briefly explain a liquid propane meter to you. A liquid propane meter is a mechanical device which positively displaces the product. As the meter wears, the displacement becomes less positive, causing product to slip past the meter without being measured. All meters have this built in wear curve that gives product away to the customer as wear occurs.

Please refer to the enclosed data from a meter manufacturer. As the data indicates, it is a given that propane retailers lose gas as the meter wears. The actual dollar loss to the retailer depends on the cost of propane and gallons delivered. Consequently, the consumer is the benefactor. It is in the propane retailers best interest to have its' meters proven to curtail such product loss. Thus, I believe the proposed meter fee is unjust.

Please consider further guidelines mandating all state certified meter testers forward their test results to the state for review. This change in venue would assure the state of meter compliance and thereby save the state thousands of dollars in administrative fees associated with state directed, on-site inspections. It is my hope that you will share this information with your colleagues on the joint finance committee to assist in their decision making process. Please call if I can be of further assistance to you in this important determination.

Respectfully,

Julie Schaus

Julie Schaus, Vice President
Motor Propane Service, Inc.

Liquid CONTROLS CORPORATION

105 ALBRECHT DRIVE
LAKE BLUFF, IL 60044
TEL: 847-295-1050 FAX: 847-295-1057

April 1, 1997

Greg Schaut
Motor Propane
PO Box 393
Manitowoc, WI 54221

Dear Mr. Schaut,

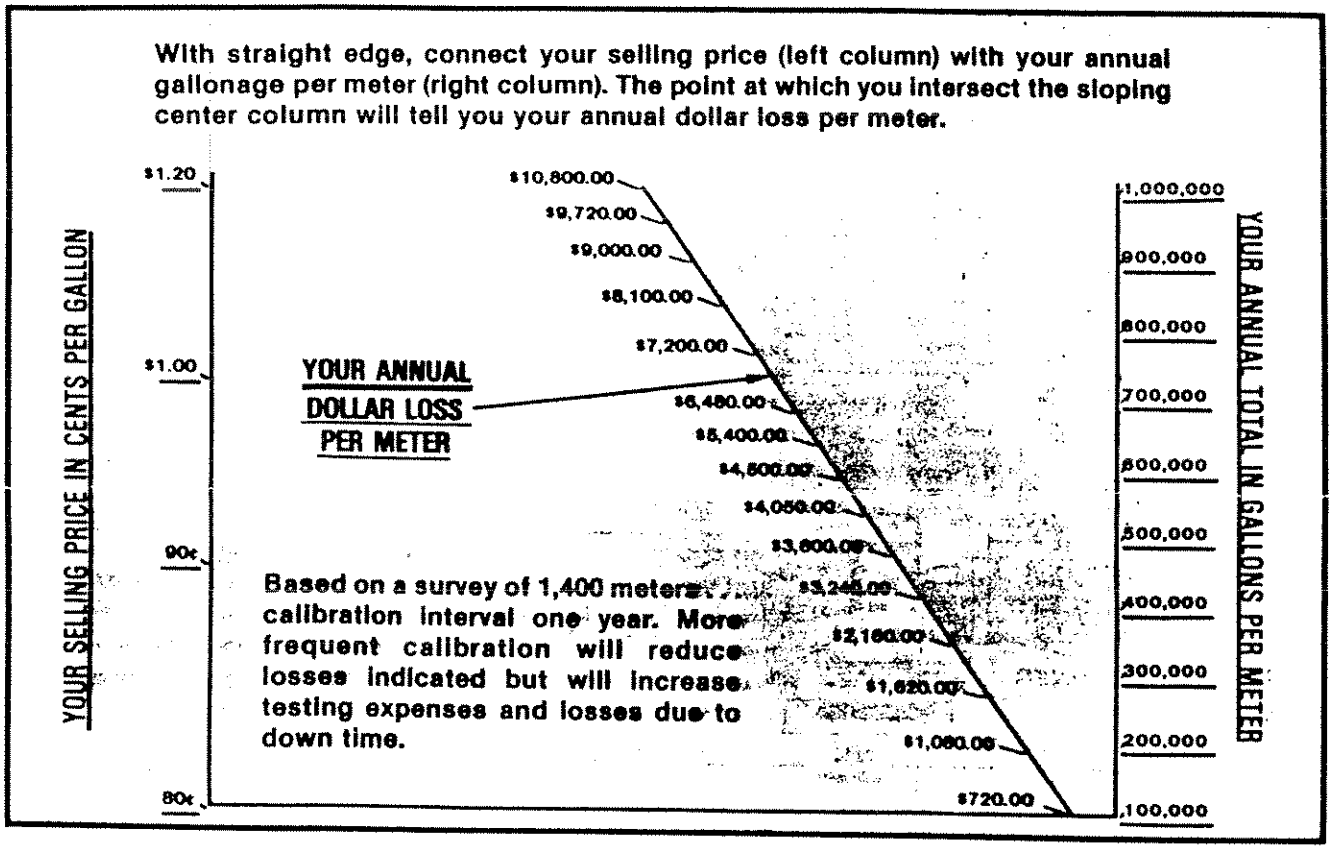
Mr. Beattie requests that I forward the attached literature pertaining to the loss of product as meters wear. He hopes that it will be of use in your correspondence with Gov. Thompson.

Please let me know of any additional literature that you may be in need of.

Sincerely,

Tammy L. Armfield
AA, Sales/Marketing

Do You Know How Much Meter Wear Is Costing You?

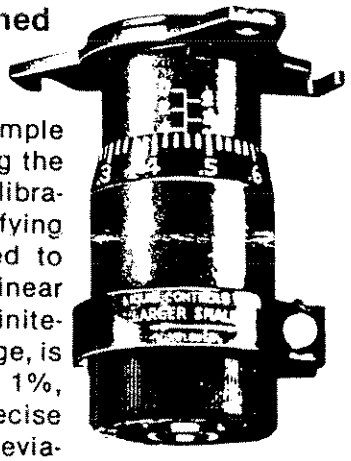


LIQUID CONTROLS LP-GAS METERS TOTALLY PREVENT SUCH LOSSES

Compare this loss due to wear with the fact that LIQUID CONTROLS LPG METERS TOTALLY PREVENT SUCH LOSSES. Liquid flows smoothly, is never squeezed, never expanded . . . eliminates inaccuracies caused by flashing. No material-to-material contact in the measuring chamber means no wear . . . no wear means no increase in clearances and no increase in mechanical drag or friction means no increase in slippage "product loss" . . . and no increase in slippage means **sustained accuracy**. Sustained accuracy means no loss of product due to the high wear rate common in competitive types which utilize reciprocating pistons, sliding vanes, or rotary gears. With LC you can accurately meter a greater volume before you need to check meter calibration.

ADJUSTER

Simple self-contained adjustment, no change gears.



The LC meter provides simple calibration by eliminating the need for a supply of calibration gears and by simplifying the calculations required to recalibrate the meter. A linear non-cyclical adjuster, infinitely variable over a 5% range, is graduated in divisions of 1%, 0.1%, and 0.2% for precise control. To correct for deviation the adjuster thimble is turned by hand to the exact % change required. For additional information see publication LC-83.

WPGA

Wisconsin **PROPANE GAS** Association

TO: Wisconsin Legislators

FROM: Wisconsin Propane Gas Association

DATE: April 11, 1997

RE: SB 77/ AB 100 Propane Meter Licensing

The Wisconsin Propane Gas Association (WPGA) is strongly opposed to provisions in SB77/AB100, which would impose a tax on propane meters. We respectfully request your support in removing this provision from the bill.

Provisions of SB 77/AB 100 which differ from current law

1. Require annual test of Propane meters by independent meter inspectors.
2. Require test results to be forwarded to DATCP along with $20 fee per meter.
3. Impose a fine of $150 for every meter failing inspection due to under-delivery of propane.
4. Impose a fine of $150 per meter for failure to test meters annually.
5. Impose a fine of $250 per meter if DATCP reinspects a meter and determines that the meter is still under-delivering propane.

Rationale for changes

1. DATCP needs $20,000.

WPGA Position

1. WPGA firmly believes that all consumers should pay for only the propane they receive. We support the concept of periodic testing of meters by private testers and would be willing to provide DATCP with the test results.
2. The role of DATCP should be limited to certifying private testers and conducting a limited number of meter tests to insure the accuracy of private tests.
3. We believe that by replacing DATCP testers with private testers, DATCP ought to be able to meet their budget requirements without imposing license fees or fines.

P.O. Box 886 • Madison, WI 53701-0886 • 608-255-9225 (phone) • 608-255-6711 (fax) • edblume@mailbag.com (e-mail)

Testimony

Dr. Verna Fowler
President, College of the Menominee Nation
Keshena, WI 54135
(715) 799-5600

Introduction

My name is Dr. Verna Fowler. I earned my Ph.D. degree from the University of North Dakota in 1992 in Educational Administration with a cognate in higher education. I am currently the President of the College of the Menominee Nation and have held that position since 1992 when the College was founded.

The College of the Menominee Nation (CMN), located in Keshena, Wisconsin on the Menominee Indian Reservation, is one of two tribally controlled colleges in the state of Wisconsin. The other is Lac Courte Oreilles Ojibwa Community College (LCOOCC) located on the Lac Courte Oreilles Reservation near Hayward, Wisconsin. Both CMN and LCOOCC are land grant institutions, sharing that distinction with the University of Wisconsin--Madison.

In my testimony today I outline the failure of the post-secondary systems in Wisconsin and throughout the nation to adequately serve Native American people. I then explain the impact of this failure on both the Native American and Wisconsin community. During this section of my presentation I outline why this failure is costing the Wisconsin taxpayer so much over the long run. Then I focus on the University of Wisconsin System, providing statistics which detail the failure of the System to serve Wisconsin's Native American citizens, then provide a remedy to this failure. I conclude by comparing the finances of the tribal colleges in Wisconsin with the rest of Wisconsin higher education, calling for the Wisconsin Legislature to amend Governor Thompson's 1997-99 budget proposal to appropriate $3,000 for each non-Indian student at the tribal colleges. The $564,000 appropriation requested will address a major inequity currently facing the tribal colleges--the fact that the tribal colleges receive no base funding from any source other than student tuition to provide educational services to non-Indian students. It will also help these Colleges to continue the important work they are doing with Indian students.

Documenting the Failure of Mainstream Public Universities to Adequately Serve Native American Communities

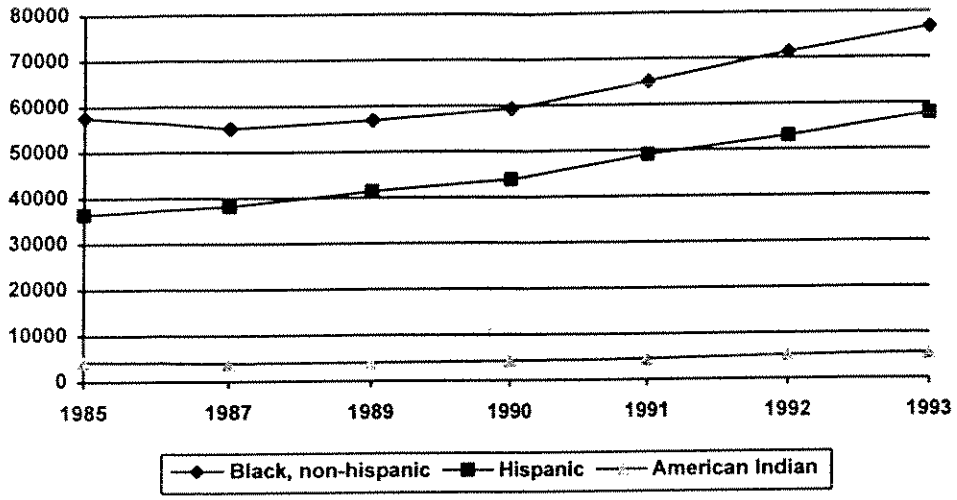
At the "Retain '96--Keeping the Vision" conference held at the University of Arizona in April 1996, the demographics of Native American higher education were summarized. The "Key Issues and Concerns" arising from analysis of those demographics at the conference were as follows:

- Graduation and retention rates for Native American students are dismally low.
- Growing numbers of Native American students are entering colleges due to an increased emphasis on minority recruitment. This recruitment is not always accompanied by an effective retention strategy.
- Dropout rates and low grade point averages for Native American students are indicators of a lack of success in motivating, supporting, and retaining Native students.
- Most institutions of higher education fail to take into consideration the learning styles of Native students based on culture, heritage, and experience.
- Campus climate has been identified as a critical factor in the success or failure of minority students, yet few institutions understand the racial climate as it is perceived by Native American students.
- Racial problems on campus are often visible, but rarely given high priority by administrators.
- Native American students face a long list of obstacles in attempting to persist to graduation from college: cultural isolation, unrealistic institutional and individual expectations of assimilation, lack of financial support, adaptability issues for Natives coming from rural to urban environments, inadequate primary and secondary school preparation, and unrealistic career expectations.

Meyers, G. Bruce, Proceedings Retain '96--Keeping the Vision, Retention in Education for Today's American Indian Nations (Tucson: University of Arizona, 1996), p. 36.

One of the most significant challenges facing the nation's higher education community is to implement strategies that solve Native American college retention problem. The following chart, "Bachelor's Degrees Awarded to U.S. Citizens and Permanent Residents, by Race/Ethnicity of Recipient and Field: 1985-1993, Selected Years," illustrates the seriousness of the problem:

Bachelor's Degrees Awarded to U.S. Citizens and Permanent Residents by Race and Ethnicity. 1985 - 1993 for Selected Years



Data Source: National Science Foundation, Women, Minorities, and Persons With Disabilities in Science and Engineering (Washington DC: National Science Foundation, 1996), p. 174

Census data shows that prior to and during the years covered by this chart, the birth rate for Native Americans increased faster than birth rates for either Black or Hispanic populations. However, as the chart illustrates, Native Americans earning baccalaureate degrees per year did not significantly increase.

Reservation Economies

Multiplying this problem's complexity is the fact that higher education is, for most Americans, the gateway to the economy. If a young person wants to find an entry-level job in today's marketplace, they need to possess at least an associate degree. A high school diploma is seldom accepted as the minimum credential for any but the lowest wage jobs:

> Poverty area householders were less educated. For 29 percent of poverty area householders, high school was the highest level of education completed; the same was true of a similar proportion of their counterparts who lived outside poverty areas. But poverty area householders were less apt to have furthered their education. For instance --
>
> Fifteen percent had attended college without obtaining a degree.
>
> Ten percent more had a bachelor's as their highest degree earned.
>
> Source: U.S. Census Bureau, 1994.

Therefore, Native Americans are caught in a cycle of despair in spite of the creation of the reservation gaming industry. Out of 557 federally recognized Indian tribes in the United States, only 188, or 34%, have developed gaming enterprises. Only 20 of these have achieved significant economic success (National Indian Gaming Commission, 1997). On Indian reservations economic success is increasingly tied to post-secondary education success. But for Native American students retention rates are exceptionally low, resulting in low graduation rates. This failure maintains the cycle of reservation poverty. The only reservations escaping from this cycle are only a handful of small tribes, such as the Oneida Tribe in Wisconsin, who have achieved economic gaming industry success.

According to the latest available statistics from the U.S. Census Bureau,

> The 1980 and 1990 censuses show that the poverty rate for American Indians has remained considerably higher than that of the total population. In 1989, 31 percent of American Indian persons lived below the poverty level, up from 27 percent in 1979. The national poverty rate was about 13 percent in 1989 and 12 percent in 1979. Source: U.S. Bureau of the Census, 1997.

The 1990 census also established that Menominee County was the 13th poorest county in the United States. This is an embarrassing statistic for the progressive State of Wisconsin.

Wisconsin Higher Education Statistics

Wisconsin's public university system has faced the same challenges educating Indian students as other states. Only 7.6% of total enrollment in University of Wisconsin universities are minority. American Indians constitute less than .7%, or less than 1%, of the total student body (Larsen, Merry, University of Wisconsin System Overview, Madison: Wisconsin Legislative Fiscal Bureau, 1997, p. 11). This is true even though Wisconsin has the fifth largest Indian population in the country and the birth rate among Indian people is higher than for any other racial group in Wisconsin.

Graduation rates for Wisconsin students are equally dismal. The six-year graduation rate for Anglo students that started in 1989 was, last year, 53.7%. The comparable rate for American Indian students starting in 1989 was only 24.3%. This rate even dropped slightly between the 1988 and 1989 cohort (The University of Wisconsin System, Accountability for Achievement 1996 Report, Madison: The University of Wisconsin System, 1996, p. 23). An analysis of the individual colleges and universities who enroll American Indian students is equally revealing. Most of the state's Indian population live in the service areas of the University of Wisconsin--Green Bay and the University of Wisconsin--Superior. Yet, only 95 self identified American Indian students are attending Green Bay with only 52 enrolled in Superior (Larsen, p. 11). These are not acceptable numbers.

Clearly, neither the state nor the university system are adequately serving the state's Native American citizenry. Just as clearly, new answers to this old dilemma are needed.

Why Is It Important That Wisconsin
Improves Native America Post-secondary Education Performance?

A number of reasons outline why Wisconsin needs to solve the Native American dilemma. Some of these are moral in nature, but just as important are those that have social and economic foundations. First, education is historically and objectively one of the state's most important functions. For democracy to flourish within any state's boundaries, an educated populace capable of furthering citizenship, commerce, and personal responsibility is necessary. In Wisconsin's contemporary economy post-secondary education is especially important for those persons who wish to become a contributing member to the state's workforce. The number of jobs for those without post-secondary training or education are shrinking while an increasing percentage of available jobs require such training or education.

Wisconsin also has an interest in reducing costs of welfare, crime, and other costs associated with those defined as needing the state's assistance. Minority populations afflicted with poverty exist out of proportion to their numbers and thus add an extraordinary burden to the State's welfare rolls. Poverty is one of the contributing factors to a large array of social problems, many of which are enumerated above.

The only way Wisconsin can successfully reduce its financial burdens over the long term is to find a way to place those suffering from poverty into post-secondary education. Still, the State's post-secondary institutions have, as documented in this testimony, in spite of the generous expenditure of resources and talent, not succeeded in their efforts to attract and matriculate persons from the state's minority communities. Persons from poverty communities have not significantly realized the benefits of Wisconsin's post-secondary education system, and the state has not been able to realize the financial and social benefits to be accrued from increasingly educated minority communities.

Wisconsin has recently embarked on a notable effort to reduce the size of the state's welfare system and to energize the state's business community with a larger trained and educated work force. The underutilized human capital in minority communities can help Wisconsin become more competitive in the global economy if such capital is fully utilized. To achieve the goal of turning wasted human capital into an asset for the state as a whole, Wisconsin needs to innovate in order to increase the efficiency of both its economy and social infrastructure.

The last point is that education can eliminate the barriers and misunderstandings that plague community to community relationships and often lead to the unraveling of the social fabric. We need not look any further than the situation with Quebec in Canada to see how dangerous this unraveling can become. Closer to home, the problems created when Native American people simply exercise what amounts to simple property rights cost the state substantial funds and created divisions that have shaken the social fabric in many Northern Wisconsin communities. A strong society is not united by culture, language, or even the ideas of its citizenry. A strong society is formed from the mutual respect and toleration that should be a part of the fabric of education. The failure to educate all citizens equally leads to misunderstandings which weaken societies and lead

to disaster. This may be the last point made in this portion of this testimony, but it is also one of the most important points to be made. As long as Native American Wisconsin citizens are unequally educated they shall be unequally employed. This inequality creates great costs and risks that need to be avoided if Wisconsin is to continue as a society with a strong progressive reputation.

The Solution To Wisconsin's Native American Post-secondary Education Dilemma

In "A Final Report by the University of Wisconsin System Board of Regents of its Study of the UW System in the 21st Century," the Regents recommended a highly flexible approach to managing the challenges posed by new educational technologies. In a key section of the Report, the Regents directed that:

> The Board of Regents should direct the President of the UW System, in collaboration with the chancellors, to explore strategies which would permit the UW System to move rapidly and effectively into the distance education market, and become a major provider. Specifically, the President should explore options such as:
>
> Quasi-public entities.
>
> Partnerships with private sector telecommunications entities.
>
> The use of Fund 104-131 and 132 (credit and noncredit outreach) or auxiliaries (Fund 128) for this purpose.
>
> Source: (University of Wisconsin System Board of Regents, Madison: http://www.uwsa.edu/bor/uw21st/21century.htm, 1996).

An approach that allows for quasi-public entities and partnerships with the private sector makes a lot of sense if the university system is to continue to deliver its traditional educational services effectively in the Information Age. However, the same kind of flexibility is needed in addressing minority post-secondary education and the State's tribal college needs. This state will benefit greatly if the Native American population can become educated and the tribal colleges can survive and grow.

What the College of the Menominee Nation and Lac Courte Oreilles Ojibwa Community College are recommending is that the state provide funding for non-Indian students who attend their campuses as part of a tribal college/University of Wisconsin/Wisconsin Technical College System partnership. This partnership should maintain the characteristics of the tribal colleges that have made them successful at educating Native American students while recognizing that it is in the State's interest to encourage the attendance of non-Indian students at the tribal colleges. Both the Indian and non-Indian public benefits as understanding and sharing between communities increases. The tribal colleges also meet a vital regional need for higher education that has resulted in increasing non-Indian student enrollments at both CMN and LCOOCC.

We believe this partnership approach will also, once and for all, help resolve, by strengthening overall tribal college finances, the Native American post-secondary education dilemma that has plagued this state for so long. By working with the tribal

colleges the University of Wisconsin's major college and university systems can dramatically increase the number of Wisconsin Native American students enrolling in post-secondary education, can increase the percent of those students who stay in school, and can increase the graduation rate. As the number of educated Native Americans increases, the economic welfare of the state's Native American population will improve, thus paying back the up-front investment the state makes in the tribal colleges.

The Success of Tribal Colleges; the Reasons for Their Success

A number of prestigious studies have studied tribal colleges and their success. A Carnegie Foundation report, Boyer, Ernest L., Tribal Colleges, Shaping the Future of Native America (Princeton: The Carnegie Foundation for the Advancement of Teaching, 1989), articles in the Tribal College Journal, scholarly work by Wayne J. Stein in his book, Tribally Controlled Colleges (New York: Peter Lang Publishing, 1992), and other scholars have documented the value of tribally controlled colleges to American higher education.

Scholars have identified a number of reasons for tribal college success:

1. Tribal governing bodies have often played an active role in encouraging tribal colleges and informing their communities about the value of the colleges.
2. Tribal communities have, as Wayne Stein phrased the idea, "supplied the goodwill necessary to found a tribally controlled college" and played an active role in working with students, faculty, and administration, giving the tribal college a strong community base from which to operate.
3. Tribal college leadership has been dynamic and innovative, reaching for dreams and forging relationships with tribal communities not often found in mainstream post-secondary education.
4. The philosophy and curricula of tribally controlled colleges have made them unique institutions. "Statements and academic programs which are Native American in nature have been deliberately inserted into the curriculum and philosophy to address the needs of tribal members" (Stein).

Today 14,000 students are attending 30 tribal colleges located in the United States. Over one third of those students will continue past the associate degree level and earn baccalaureate degrees. Wisconsin's tribal colleges enroll nearly as many Native American students as the rest of the University of Wisconsin System institutions. Nearly 25% of the enrollment at Wisconsin's tribal colleges are non-Indian students, primarily from the geographical region surrounding the colleges.

In Wisconsin two tribal colleges exist: College of the Menominee Nation, serving reservations in Northeastern and Northcentral Wisconsin, and Lac Courte Oreilles Ojibwa Community College, serving reservations in Northern Wisconsin. These colleges have been unable to achieve significant growth because of funding dilemmas, but together serve over 800 students per semester.

Tribal College Funding vs. University of Wisconsin System Funding

The major challenge facing Wisconsin's tribal colleges is a funding structure that limits the effectiveness of their programming. One of the miracles of the tribal college movement is that so much is accomplished with so little. Per Full Time Equivalent student income is far below what Wisconsin spends on its university and technical college student bodies, and no base support funding for non-Indian students is provided. Still, the instability and the lack of basic infrastructure caused by the shortage of funding negatively impacts both the tribal colleges and Wisconsin's ability to economically develop the Native American communities, and the geographic areas surrounding Reservations, within its borders.

One of the points that should be highlighted is that the tribal colleges are working with a high risk population. The typical tribal college student, non-Indian and Indian, comes to the college without the basic skills needed to succeed in a college level program. The tribal colleges, therefore, have to build skills before they can educate students and move them through a rigorous college-level program. Tribal colleges do not have the luxury of selecting top performing students from the state's high school pool of available college-ready students. That is not their mission. Their mission is to take whomever expresses the desire to become a college educated individual and to prepare that individual for success and to help them complete the academic work necessary for success. This means that the tribal colleges have a need for more faculty per college credit generated rather than fewer faculty. It also means that tribal colleges are severely underfunded. They underpay their faculty and staff and simply do without necessary services in order to continue their work. This results in high staff turnovers and instability. This situation is not in Wisconsin's long-term interest.

The current Wisconsin General Purpose Revenue (GPR) per Full Time Equivalent (FTE) student in the University of Wisconsin System is $6,670. This is down from a GPR/FTE per student of $6,800 in 1994-95. The amount of federal funding per FTE is $3,447 (Merry, 1997, p. 16). An important point to be made about this data is that the University of Wisconsin System is possibly the most efficient public post-secondary system in the nation.

At the College of the Menominee Nation the major funding source, other than student tuition, is the Tribally Controlled Community Colleges Assistant Act of 1978. Wisconsin's tribal colleges, in 1997, received $2,940 per enrolled Indian student FTE from this source. Both of Wisconsin's tribal colleges also serve non-Indian students from the geographical regions where they are located. These colleges receive no direct state GPR funds for either Indian or non-Indian students, collections of tuition equal less per FTE than the collections achieved in the University of Wisconsin System, and, as has been shown above, less is received per FTE from the federal government than is realized by the System, especially when non-Indian FTE numbers are added to Native American FTE numbers.

Conclusion

What is clear from all of this is that Wisconsin's tribal colleges have been serving the state's interests since their creation. Neither Wisconsin nor the federal government, however, have been providing anywhere near adequate support for these valuable resources. Both College of the Menominee Nation and Lac Courte Oreilles Ojibwa Community College, instead, have been existing on the edge, managing to maintain their service to the state without adequate funding. They have, in addition, taken on the additional privilege and burden of educating non-Indian students in their regions, fostering racial and cultural understanding and goodwill and moving toward a day when all of Wisconsin's various peoples will share equally in the state's economic and cultural life.

This Committee of the State of Wisconsin Legislature can improve the state's high quality post-secondary educational system by designating College of the Menominee Nation and Lac Courte Oreilles Ojibwa Community College as partner institutions with the University of Wisconsin and Wisconsin Technical College systems and providing funding for the non-Indian students these institutions serve. By increasing funding for these colleges, Wisconsin can begin to solve some of this state's most severe problems with poverty, thus saving considerable tax dollars in the long run. This Committee can also do what's right and just by including the tribal colleges in the State of Wisconsin's budget for the first time. They can improve diversity within the University of Wisconsin and Wisconsin Technical College Systems and create a better future for both Indian people and those non-Indians who choose to attend the state's two tribal colleges.

I urge the Joint Finance Committee to support the effort by Wisconsin's two tribal colleges to amend Governor Thompson's budget proposal and appropriate $3,000 for each non-Indian student attending Wisconsin's tribal colleges.

Thank you,

Dr. Verna Fowler
PRESIDENT, COLLEGE OF THE MENOMINEE NATION

CENTER PROJECT
An Affiliated Agency Of The AIDS Resource Center Of Wisconsin

Testimony Before The Joint Finance Committee
In Support Of Increased funding For AIDS/HIV Prevention Education

Good day. Thank you for the opportunity to address the committee regarding funding for AIDS/HIV prevention education.

My name is Stan Kocos. I am currently the Executive Director of Center Project, an AIDS service organization serving northeast Wisconsin. In this capacity I administrate the day-to-day operation of all agency services. In addition, I am still periodically able to get out from behind a desk to provide direct AIDS/HIV prevention education and training services.

Not more than two hours ago I provided a training for one of the area Cooperative Educational Services Agency districts, which was intended to increase the level of HIV and AIDS knowledge of public school personnel working with high-risk youth. I provided this service because there was a strong demand for this information, and none of our other prevention specialists was available. On this rare occasion, I was. Tomorrow I might not be. Programs such as this throughout the state have been severely curtailed or eliminated due to the removal of funding during the previous biennial budget process.

We are clearly aware that there is substantial under-funding in HIV prevention, specifically in the priority areas of outreach counseling and testing, peer education, one-to-one risk-reduction education, HIV prevention case management, materials distribution, opinion leader strategies and development of harm-reduction skills. We in the AIDS/HIV field know this by our direct contact with infected and other high-risk populations that are not currently being reached due to lack of sufficient resources. The numbers here in Wisconsin support this conclusion:

- HIV/AIDS cases have increased by 25%-700 new cases in just two years
- AIDS has become a leading killer of state residents from age 25 to 44
- The number of newly reported cases is rising most rapidly among women

The Wisconsin HIV Prevention Community Planning Council has done excellent work over the past two years in determining the most effective HIV prevention strategies for populations at greatest risk of contracting HIV. Consistent with state epidemiological data on HIV cases, the Council, via it's extensive 1997 HIV Prevention Plan, has identified the highest priority populations that should be targeted with more intensive HIV prevention education. So, if we know who it is we should reach, and with what we should be reaching them, then what's the problem? Sixteen years into the AIDS epidemic, Wisconsin has yet to conduct a coordinated statewide HIV prevention campaign to increase awareness and increase knowledge of the disease.

I ask that you support an increase of $300,000 in each year of the biennium for HIV prevention education to address the unmet needs identified by the Wisconsin HIV Community Prevention Planning Council. If only one new infection per year is prevented, then this expenditure will have resulted in a cost savings when compared to the expense of other long-term governmental support for a person living with AIDS.

Respectfully,

Stan Kocos

increase by $32.2 million in FY 98 and $21.6 million in FY 99. The 3% E&D increase represents only 1% of the total DOT budget increase.

Long-Term Care Ombudsman Program

The Governor proposes to restore the two Ombudsman positions he vetoed in AB 739 (Act 464). The Ombudsman program is operated by the Wisconsin Board on Aging and Long-Term Care and investigates complaints and mediates disputes on behalf of residents of nursing homes, Community-Based Residential Facilities (CBRFs) and COP.

ACTION STEPS

It is important to start talking with your **STATE** Senators and Representatives about the budget. CWAG suggests you highlight the following priority needs of older persons:

1) There is a need for much more *COP* funding to help older persons and people with disabilities to remain in their own homes.

2) There is a great need for additional funding for *Elderly and Disabled Transportation Assistance* programs especially if there is a gas tax or other increase in the DOT budget (which is very possible).

3) There should be increased funding for the *Ombudsman program* to also be responsible for investigating complaints from residents of Assisted Living Facilities, and to provide a coordinator position to continue developing a *Volunteer Ombudsman program*.

4) There is a need for additional funding for the *Benefit Specialists program*.

5) Funding to provide services to the victims and families of *Elder Abuse* should be increased.

6) Legislators should expand the *Homestead Tax Credit program* as a way of providing some property tax relief to renters as well as more equitable relief to low-income households.

It is important to talk with all legislators but it is especially important to talk with the members of the Joint Committee on Finance (listed below) who will be the first to review the Governor's budget and will make the most changes in the budget, such as those described above.

Joint Committee on Finance

Sen. Brian Burke (D) - Co-Chair - 266-8535
Rep. Scott Jensen (R) - Co-Chair - 264-6970

Sen. Russell Decker (D) Vice Chair . 266-2502
Sen. Gary George (D) 266-2500
Sen. Robert Jauch (D) 266-3510
Sen. Joseph Wineke (D) 266-6670
Sen. Kevin Shibilski (D) 266-3123
Sen. Robert Cowles (R) 266-0484
Sen. Mary Panzer (R) 266-7513

Rep. Tom Ourada (R) Vice Chair . . 266-7694
Rep. Cloyd Porter (R) 266-2530
Rep. Sheila Harsdorf (R) 266-1526
Rep. Dean Kaufert (R) 266-5719
Rep. Sheryl Albers (R) 266-8531
Rep. Barbara Linton (D) 266-7690
Rep. Spencer Coggs (D) 266-5580

Other Medical Assistance Rate Adjustments

The Governor requested increases of 2.1% in FY 98 and 2.5% in FY 99 for acute care hospitals (grand total of $21.2 million). An annual 1% increase was recommended for all other MA providers (grand total of $20 million).

Women's Health Initiative

The Governor proposes spending $3.1 million in FY 98 and $2.2 million in FY 99 (all funds) for a new women's health initiative. The initiative includes: (1) $1 million for health screening services for low-income, uninsured women; (2) strengthening domestic abuse enforcement and providing funds to support eight additional domestic abuse shelters; (3) $900,000 over the biennium to highlight women's health concerns, such as breast cancer and osteoporosis, and include education and prevention activities; (4) targeted case management for women between ages 45-64 to help them obtain health services; (5) creating a position of Women's Health Officer to focus on the special health needs of women and (6) spending $600,000 to purchase a mobile mammography van to expand the availability of breast cancer screenings.

Supplemental Security Income (SSI) Program

SSI provides income supplements for very low income elderly, disabled and blind persons. SSI is primarily a federal program but many states provide a state supplement to the federal amount (e.g., one person receives $568 of which $84 is the state supplement. A two-person household receives $858 of which $132 is the state portion). In Wisconsin the total amount received represents 88% of the federal poverty level for one person and 99% for two persons.

The Governor's budget decreases the state's share of SSI payments by $10.5 million to reflect federal changes that eliminates SSI eligibility for persons for whom alcohol and other drug abuse is a major factor contributing to their disability, non-citizens (legal immigrants) and certain children. Wisconsin has a maintenance of effort (MOE) requirement to spend $128.1 million in SSI payments (i.e., Wisconsin cannot decrease the state supplement below $128.1 million). Normally, because of the MOE requirement, the SSI state supplement would have been increased for all the remaining elderly, disabled and blind recipients. Instead, the budget proposes to shift SSI state funds to fund Wisconsin Works (W-2) payments to SSI parents with children. This frees up other state funds that would have been used for W-2. The conclusion--SSI recipients lose again!

Transfer of the Office of Health Care Information (OHCI)

The Governor proposes transferring OHCI from the Office of the Commissioner of Insurance (OCI) to the Department of Health and Family Services (DHFS) on the grounds of consolidating all health care data collection activities in one agency.

Transfer of the Health Insurance Risk Sharing Plan (HIRSP)

The Governor proposes transferring HIRSP from OCI to DHFS and model the program on the Medical Assistance program with claims paid at MA rates.

Elderly and Disabled Transportation Program

The Governor recommends a 3% annual increase in the E&D Transportation Assistance program (county transit aid and capital grants). The increase would be $199,200 in FY 98 and $404,400 in FY 99 for a total of $603,600. The overall Department of Transportation budget is projected to

TO THE EDITOR

THE BUDGET BILL OF GOVERNOR THOMPSON BILL (AB100) AND SB 67 WILL BE REFERRED TO THE JOINT FINANCE COMMITTEEON FINANCE. THE COMMITTEE WIL CONDUCT AGENCY BRIEFINGS IN MARCH AND PLANS TO HOLD PUBLIC HEARINGS AROUND THE STATE IN APRIL (PROBABLY THE SECOND AND THIRD WEEKS OF APRIL ALTHOUGH EXACT DATES ARE NOT YET AVAILABLE. PUBLIC HEARINGS ARE PLANNED FOR MILWAUKEE, EAU CLAIRE, WAUSAU AND MADISON. TWO HEARINGS ARE PLANNED FOR MADISON WITH ONE OF THEM BEING A TELCONFERENCE WITH SUPERIOR AND ONE IN GREEN BAY.

OUR JOB BETWEEN NOW AND EARLY JULY IS TO CONVINCE STATE LEGISLATORS THAT WHAT THE PEOPLE REALLY WANT IS TO DO SOMEWHAT DIFFERENT THEAN THE PRIORTIES PURPOSED BY THE GOVERNOR.

COMMUNITY OPTIONS PROGRAMS

THE GOVERNOR RECOMMENDS 400 (280 COP-WAIVER) COP PLACEMENTS IN EACH YEAR OF THE BUDGET WITH A COST OF $965,600 IN FY 98 AND $4,349,100 IN FY 99 ($5.3 MILLION TOTAL FUNDS) THE DEPT. OF HEALTH AND FAMILY SERVICES (DHFS) HAD REQUESTED A TOTAL OF ALMOST 2,500 PLACEMENTS WITH TOTAL FUNDING OF $15.5 MILLION.

THE COMMUNITY OPTIONS PROGRAM IS THE MOST ECOMONICAL LONG CARE PROGRAM WE HAVE, YET THE GOVERNOR SKIMPS ON THE FUNDING YEAR AFTER YEAR, WHILE THE WAITING LIST GETS BIGGER AND BIGGER. WE HAVE PEOPLE ON THE LIST WHO ARE DYING BECAUSE OF THE LACK OF FUNDS.

IT IS TIME WE WOKE UP AND WROTE TO OUR LEGISLATORS ABOUT THE NEEDS OF THIS PROGRAM. IF WE DON'T WAKE UP THE PEOPLE IN MADISON SOON WE WILL HAVE A LOT MORE PEOPLE DYING. THIS PROGRAM IS A LOT CHEAPER THEN A NURSING HOME AND OUR SENIORS CAN KEEP THERE DIGINTY ALIVE WITH A HAPPY LIFE RATHER THEN A NURSING HOME. FELLOW SENIORS LETS GET ON THE BALL AND WRITE TO OUR REPRESENATIVES AND SENATORS BEFORE IT IS TOO LATE.

LEO SIMON
1331 BELLEVUE LOT 353
GREEN BAY WIS 54302

TESTIMONY FOR JOINT FINANCE COMMITTEE April 17, 1997

I am Sherri McNamara, the Legislative Aide for Outagamie County. The Outagamie County Board has just begun the process of examining the State Budget as proposed by the Governor and has recently passed resolutions regarding the issues that I will present today.

First, the Outagamie County Board is very concerned with the accelerating rate schedule proposed for the juvenile correctional institutions and child caring institutions while maintaining the youth aids to the county at the present rate. The youth aids are the funds that are drawn on for the institutional placements of the young in our county and without an increase which corresponds to the institutional increase, the balance falls on the property tax. This does not appear to be fair and could be considered an unfunded mandate. Outagamie County proposes to tie the institutional rate increase to an increase in the youth aids funding.

Our second issue is Outagamie County's concern regarding continued funding of its three watershed projects which are (excuse the pun) in mid-stream. The proposed budget suggests that a moratorium be placed on the projects, then re-prioritized, and funded with limited funds. Outagamie County requests that continued funding of the watershed projects and acceptance of additional watershed projects be funded during the proposed evaluation period.

The third issue I wish to discuss is the reduction of the part-time study grant program for Wisconsin Veterans. This grant program targets veterans in need of training long after the GI Bill eligibility has ended. The reconfiguration of the reimbursement rate, proposed to be 50% of the cost of three-credit course offered at UW-Madison, results in

a reduction for the veteran who may be experiencing retraining due to downsizing at a time that his family needs prevent him from pursuing his educational needs. We urge you to eliminate Section 1382 of Assembly Bill 100 which will preserve the present language.

Thank you.

Sherri McNamara, Legislative Aide
Legislative Services Office
410 South Walnut
Appleton, WI 54911
(414)832-1587