Community Living Alliance

1310 Mendota Street, Madison, WI 53714-1039

Partnership ■ Personal Care ■ Service Coordination

Testimony of Owen McCusker, Executive Director
Community Living Alliance, Inc.
Madison, Wisconsin

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Some background information on CLA:

Community Living Alliance, Inc was founded in 1998 by a group of people with disabilities and other community leaders to provide long term support and health care services to assist people with significant disabilities to live independently in the Dane County community. CLA operates three primary programs for people with significant disabilities: Medical Assistance personal care; Medical Assistance waiver service coordination; and the Wisconsin Partnership Program. In 2000 CLA will provide services to over 375 people with significant disabilities.

CLA, and its founding organization Access to Independence, have struggled for over ten years to provide Medical Assistance personal care services to over 100 people with significant disabilities. CLA has done so despite the chronic underfunding of the personal care benefit; lack of consistent technical assistance and administrative support from the state of Wisconsin, and continued public policy efforts to radically curtail access to the benefit. (e.g. "community caps" and efforts in past biennial budgets to eliminate MA personal care as a Wisconsin MA benefit))

Make no mistake about it, unless CLA and other organizations like it receive the support of the Wisconsin legislature, we will have to close our personal care program. In Dane County alone this will mean that between 135 – 300 people will have their health, safety and very freedom compromised. Many people who live independently in the Dane County community will be forced, against their will, to live in institutions!

Accomplishments of the CLA Medical Assistance Personal Care Program:

The CLA MA personal care program is one of the cornerstones of the community based long term support system for people with significant disabilities in Dane County.

- By the end of 200 CLA will serve 135+ people with significant disabilities in our MA personal care program.

608 242 8335 phone, voice TDD ■ 608 242 8583 TDD only ■ 608 240 7060 fax

Funded by Dane County Human Services and the Wisconsin Department of Health and Family Services

- CLA is one of the few local organizations willing to provide PLA services to people with significant disabilities.

- The CLA program "leverages" over $1.2 million dollars per year to augment local Medical Assistance waiver dollars. Without this money, the waiver programs would be $1.2 million "poorer." (i.e. without the program many current waiver recipients would suffer a drastic reduction in the services that they receive!) See below.

- The program brings $3 -3.5 million dollars into the Dane County Long Term Support system each year to assist people with disabilities.

- The program provides employment over 250 predominately female, lower income residents of Dane County that has with flexible hours and health care benefits. (In 1999, 16% of PLAs were ethnic minorities and 87% were female)

- The program is only one of a few PC programs in Wisconsin to use an "unscheduled" approach to providing services. Limiting the use of scheduling provides consumers with more flexibility to manage their own schedules, however, it is a more complex system to administer.

- The program is one of only a few in the state that emphasizes hiring family, friends and other "natural supports" as PLAs. This helps people build and sustain the informal supports they need to live independently.

- Currently 92% of all PC program costs are for salary / fringes and operating costs related directly to service provision (i.e. liability insurance) Nineteen percent (19%) of all salary and fringes are for non-PLA staff (i.e. service coordination and administrative staff).

- The CLA program is currently one of only a few PC programs in the state that provides health care benefits and workers compensation. (Workers employed under other community long term support programs (e.g. COP and Medicaid waivers) do not generally have access to these benefits.

- The continued existence of long "waiting lists" for COP and Medical Assistance waiver services in Dane County makes the CLA MA personal care benefit one of the few service options available for local residents with disabilities. (Currently there are 438 people on the Dane County "waiting list" for COP and MA waiver services.)

- The imposition of "daily cost containment limits" in the local COP and MA waiver case plans means that many people receiving these services need MA personal care to secure the total support services they need to live independently. (Currently over 50% of all people receiving MA personal care services from CLA also utilize the COP and / or MA waiver programs.)

The destruction of the CLA program:

Despite these accomplishments and the preference of a vast majority of Wisconsin citizens to live in their own homes the MA personal care benefit continues to experience benign neglect and worse from Wisconsin policy makers.

Without expanded legislative support, personal care service and many other LTS service that are vital to the independence of many Wisconsin residents will cease to exist! Consider just a few facts:

- Since 1997 more than 90 MA-PC programs in Wisconsin have "closed their doors." Of the remaining programs, 73% have had to lay off staff and reduce services while 43% anticipate that they may close their doors within a year. [1]

- Since 1998 4 Dane County personal providers have closed their doors. They are: Home Health United, Visiting Nurse Service of Dane County; Meriter Home Health Extended Care and Elder Care of Dane County. [2]

- Madison's unemployment rate has been the lowest in the whole country for the past 4 months! The seasonal unadjusted unemployment rate in Madison in September 1999 was 1.1%. (It was 1.6% in September 1998.) The service segment of the local economy has grown 30% over the past 6 years. It is growing at twice the rate of the Dane County job market as a whole. Current PLA wages are too low to make the work attractive in a very competitive labor market.

- CLA has on average 90+ "un-filled PLA shifts" per week (including Partnership and waiver employed attendants). (See above)

- The recent imposition of punishing "audits" by the state on the MA personal care provider network and the proposed "recoupment" of incredible sums of money for minor and questionable "paper work" errors is unprecedented! The "recoupment" that the state is demanding in these audits If allowed to stand, alone will destroy most remaining MA-PC programs [3]

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[1] C.f. October 11, 1999 letter from Russell King, President – Wisconsin Homecare Association to Governor Thompson.

[2] C.f. November 15, 1999 legislative memorandum from Rep. Mark Meyer entitled: "Co-sponsorship of LRB-3558."

[3] Currently over 50 Wisconsin counties provide personal care services directly or through POS contract providers. If seems naive to believe that any county government would willingly continue to subject itself to the risk of massive, punitive and seemingly arbitrary financial risks to operate these programs.

- Since 1989 the MA-PC program has seen only <u>one</u> increase in the "reimbursement rate" it receives from the state. This means that if you just factor for inflation over the same period that the "value" of the reimbursement rate has decreased by 27%! Many costs like health insurance rise much faster than the rate of inflation. (An increase of 75 cents per hour over the next biennium was just signed into law.)

- Since 1998 Dane County has had to augment the revenues the CLA PC program receives from the state to enable CLA to provide a "living wage" to PLAs. Simply put the program has not, for several years, received enough revenues from billings alone to "pay for itself." In 2000 Dane County will supplement Medical Assistance revenues for the program with over $294,000 in local tax levy dollars.

- Since January 1998 CLA has increased PLA wages by 28%; five days with "holiday pay" have been added. We have been able to do so only with the support of Dane County government local tax levy dollars. The current reimbursement level does not provide us with enough revenues to provide a "living wage."

- Due to new budget constraints Dane County will not be able to provide the amount of the subsidy required to "make the program whole" in 1999 or beyond. (In 2000 for example we currently anticipate that Dane County will be able to provide only 57% of the subsidy that the program needs to remain solvent.)

<u>What should the legislature do?</u>

- Provide a much needed and long overdue increase in the reimbursement rate for MA personal care by passing AB 630. (Also known as the "Meyer" bill.)

- Suspend the promulgation of administrative rules and the development of the MA personal care handbook until appropriate legislative and public oversight of the rule making process can be established. Recent changes on the federal level are further "de-medicalizing" the personal care benefit . This "de-medicalizing" is the clear preference of people with disabilities who receive this service. The legislature should assure that rules promulgation in Wisconsin reflects this larger federal intent.

- Suspend the current punitive state field audits of MA providers until an independent review of the methods and policies directing these audits can be determined. For example, a review of the audit "tool" should be conducted against the enabling legislation for the benefit. A review of the process that the state uses to determine which providers are "sanctioned" and which providers are "educated" as an outcome of the audit process should be undertaken.

- The legislature should determine whether it is reasonable public policy for the state to engage in a systematic auditing of providers that imposes such draconian punishments

for minor "paperwork" violations. Legislators should bear in mind that these proposed sanctions are not for fraud, poor service delivery, lack of service etc. they are for very minor "paperwork" violations. [4]

- Convene an independent study and advisory group made up of Wisconsin citizens, representatives of state governments and MA providers to develop a plan to effectively and respectfully deliver these vital services to Wisconsin residents.

[4] The presumption that violations even occurred at all is premised on the misleading assumption that the state promulgated and implemented consistent and clear rules / policies and technical assistance to MA personal care providers.

WHAT IS OUR MISSION?

Copper Family Treatment Services strives to create loving, caring, consistent environments where children and adults can realize their potential, live as independently as possible, have a quality life, and be valued members of their community.

For more info. call, write or fax:

(608) 625-2453 FAX (608) 625-2446
243 E. Lakeview Drive
La Farge, WI 54639

Copper Family Treatment Services

"We do our best so others can do their best!"

Providing loving, caring, secure environments and services in

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- Foster Homes
- Adult Family Homes
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For severely mentally and physically challenged Children & Adults.

High Level Services in Home Type Settings Located in the Beautiful Kickapoo Valley of Southwestern Wisconsin

QUALITY CARE SINCE 1976

HISTORY

The bicentennial year of 1976 was very important in the history of our nation and our own as well. A year of remembering our heritage and renewing our pledge to serve God, our Country, and those in need. Our former education and experience in sociology, psychology, management, and from the school of life, gave us the foundation we needed to open our doors to children and adults. Our home offered them an opportunity to be all that they could be. We continue to offer even more services today to better serve their needs, and the needs of others.

SERVICES AVAILABLE

* Residential care for children and adults
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* Highly individualized programs
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* Daily living skills
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* Recreation
* Socialization
* Behavior management
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* Occupational therapy
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* Community Services
* Day Services
* Parent/Child visitation coordination
* Well coordinated TEAM effort
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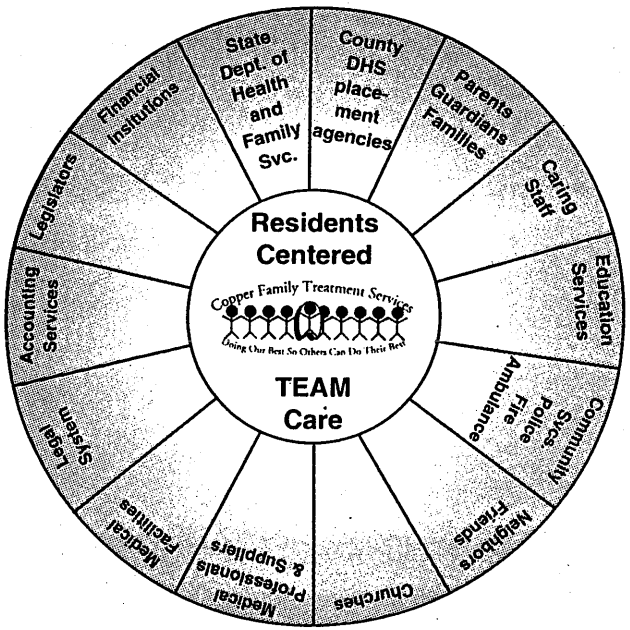
* Awake staff
* Air conditioned, pleasant homes
* Swimming pool
* Exercise room
* Pet Therapy

Copper Family Treatment Services offers State Award Winning Services



T. E. A. M.

Together Everyone Accomplishes More

PHILOSOPHY

We believe:

* Everyone has a purpose, God given gifts, and in a loving, caring, consistent environment their individual gifts can be realized.

* It is important to challenge, but not frustrate.

* In encouraging individuals to be individuals, to develop their talents, to be respectful of the rights of others and to be valued members of their community.

* To be effective, we must have empathy, not sympathy.

* A positive self image produces positive attitudes.

* In encouraging realistic independence in all programming.

* Everyone deserves to feel loved and be part of a family. A solid family structure offers a firm foundation on which to build their values and lives.

* In loving discipline, which is a positive guide to develop values, security, structure, positive self images, and well rounded personalities.

* Those whom we serve, do their best if we do our best.

* We are successful if one life has breathed easier because of us.

LINCOLN COUNTY DEPARTMENT OF SOCIAL SERVICES

Lincoln County Health & Human Services Center
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January 31, 2000

Senator Rodney Moen, Chair
Health, Utilities, Veterans & Military Affairs Committee

RE: Hearing on Title XIX Personal Care Services
February 2, 2000

Dear Senator Moen:

The Lincoln County Department of Social Services made the decision in December 1999 to begin managing the Title XIX Personal Care Program when the former provider chose to discontinue its certification. The department made this choice because there were no other providers in the area interested in providing Personal Care Services. Many of the recipients receiving this service are COP-Waiver cases. The costs associated with picking up this service under our existing Long Term Care Programs were prohibitive, as funding for those programs is very limited and could not absorb these extra costs. In many situations for the current recipients to continue to remain at home, the services need to be continued.

In light of the many severe audit findings some providers have faced, it is a major concern to us to be in compliance with the regulations of this program. Lincoln County is finding it very difficult to locate someone who will provide any training on compliance issues and audit concerns. EDS has been helpful on procedural questions but admits they are not trained to advise on the technicalities of audit compliance. Because of this experience, I suggest that the providers and Health Care Financing would benefit from the availability of outreach trainers to Personal Care agencies to avoid the impact of audit recoupment.

There is an obvious need for the audit process to find and recoup fraudulent activity. But for many agencies trying to manage the program effectively, there is a real vacuum in determining what is an acceptable procedure and what is not, without the burden of an audit finding.

We hope that a balance can be found between the ability to provide adequate training and the audit process.

In reading the publications, I have discovered that Health Care Financing approaches the care for this program similarly as they would institutional and medical services. Many Human and Social Services agencies now are interested in managing the Personal Care Program for the benefit of their clients. I wonder if the Personal Care Programs would more appropriately meet the needs of Wisconsin citizens if administered by the Division of Supportive Living, which has a history of managing community based services. This would also assist in centralizing community based services in one division, rather than the current process of patching together services from two state divisions using procedures which are not necessarily compatible.

I am sorry I personally was not able to attend this hearing, but appreciate your attention to this matter. I do hope some action will come from what you hear today to benefit those vulnerable and dependent citizens of Wisconsin in order for them to continue to receive the care and service they need.

Sincerely,

Donna Simek

Donna Simek
Adult Services Supervisor

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Promoting Quality of Life for People with Developmental and Related Disabilities

Celebrating 50 Years of Service

TESTIMONY REGARDING PERSONAL CARE

Senate Health, Utilities, Veterans, and Military Affairs Committee

February 2, 2000

Chairman Moen and Members of the Committee:

Thank you for holding this hearing on the very critical service called personal care. Most of the presentations and discussions are about the audits of counties and personal care agencies and the impact of the very low rates to providers and the staff performing personal care services. These are very critical issues since they both are having the effect of making it increasingly difficult for people who need this type of assistance to receive it.

Think about needing personal care assistance to be able to get up in the morning, to get ready for the day's activities or to get off to work, eat meals, etc. Also think about a parent or family member whose son or daughter or relative needs this type of assistance to survive in the community. If this service and support becomes unreliable or in jeopardy, how much worry does this cause a person or family? It literally terrorizes those at risk. The audits and the low rates are having this effect. Instead of the Department of Health and Family Services (DHFS) and the state giving assurance and assistance for these services, they are leading the charge to eliminate and threaten these critical services.

While you are hearing much about the specifics of the audit and the rate problems, I would like to take a few minutes to describe the personal care crisis within the context of what appears to be a concerted and comprehensive effort to deny community services to people with disabilities. Starting with the 1999-01 State Budget, there were critical omissions in addressing service needs including no new Community Options (COP) slots, no new CIP 1B slots, very limited rate increases, new community aids funds only to make up part of the Federal reductions, no family support increases and in general very little to address 11,000 people and families on the COP waiting list and 7,000 people and families on the Developmental Disabilities waiting list. We all recognize this in part was addressed by the legislature. Nevertheless, add to this the concerted effort to deny or make it difficult to obtain certain types of Medicaid services to individuals with disabilities and their families including OT, PT, speech therapy, personal care and

durable medical equipment; and with the chilling effects of the personal care audits it is like a web is being spun to deny needed and critical services.

This is in stark contrast with what is happening in many other states. I have attached copies of information about efforts of more than 20 states in addressing the disability waiting lists. In yet some other states, which likely will be a growing number and realistically should include Wisconsin, lawsuits are underway to require the state to provide basic services either under Medicaid policies such as in Florida or the ADA and the Olmstead Decision such as in Oregon. A January 14, 2000 letter to state Medicaid Directors from Federal Health Care Financing officials including the director of the Office of Civil Rights, Thomas Perez, provides directions to serve people in the most integrated manner and address waiting lists--not to create an environment of intimidation and denial of services.

We all recognize it is difficult for the Legislature to direct an administrative agency when it appears intent on carrying out a certain direction or policy. Yet this Committee, individual legislators and the Governor can have an impact on state policy and activities. The DHFS Strategic Business Plan, "Aiming Higher" describes "new thinking...thinking in terms of the outcomes of our services—how the service or program interventions made a positive difference?" Or in its Mission, "Treat others fairly and with respect." Or its Vision, "Wisconsin continues to be a leader in health and family services among the states; our citizens who are aging and/or disabled have cost effective living choices and support toward independence." Wisconsin appears a long way from these goals and principles.

At this time the people with disabilities are losing ground and Wisconsin is far from a leader in disability services. It is sad to see what has happened here in the past few years. DHFS may say Family Care is the answer to all of this. It may very well be, but at this time, it is an untested proposal with only limited impact on between 5 and 11 counties over the next 3.5 years. What about the rest of the state? If Family Care is to be successful, why drive many needed providers out of business before Family Care even gets started?

Hopefully as a result of the Legislature and Governor's intervention, DHFS will become a partner in solving the problems of waiting lists, unserved and underserved individuals and will provide leadership to help agencies develop and grow in providing services rather than intimidating agencies and forcing them out of the service system with low rates and nit-picking audits.

Since there are only procedural issues in all but a very few instances of the personal care audits, DHFS needs to work with the counties, tribes, independent living centers and providers to resolve the problems prospectively and not apply confusing and conflicting policies retrospectively. DHFS needs to put forth a significant effort to keep the existing agencies as providers and expand the number of agencies that can provide personal care services. The mission of DHFS is to lead the way in providing a little help to people who

need this to have some quality in their lives. People with disabilities need them to be this kind of leader.

There is no debate that the people who are receiving personal care need this service. There is no debate that the service has been and is being provided. There is no question that these current recipients and many more in the future will need personal care. DHFS needs to help make this happen.

Finally, because of the current policies of the state, at least one civil rights complaint has already been filed with the U.S. Department of Health and Human Services, Office for Civil Rights. It is likely more will be on their way to say nothing about the call that is getting louder for a lawsuit to be brought against the state for its concerted effort to deny Medicaid entitlement services to eligible individuals and for its violations of the ADA requirements. These types of actions take much time and energy. Hopefully through your efforts this can be avoided, and the state, consumers, counties, tribes, families, independent living centers and providers can work together to assure that quality of life opportunities are available for the individuals and families who need a little assistance to make this a reality.

Thank you for the opportunity to provide this information to the committee. Please let me know if The Arc can assist in any way.

Jayn Wittenmyer, Chairperson
Public Policy Committee

NASDDDS's

November, 1999
Vol. 6, No. 11

Community Services Reporter

Preliminary Injunction Issued in WV Waiting List Suit

Recently, the U.S. district court serving southern West Virginia granted the plaintiffs' motion for a preliminary injunction in the ***Benjamin H. et al. v. Ohl*** class action complaint (Civil Action No. 99-0338). The court found that the plaintiffs, five wait-listed children with mental retardation or a related developmental disability, were likely to succeed in their complaint on the merits. The Plaintiffs allege violations of federal law including provisions under Title XIX of the Social Security Act that guarantee "freedom of choice" and the receipt of Medicaid services with "reasonable promptness."

In making its determinations regarding the plaintiffs' claims, the court relied heavily on the district and circuit court rulings in the Florida *Cramer v. Bush* (formerly *Cramer v. Chiles*) and *Doe v. Bush* (formerly *Doe v. Chiles*) litigation (see related article on page). The court was especially clear in its interpretation that federal Medicaid law establishes an entitlement to services for individuals found to be eligible for ICF/MR services and that the state is obliged to furnish such services promptly.

While acknowledging that promptly furnishing services to wait-listed individuals would have budgetary ramifications, the court found that state officials had not provided a satisfactory explanation of the basis for its budgetary limits and pointed out that furnishing home and community-based services immediately to individuals would lead to reduced outlays over the long-term compared to providing the same persons with institutional services.

Background. Filed in April 1999, the ***Benjamin H.*** plaintiffs allege that the West Virginia Department of Health and Human Resources is denying individuals who meet ICF/MR level of care criteria access to needed services by maintaining a statewide moratorium on the expansion of ICF/MR bed capacity and failing to permit adequate growth in the state's Medicaid home and community-based waiver program for persons with developmental disabilities. The five named plaintiffs are all children, under 19 years of age, who are living in their family's home and on the waiting list for HCB waiver services. These indi-

(Continued on page 4...)

Inside This Issue

...Across the Country

From: **SMEIDELMAN@aol.com**
Date sent: **Wed, 26 Jan 2000 08:38:09 EST**
Subject: **The Arc and The Waiting List Get Incredible Press in NJ**
To: **Crim@thearc.org**

"Advocates for Disabled Welcome Money For More Group Homes"

The Star-Ledger (NJ's only statewide newspaper) Donna Leusner, Staff Writer

1/26/2000

Sharing the state's economic prosperity with the disabled, Gov. Christie Whitman wants to spend $72 million more in federal and state money to provide more group homes and give pay raises to those working in the homes.

About $19.2 million would allow 500 disabled adults, who are living at home with aging parents, to move to group homes. An additional 400 disabled people would be able to get job training or attend day programs.

Another $5.7 million will help 144 residents of state developmental centers move into group homes. A recent U.S. Supreme Court decision ruled that residents who want to leave state institutions and have been deemed by professionals as capable of living in the community should be able to do so. New Jersey has between 800 and 1,500 residents of state institutions who meet those qualifications.

Several thousand workers in group homes and job-training programs would receive 2 percent raises as part of a $13 million addition to the budget. That funding also would pay for a 1.6 percent cost of living adjustment for dozens of nonprofit agencies under state contract to run group homes and job-training programs.

The raises are important because low wages have historically resulted in high staff turnover in group homes. In a very tight job market, salaries are higher in supermarkets and discount chains than the $7 to $9 hourly wages in some group homes.

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State to raise spending on disabled
$41 million would bolster community care
By MICHAEL QUINLAN, The Courier-Journal
FRANKFORT, Ky. -- Gov. Paul Patton and key legislators said yesterday that the state ~~will put~~ an additional $41 million into services and community homes for mentally ~~retarded people and others~~ with disabilities during the next two fiscal years. The move would mean 700 to 800 of the 1,300 or so people waiting for care would get it -- salving a sore point for families and, in some cases, elderly parents who are trying to care for mentally retarded children at home. State officials said the eventual goal is to eliminate the waiting list for

From: **SMEIDELMAN@aol.com**
Date sent: **Mon, 24 Jan 2000 17:35:46 EST**
Subject: **New Jersey Waiting List Progress – Governor praises Key of yo Campaign**
To: **eidelman@thearc.org**

Governor Whitman today proposed an historic $72 million investment in services for people with disabilities. The following initiatives are included in this package;

COMMUNITY LIVING OPPORTUNITIES: Governor Whitman's fiscal year 2001 budget maintains her commitment for the fourth year in a row to support the ten-year plan to end the Community Services Waiting List for people with developmental disabilities. The budget includes $19.2 million to support community living opportunities for 500 people with developmental disabilities now living at home with their aging parents. The money will also support day programs--including supported employment--for 400 people with developmental disabilities and case management services for these individuals and their families. The fiscal year 2001 budget also includes $12.8 million for the full year costs of last year's (FY2000) Community Services Waiting List initiative.

New Jersey's plan is the model for The Arc (Association for Retarded Citizens' national campaign known as "Key of Their Own" that has resulted in similar commitments by governors and legislatures across the nation.

COMMUNITY SERVICES: This budget provides $5.7 million for community services for 144 developmental center clients who have been assessed by treatment professionals as ready to transfer to the community and who want to do so. Existing staff at the developmental centers will remain, resulting in a higher staff to resident level for remaining clients.

INCREASING CARE WORKERS' SALARIES: The quality of the community services provided to people with disabilities is directly related to the commitment and competence of the staff who provide these services. In order to avoid the disruption in services that results from

From: **SMEIDELMAN@aol.com**
Date sent: **Wed, 19 Jan 2000 17:00:29 EST**
Subject: **Florida**
To: **eidelman@thearc.org**

Governor Bush Releases More Budget Detail

Earlier today, Governor Jeb Bush released more information concerning the budget recommendations he will submit to the 2000 Florida Legislative Session.

As expected, and as announced last week, the Governor increased funding for programs that serve people with developmental disabilities by over $136 million in new funds for the coming fiscal year. The Governor indicated that this would represent a 53% increase in funding for this program and earlier indicated that his staff believed that these monies could eliminate the State's historically long waiting list for services and supports.

Advocates for individuals with mental health needs appeared to not receive the same level of support or recognition in the Governor's budget. According to the on-line budget document released by the Governor's office, next year's budget allocation for people with psychiatric disabilities will only receive a 5.6% increase in overall funding.

The Governor's budget specifically stated: "The Executive Budget also includes a 5.6% increase in mental health funding. Funds are provided to begin statewide implementation of the assertive community treatment pilot, expand jail diversion programs, and provide behavioral health care for children in protective services. These initiatives are part of the Governor's commitment to provide increased community-based services for the mentally ill. In addition, the Florida Commission on Mental Health and Substance Abuse is developing recommendations for changing the current delivery system which reflect the Governor's vision of individualized care in the least restrictive environment. The commission's work focuses on the use of psychotropic medications, role of mental health institutions, diversion efforts, and evaluation of local service providers. Through concerted efforts, our mental

Date sent: **Fri, 21 Jan 2000 15:33:35 -0500**
To: **spota@trib.com, SMEIDELMAN@aol.com, haybar@fcbl.net, ar arc@aristotle.net, arcca@quiknet.com, arct@aol.com, dcarc@ao arcfl@supernet.net, arc-hi@aloha.net, tony@thearcofil.org, arcin@in.net, thearcks@cjnetworks.com, arcofky@aol.com, arcmass@gis.net, arcmi@voyager.net, arcminn@ntn.org, ptiofns@misnet.com, arcneb@inetnebr.com, tbaffuto@arcnj.com arcnm@abq.com, nysarc@crisny.org, dave@arcnc.org, arcohio paulablue@hotmail.com, thearcpa@usa.net, riarc@compuserve. thearcsc@aol.com, mrenus@usit.net, bright@thearcocftexas.org, arcutah@burgoyne.com, arcwa@earthlink.net, arcwger@itis.co sbergey@trib.com, max@dca.net**
From: **The Arc of Virginia <arcva@richmond.infi.net>**
Subject: **Virginia Waiting Lists - Democrats Plan to Spend More**

Richmond Times Dispatch
1/21/2000

Democrats to seek more spending on health care
/ Amendments totaling $100 million planned

BY RUTH S. INTRESS
Times-Dispatch Staff Writer

House and Senate Democrats, pushing their health care agenda, said yesterday they'll put in additional budget amendments totaling more than $100 million for the next biennium.

The aim of these amendments would be to bolster mental health services, assist families caring for elderly relatives, aid unemployed textile workers and help poor children gain health insurance.

"From our youngest child to our oldest senior citizen, Virginians have pressing health care needs that are not being met," said Del. Jerrauld C. Jones of Norfolk, who is head of the assembly's Black Caucus and vice chairman of the House Democratic Caucus.

Jones declared that "Virginia Democrats are dedicated to seeing that those needs are met," and other Democratic lawmakers lambasted Gov. Jim Gilmore for failing to heed his own campaign promises to improve

From: **SMEIDELMAN@aol.com**
Date sent: **Mon, 17 Jan 2000 18:03:24 EST**
Subject: **Oregon Waiting List**
To: **jwilson@schuylerarc.com**

Disabled sue state to force payment of home care
A victory in federal court could provide more help for people who've been on waiting lists for years

Monday, January 17, 2000

-------- -- By Mark Larabee of The Oregonian staff

A federal lawsuit filed on behalf of six developmentally disabled and mentally retarded Oregonians aims to force the state to pay for residential and intensive in-home programs as required under the Americans with Disabilities Act.

The suit, filed by the Oregon Advocacy Center and Legal Aid Services of Oregon on Friday in U.S. District Court, names Gov. John Kitzhaber; Gary Weeks, director of the Oregon Department of Human Resources; and the Human Resources Department.

Although the lawsuit is not a class action, advocates for the disabled said a victory could mean sweeping changes for frustrated families dealing with severely disabled relatives, many of whom have been on waiting lists for more than a decade.

"The only way you get services is when you're in crisis," said Kathleen L. Wilde, a lawyer for the Oregon Advocacy Center. "When the parents die and suddenly there's no care, that's when the money is used."

A Key of Our Own
Unlock the Waiting List!
The Arc

KeyNotes

The Arc®
a national organization on mental retardation

September, 1999 - Vol. 2, No.2

1999 National Convention Edition

Waiting List Campaigns Having Impact in Several States

There has been considerable progress with Waiting List Campaigns across the nation. Here are some brief descriptions of state activities and achievements:

Alabama -- 600 attend breakfast for legislators in March; DD and MR services funded through different state agencies -- internal battles for limited $

Arizona -- 34-agency consortium; legislature fully funds children and adult programs (450 off lists); now working for future needs as state population increases

California -- committee formed; state says everyone receiving some service, even if not exactly what they want

Colorado -- task force investigating options; facing ìtaxpayers bill of rights"which caps budget increases at 6%; held legislative coffee -- big attendance

Waiting List Appropriations
FY '99--'00 (in millions)

Connecticut	$ 8.45
Florida	143.50
Indiana	19.50
Kansas	15.00
Maryland	36.40
Massachusetts	23.60
Minnesota	9.88
Nevada	10.45
New Jersey	35.00
New York*	47.60
New Mexico	8.15
No. Carolina*	42.00
Texas	6.20
Virginia	38.55
Total	$434.33

Approximately 15,000 people will be removed from wating lists in the coming year.
*includes federal funds

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Connecticut -- legislature passes $16.9 million over two years to serve 425 on lists

Delaware -- developed home build/purchase program; The Arc serves as developer of apartments and homes, other agencies provide support services; 187 waiting

Florida -- Gov. Bush and legislature pass $200 million funds for DD services, including $143 million for waiting lists '99 - '00; balance for program/data overhauls

Georgia -- 17-member coalition; Gov. Barnes commits use of tobacco settlement $ to fund 147 MR waivers in FY 2000 budget

Hawaii -- coalition battling disinterested legislature and governor; P&A filed lawsuit

Illinois -- 18-member coalition working with DDD to develop research for accurate count of people on waiting lists; proposing $50 million, 3-year initiative for DD services

Indiana -- coalition; legislature passes $39 million for '99 --'01; 1,300 to come off lists

Kansas -- Governor Graves & legislature agree on $10 million DD funds + $5 million for waiting lists for'99-'00 and $10 million DD funds for'00-'01

Kentucky -- coalition formed; 450 attend August 4 rally at Capitol

Maryland -- Year 1 of Initiative takes 2,000 off lists by 6/30/99; $36.4 million funding for Year 2 passes, additional 2,000 off lists in'99-'00

Massachusetts -- coalition; currently in mid-point of three-year plan; $13.6m for transition, $10m for wait lists '99 --'00; Gov. proposes $13.6m transition, $5m for wait lists'00-'01; parents file lawsuit

Michigan -- coalition; state-operated managed care program for adults started in Oct. '98; all to be served through person-centered planning

Minnesota -- Governor Ventura and legislature approve $39.5 million over four years for HCB programs; 2,600 -- 3,000 to come off lists

Nebraska -- coalition formed; feasibility study under way

Nevada -- legislature and governor pass $20.9 million over two-years for current and projected growth of HCBS waiver programs

New Hampshire -- planning; legislator developing bill for census of needs

New Jersey -- Governor Whitman's budget includes $32 million for Year 2 of plan; 500 residential, 400 day programs, + $3 million for family support services

New York -- coalition; in second year of five-year, $238 million (state & federal) plan for residential services; working of other programs

New Mexico -- filed lawsuit on behalf of four individuals in January - asking for jury trial; legislature/governor approve $8.15 m for'99-'00 -- 371 off lists

North Carolina -- 29-agency coalition; governor/legislators pass $30 million (state & federal) increase for 1,700 waivered individuals, plus $12 million (state) for 750 people not eligible for waivers

Oregon -- one legislator sponsoring census bill, another sponsoring new $10m in funds;

Pennsylvania -- 14-agency coalition; office of MR gathering accurate census; parents filed lawsuit

Tennessee -- coalition formed; campaign kicked-off at June 19 state convention

Texas -- coalition formed; $3.9 million over two years (new) for in-home and family support services, $0.5 million for supported employment; $8 million (new) for children on waivers

Utah -- coalition formed; 2,000+ on critical waiting lists; future Winter Olympics getting available funding for site improvements; many in state believe "people should take care of their own"

Virginia -- coalition; governor/legislators pass budget includes $38.55 million in new state and federal funds for waiting list programs serving about 2,000 people

Washington -- 33-agency coalition

Wisconsin -- coalition working with governor to increase budget for long-term care plan

Wyoming -- coalition forming

>From another listserv

Federal Judge Finds State in Contempt in Does – Assesses Fines

In a dramatic move, United States District Judge Wilkie D. Ferguson, Jr. has found the state of Florida "in contempt for willful non-compliance with a judgment of this courtâ[redacted]" in the Does v. Bush class action.

The Does case is not a case brought by the Advocacy Center but the Stateâ[redacted]s response to the contempt order may have substantial spillover effect on the Centerâ[redacted]s class actions (Cramer/Smith, Prado and Brown).

Does was originally filed in 1992 on behalf of 13 individuals with developmental disabilities alleging their access to timely provision of ICF/MR services was being denied in violation of statutory and constitutional rights. In August of 1996 the district court agreed with the plaintiffs and entered a judgment ordering the State to comply with Federal regulations by providing services in a reasonable period of time. The judgment was later affirmed by the Eleventh Circuit Court of Appeals.

Judge Ferguson's order fines the State $10,000.00 a day until a comprehensive plan which comports with the letter and spirit of the judgment entered August 28, 1996, is submitted and ready for implementation.

The Judge also expressed doubt and exaspertion with the State's intentions in trying to reform the State's developmental services programs. He suggested that because the amount of funds requested of the legislature for developmental services reform was 47% less than needed, it may be inferred that there was never an intent to timely comply with the mandate of the Eleventh Circuit or the District Court.

Judge Ferguson also questioned the State's survey method for determining eligibilty by declaring that the Florida status tracking survey represents unlawful rulemaking and violates individualsâ[redacted] right to due process.

The Judge also called the State's concept of "choice" for people with disabilities to be hollow stating that the current choice between ICF/MR and waiver is a â[redacted]phantomâ[redacted] choice. The Judge declared that â[redacted]eligible individuals offered community based services as an alternative to an intermediate care facility are not informed that, because of inadequate funding, acceptance of the offer does not insure placement in the immediate future.â[redacted] As found in Cramer, such choice is really no choice at all. â[redacted]The offer is misleading and serves the obvious purpose of allowing the agency to postpone the delivery of services.â[redacted]

Furthermore the Judge held that the State's efforts to comply with the Court's Orders were deliberately weak and ineffective implying that the State never intended to comply with the Court's Orders. The Judge stated: â[redacted]The compliance plan which has been presented to the court is one which would circumvent the judgment by (1) a tortuous interpretation of the decree; (2) denying or delaying placement of eligible individuals in ICF/DD facilities by an unlawful change in eligibility criteria; (3) misleading eligible individuals with offers of community based services as an alternative to intermediate care

facility when there are presently insufficient funds to provide these services, and ; (4) offering ICF placements at facilities far removed from home support bases or which are otherwise inappropriate.â[redacted]

Judge Ferguson leveled significant criticism at the State's Administration and Legislature declaring that the Departments new administrators "â[redacted]are hobbled by the same planned short-changing in appropriations which frustrated their predecessors.â[redacted]

In my many years of disability advocacy, I have rarely seen a federal court make their exasperation clearer or more articulate.

Will the State get the message? Who knows? It appears to many and apparently also now to Judge Ferguson that the State's leaders never have had the intention of complying with his Orders. Some believe, as I do, that the Attorney General's strategy has always been to delay, delay, appeal, delay, appeal and delay even further all actions related to the developmental services suits. This strategy suggests simply wearing down advocates; wearing down families and spending millions of dollars on defense moves instead of helping people.

Community Living Alliance

1310 Mendota Street, Madison, WI 53714-1039

Partnership ■ Personal Care ■ Service Coordination

Testimony of Owen McCusker, Executive Director
Community Living Alliance, Inc.
Madison, Wisconsin

Phone 608-242-8335 / extension 114
E-mail: mccusker@wpp.org

Some background information on CLA:

Community Living Alliance, Inc was founded in 1998 by a group of people with disabilities and other community leaders to provide long term support and health care services to assist people with significant disabilities to live independently in the Dane County community. CLA operates three primary programs for people with significant disabilities: Medical Assistance personal care; Medical Assistance waiver service coordination; and the Wisconsin Partnership Program. In 2000 CLA will provide services to over 375 people with significant disabilities.

CLA, and its founding organization Access to Independence, have struggled for over ten years to provide Medical Assistance personal care services to over 100 people with significant disabilities. CLA has done so despite the chronic underfunding of the personal care benefit; lack of consistent technical assistance and administrative support from the state of Wisconsin, and continued public policy efforts to radically curtail access to the benefit. (e.g. "community caps" and efforts in past biennial budgets to eliminate MA personal care as a Wisconsin MA benefit))

Make no mistake about it, unless CLA and other organizations like it receive the support of the Wisconsin legislature, we will have to close our personal care program. In Dane County alone this will mean that between 135 – 300 people will have their health, safety and very freedom compromised. Many people who live independently in the Dane County community will be forced, against their will, to live in institutions!

Accomplishments of the CLA Medical Assistance Personal Care Program:

The CLA MA personal care program is one of the cornerstones of the community based long term support system for people with significant disabilities in Dane County.

- By the end of 200 CLA will serve 135+ people with significant disabilities in our MA personal care program.

608 242 8335 phone, voice TDD ■ 608 242 8583 TDD only ■ 608 240 7060 fax

Funded by Dane County Human Services and the Wisconsin Department of Health and Family Services

- CLA is one of the few local organizations willing to provide PLA services to people with significant disabilities.

- The CLA program "leverages" over $1.2 million dollars per year to augment local Medical Assistance waiver dollars. Without this money, the waiver programs would be $1.2 million "poorer." (i.e. without the program many current waiver recipients would suffer a drastic reduction in the services that they receive!) See below.

- The program brings $3 -3.5 million dollars into the Dane County Long Term Support system each year to assist people with disabilities.

- The program provides employment over 250 predominately female, lower income residents of Dane County that has with flexible hours and health care benefits. (In 1999, 16% of PLAs were ethnic minorities and 87% were female)

- The program is only one of a few PC programs in Wisconsin to use an "unscheduled" approach to providing services. Limiting the use of scheduling provides consumers with more flexibility to manage their own schedules, however, it is a more complex system to administer.

- The program is one of only a few in the state that emphasizes hiring family, friends and other "natural supports" as PLAs. This helps people build and sustain the informal supports they need to live independently.

- Currently 92% of all PC program costs are for salary / fringes and operating costs related directly to service provision (i.e. liability insurance) Nineteen percent (19%) of all salary and fringes are for non-PLA staff (i.e. service coordination and administrative staff).

- The CLA program is currently one of only a few PC programs in the state that provides health care benefits and workers compensation. (Workers employed under other community long term support programs (e.g. COP and Medicaid waivers) do not generally have access to these benefits.

- The continued existence of long "waiting lists" for COP and Medical Assistance waiver services in Dane County makes the CLA MA personal care benefit one of the few service options available for local residents with disabilities. (Currently there are 438 people on the Dane County "waiting list" for COP and MA waiver services.)

- The imposition of "daily cost containment limits" in the local COP and MA waiver case plans means that many people receiving these services need MA personal care to secure the total support services they need to live independently. (Currently over 50% of all people receiving MA personal care services from CLA also utilize the COP and / or MA waiver programs.)

The destruction of the CLA program:

Despite these accomplishments and the preference of a vast majority of Wisconsin citizens to live in their own homes the MA personal care benefit continues to experience benign neglect and worse from Wisconsin policy makers.

Without expanded legislative support, personal care service and many other LTS service that are vital to the independence of many Wisconsin residents will cease to exist! Consider just a few facts:

- Since 1997 more than 90 MA-PC programs in Wisconsin have "closed their doors." Of the remaining programs, 73% have had to lay off staff and reduce services while 43% anticipate that they may close their doors within a year. [1]

- Since 1998 4 Dane County personal providers have closed their doors. They are: Home Health United, Visiting Nurse Service of Dane County; Meriter Home Health Extended Care and Elder Care of Dane County. [2]

- Madison's unemployment rate has been the lowest in the whole country for the past 4 months! The seasonal unadjusted unemployment rate in Madison in September 1999 was 1.1%. (It was 1.6% in September 1998.) The service segment of the local economy has grown 30% over the past 6 years. It is growing at twice the rate of the Dane County job market as a whole. Current PLA wages are too low to make the work attractive in a very competitive labor market.

- CLA has on average 90+ "un-filled PLA shifts" per week (including Partnership and waiver employed attendants). (See above)

- The recent imposition of punishing "audits" by the state on the MA personal care provider network and the proposed "recoupment" of incredible sums of money for minor and questionable "paper work" errors is unprecedented! The "recoupment" that the state is demanding in these audits If allowed to stand, alone will destroy most remaining MA-PC programs [3]

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[1] C.f. October 11, 1999 letter from Russell King, President – Wisconsin Homecare Association to Governor Thompson.

[2] C.f. November 15, 1999 legislative memorandum from Rep. Mark Meyer entitled: "Co-sponsorship of LRB-3558."

[3] Currently over 50 Wisconsin counties provide personal care services directly or through POS contract providers. If seems naive to believe that any county government would willingly continue to subject itself to the risk of massive, punitive and seemingly arbitrary financial risks to operate these programs.

- Since 1989 the MA-PC program has seen only <u>one</u> increase in the "reimbursement rate" it receives from the state. This means that if you just factor for inflation over the same period that the "value" of the reimbursement rate has decreased by 27%! Many costs like health insurance rise much faster than the rate of inflation. (An increase of 75 cents per hour over the next biennium was just signed into law.)

- Since 1998 Dane County has had to augment the revenues the CLA PC program receives from the state to enable CLA to provide a "living wage" to PLAs. Simply put the program has not, for several years, received enough revenues from billings alone to "pay for itself." In 2000 Dane County will supplement Medical Assistance revenues for the program with over $294,000 in local tax levy dollars.

- Since January 1998 CLA has increased PLA wages by 28%; five days with "holiday pay" have been added. We have been able to do so only with the support of Dane County government local tax levy dollars. The current reimbursement level does not provide us with enough revenues to provide a "living wage."

- Due to new budget constraints Dane County will not be able to provide the amount of the subsidy required to "make the program whole" in 1999 or beyond. (In 2000 for example we currently anticipate that Dane County will be able to provide only 57% of the subsidy that the program needs to remain solvent.)

<u>What should the legislature do?</u>

- Provide a much needed and long overdue increase in the reimbursement rate for MA personal care by passing AB 630. (Also known as the "Meyer" bill.)

- Suspend the promulgation of administrative rules and the development of the MA personal care handbook until appropriate legislative and public oversight of the rule making process can be established. Recent changes on the federal level are further "de-medicalizing" the personal care benefit . This "de-medicalizing" is the clear preference of people with disabilities who receive this service. The legislature should assure that rules promulgation in Wisconsin reflects this larger federal intent.

- Suspend the current punitive state field audits of MA providers until an independent review of the methods and policies directing these audits can be determined. For example, a review of the audit "tool" should be conducted against the enabling legislation for the benefit. A review of the process that the state uses to determine which providers are "sanctioned" and which providers are "educated" as an outcome of the audit process should be undertaken.

- The legislature should determine whether it is reasonable public policy for the state to engage in a systematic auditing of providers that imposes such draconian punishments

for minor "paperwork" violations. Legislators should bear in mind that these proposed sanctions are not for fraud, poor service delivery, lack of service etc. they are for very minor "paperwork" violations. [4]

- Convene an independent study and advisory group made up of Wisconsin citizens, representatives of state governments and MA providers to develop a plan to effectively and respectfully deliver these vital services to Wisconsin residents.

[4] The presumption that violations even occurred at all is premised on the misleading assumption that the state promulgated and implemented consistent and clear rules / policies and technical assistance to MA personal care providers.

DANE COUNTY
DEPARTMENT OF HUMAN SERVICES

KATHLEEN FALK
DANE COUNTY EXECUTIVE

Dane County Department of Human Services
Division of Adult Community Services

Director - Susan Crowley
Division Administrator - Fran Genter

Testimony on Medicaid Personal Care

Presented to the Senate Health Committee
February 2, 2000

Good afternoon. My name is Fran Genter, and I represent Dane County Department of Human Services, which has been a certified provider of MA Personal Care since 1989. In the past decade, Dane County, through its contracted agencies, has provided over 2 million hours of MA Personal Care service to older adults and people with physical or developmental disabilities. We currently provide 250,000 hours of service annually to 160 – 180 people, most of whom require several hours of care each day. Although this program was once self-supporting via Medicaid revenue, that is no longer true, as inflation and labor market pressures have driven up the cost of care. During 1998, 1999 & 2000, Dane County's local support for this service averaged $330,000 per year; that's nearly $1.0 million over a three year period. Our contracted agencies report actual costs of $14 - $17 per hour for this service, which is $2 - $5 per hour more than the established MA payment rate.

As you have heard/will hear many times today, Personal Care is a wonderful service. We were thrilled when the benefit was first created, and it continues to be among the most valued MA benefits. Personal Care offers assistance with bathing, dressing, eating, toileting, and ambulation that is essential to individuals remaining in their own homes and communities. It is the daily care that enables people to get an education, maintain employment and participate in community life. It offers an alternative for those on the waiting list for the Community Options Program (and, I'm sorry to say, Dane County has over 1,600 on its COP waiting list). Additionally, Personal Care is

blended with COP & CIP funds to create a comprehensive package of care for individuals with substantial needs.

While I am praising the program, I must also tell you the Dane County's Personal Care program is in trouble on many fronts. Financially, our program is losing more and more money each year. The $12.00 hourly MA rate simply does not come close to covering costs. Dane County's contribution of $369,000 for 2000 may get us through this year, but when Community Aids and other state and federal revenues are flat, the county's ability to increase its support is severely limited. One of our contracted providers, which served 64 consumers in 1999, is being downsized to 15 participants by the end of this month as Dane County is unable to continue to cover the substantial loses the provider was incurring. (We are working on finding alternative services for the displaced individuals.) We also have Labor Market woes. The $8.00 to $8.50 per hour that our contractors are able to pay personal care workers is low compared to other entry level jobs in Dane County. Workers receive some limited benefits, but those also compare poorly to other fields. Thus, turnover is high and new worker recruitment is awful. Many active participants must go extended periods with reduced service if their existing worker quits. Frankly, I don't know how they get by if they don't have family or friends to fill the gap. Thirdly, we are plagued by the threat of Recoupment via Audits. The State of Wisconsin may ask Dane County for a repayment of $750,000 or more, if recent audit findings experienced by other programs are applied to us. I sure hope this doesn't happen, because it could kill our program. It is our position (a) that we have provided a quality service for a mere $11.05 to $11.50 per hour, (b) that, given the lack of a provider manual, we have followed the verbal instructions we were given by state staff, and (c) that we have acted in good faith over the past eleven years. If an audit or lack of a reasonable rate forces us to pull the plug on this program, we will do so with great sadness and regret. Personal Care is an essential service, it's a fiscal bargain, and it will take a long, long time to repair the damage if this program is driven to extinction.

Fran Genter, Administrator
Division of Adult Community Services
608 242-6481
email: genter@co.dane.wi.us

COPPER FAMILY TREATMENT SERVICES, INC.

243 East Lakeview Dr.
La Farge, WI 54639

Phone (608) 625-2453
Fax (608) 625-2446

February 01, 2000

To whom it may concern,

Copper Family Treatment Services, Inc. has provided quality services for severely, cognitively, mentally, and physically challenged children and adults since 1976.

Most of the people we serve are one step from an institutional setting. The cost of care in institutions is approximately $400 - $600 per day per person. Our care rates are approximately 25% of the institution cost including personal care. We have defrayed the cost to all the counties who wish to utilize the personal care approved funding to serve our residents. This has helped to ensure the health, safety, and welfare and rights of each resident. Our goal is to help the residents live as independently as possible, realize their potential, have a quality life, and be a valued member of their community.

The direct care personal care staff spend a tremendous amount of time documenting time in - time out minutes to ensure the accuracy of billing. The amount of time, complexity of documentation, low pay, and poor hours has discouraged some personal care providers from wanting to provide services even as much as they care about others. These same employees can work at a fast food restaurant with less responsibility, no education, less training, choose their hours and earn more money. They truly have to love people to work in personal care.

We have worked closely with Vernon County Department of Human Services and Bethel Home and Services, Inc. for many years. They have always tried diligently to meet the personal care program criteria that they felt was being requested of them. We feel that the personal care audits that have been conducted are very unfair. I believe that most people are honest and want to operate programs according to the mandates established. However, the state and federal guidelines for many programs are vague and left for interpretation of whoever is monitoring at the moment. When we request information from individuals supposedly hired to administer programs, conflicting direction is sometimes given. How are we to know what the state and/or federal government wants when they aren't sure either what the code intends?

To ever rectify this major lack of communication and direction we must:

* Have clean cut directives and codes that are not left for interpretation.
* Federal and state staff must interpret the codes consistently with auditors and other administrators.
* Keep all recording simple, but thorough to ensure compliance.
* Develop a rule handbook with input from all levels of service area.
* Find positive ways to deliver the services to meet the needs of those eligible for services.
* Raise the personal care rate to attract and keep good employees.

Please consider this information to help us do our best to help others do their best. Our democratic form of government continues to be the best on earth, and was established "of the people, by the people, and for the people." Let's ensure that our actions in delivering personal care services is of the people, by the people and truly for the people.

God bless you,

Mr. & Mrs. Donald Copper

Mr. and Mrs. Donald Copper
Owners/Directors
Copper Family Treatment Services, Inc.

T E A M
Together Everyone Achieves More

TAMMY BALDWIN
2ND DISTRICT, WISCONSIN

BUDGET COMMITTEE

JUDICIARY COMMITTEE
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Congress of the United States
House of Representatives
Washington, DC 20515–4902

December 20, 1999

Mr. Russell King
Wisconsin Homecare Organization
Suite 33
5610 Medical Circle
Madison, Wisconsin 53719-1233

Dear Mr. King,

Thank you for contacting me regarding the effects the Balanced Budget Act of 1997 has had on hospitals and other health care facilities. I appreciate hearing from you.

As you know, the Balanced Budget Act of 1997 enacted the most far-reaching changes to the Medicare program since its inception. Medicare payments to health care facilities have undergone tremendous changes as a result of this legislation and recent program requirement changes.

I have been greatly concerned that the changes in Medicare have compromised the quality of care that seniors are receiving under the Medicare program. Controlling Medicare costs is a necessary goal, but the unintended consequences of the most recent cuts in Medicare have been severe. That is why I voted for the Medicare Balanced Budget Refinement Act, to improve access to health care in rural and medically under-served areas of the country by correcting unintended consequences of the Balanced Budget Act of 1997. Fortunately, this legislation was included in the final spending bill for fiscal year 2000.

Some provisions in the final legislation include:

- A four year exemption for small rural hospitals from the new Medicare outpatient payment system. It also gives cancer hospitals a permanent exemption from the new payment system;
- A cap on seniors' out-of-pocket expenses for certain out-patient treatment at $776;
- Help in caring for "medically-complex" patients and those seniors needing rehabilitation therapy for Skilled Nursing Facilities;
- A delay in the 15 percent scheduled payment reduction to home health agencies, and an increase of payments to help those agencies with added paperwork and record-keeping costs.

I am pleased that Congress was able to pass legislation to restore some of the 1997 Medicare cuts which have had an unintended impact on some providers and beneficiaries. I will be working in Congress on ways to improve and expand Medicare to increase the quality of life for our seniors.

Again, thank you for sharing your views. Your opinions matter to me. If I can be of service to you in any other way, please do not hesitate to let me know.

Sincerely,

Tammy Baldwin

Tammy Baldwin
Member of Congress

TB:ss

Wisconsin Homecare Organization

Newsline

The voice of home care in Wisconsin

January 2000

INSIDE

ADVERTISERS

Another view from the chair

A new year in home care

by Linda Gilbert, treasurer
WHO Board of Directors

It's that time of year again. The new year came in like a lamb for most of us. There were few computer problems and the world celebrated in high fashion. Resolutions were made to eat less food, lose weight, spend more time with our families and pledge to be better prepared next year for the holiday season.

The new year is a time of reflection and promises, and many of us will take a look at how our careers are stacking up against the goals we have set and the meaning of our jobs and daily work. We in home care have many challenges in front of us. We all need to be informed of reimbursement issues such as PPS and we need to inform our public officials on how PPS will impact our agency, our staff, and the quality of care to our patients.

WHO will continue to bring you information about the changes in reimbursement, regulation and oversight so you can better contemplate your job, your practice and agency position. Just as caring for patients requires the concentrated effort of nurse, physician and patient; working in the new millennium means that each of us must also be individually responsible for looking at work much differently within an environment that is changing. Here are my suggestions for the new year:

1. Embrace change, continue to be flexible and adaptable.
2. Be committed to quality of care for patients, establishing patient goals and outcomes.
3. Keep well informed to develop innovative solutions.
4. Become a valuable member of your care team and your state organization.

Home care's overall goals must be to work with everyone to find creative ways to effectively and efficiently care for patients. The new year and new ways may become the best ever.

State news

Quick access to the MA Forward card data

As you are aware, the Wisconsin Medicaid program has begun issuing Medicaid and BadgerCare recipients a new permanent plastic card called the Forward card. This card is a blue credit-card type of card that only provides the recipients name and ID

number on the card. Thus, the card no longer contains specific eligibility information such as dates of eligibility. Medicaid has indicated that Medicaid programs in other states already use such cards and have reduced administrative costs for those states.

The Wisconsin Health Information Network (WHIN) offers health care providers a way to obtain eligibility information by using a standard PC that is connected to a phone line. WHIN uses browser-based applications (such as Netscape or Internet Explore) to connect you to WHINs' secure network. Once connected, the health care provider enters the recipients' 10 digit MA number and within 15 seconds the recipient's eligibility information is displayed on the computer screen. The report can then be printed or stored as a file in the computer.

By using WHIN, your agency will decrease denials, submit more accurate claims, and be aware of eligibility prior to service being provided.

As reimbursement continues to decline, accurate eligibility information is a must! WHIN is working diligently with the Wisconsin Homecare Organization (WHO) to provide members with network pricing.

For more information, please contact Carole Gray Unis at Wisconsin Health Information Network at 414-489-5176.

Where to go for info at the state

For information on:

- Terminating or obtaining home health licensure, call Karen Turnure, Bureau of Quality Assurance at (608) 266-7782.
- Applying for Wisconsin Medicaid personal care certification, see the Medicaid All Provider Handbook or contact Provider Services at 1-800-947-9627.
- Terminating Medicaid home health certification, see the Medicaid All Provider Handbook
- Providing Medicaid personal care services, call Andrea Henrich at (608) 266-9438 or Sheila Chaffee at (608) 267-9697.

Rural health seeks home care ideas

The Wisconsin Office of Rural Health will be holding a one-day Rural Health Forum at the Sheraton Hotel in Madison on Feb. 16, 2000. The quarterly forums are an opportunity to bring rural health care professionals and administrators together to discuss timely policy and legislative issues. The Feb. 16th Forum will focus on the use of non-physician providers in under-served areas, as well as to explore RN workforce issues.

Also on April 27-28, 2000, the Wisconsin Rural Health Association is sponsoring it's 3rd Annual Rural Health Conference at the Hotel Mead in Wisconsin Rapids. At this point we are in the process of planning the conference and are seeking requests for presentations. The association would like to target a larger audience this year and would welcome the home care community's participation.

For further information, contact: Barbara L. Duerst, MS, RN, Associate Director, Wisconsin Office of Rural Health, 110 Bradley Memorial, 1300 University Avenue, Madison, WI 53706; Phone: (608) 265-5116; Fax: (608) 265-4400; E-mail: bduerst@facstaff.wisc.edu.

WHO baby arrives

Russell and Rhonda King are proud to announce the birth of their son, Jaden Robert, on Jan. 20, 2000. Jaden weighed in at 9 lbs. 4 oz. The King family also includes Daniel (11), Hannah (8), Logan (6) and Rylee (4).

Helpful web sites

✔http://www.wishomecare.org
Telemedicine
✔http://world.std.com/~goldberg/TLcontents.html
✔www.vtmednet.org
Free guidelines for health professionals
✔ www.guideline.gov
OASIS stuff
✔www.hcfa.gov/medicare/hsqb/oasis/hhnew.htm
✔www.asma-homehealth.com
✔fbesn@aol.com
Free Adobe Acrobat Reader
✔www.adobe.com/supportservice/custsupport/download.html
Pediatric home care and hospice
✔www.nahc.org click on peds@home
Home health educational materials
✔www.beaconhealth.org

2000

WHO Annual Convention
March 21 & 22

Tradition of Caring
Journey to Success

Wisconsin Homecare Organization
Park Plaza Hotel, Oshkosh

Highlights of the upcoming WHO 2000 convention

The Washington Update and PPS with Bill Dombi, Vice President for Law, NAHC.
This session will identify congressional status of home care issues within Medicare; recognize priority regulatory concerns for home care; and identify issues involving Medicare transition to the prospective payment system (PPS).

Home Care and the Internet with Tom Williams, Stony Hill Management, Inc.
This session will review Internet development, focusing attention on its potential use in home care to support both administrative and clinical applications. It will also identify cost-saving Internet-based technologies that can potentially be used to better position agencies to cope with PPS.

Seeking home care-friendly docs

WHO is trying to build a network of Wisconsin physicians who know and support home health care. If you know of such a physician in your community, please send his or her name and address to the WHO office. Thank you.

Cutting Costs, Not Services with Deborah Ondeck, *Advantage HCMR Consultants,*
At the completion of the program the participant will gain an understanding of how to decrease their visit cost through application of the principles of home health redesign and how to identify 3 methods of cost reductions that would maintain or enhance quality.

Fund-raising in the New Millennium with Melanie G. Ramey, *Center for Creative Management.*
At the completion of this program the participant will learn how the changing societal demographics will affect their ability to raise funds; how to understand the psycho graphics of potential donors; and how to develop a successful strategy for raising funds.

The Administrative Appeal Process for Home Care & Hospice Reimbursement with Laura M. Brown, *von Briesen, Purtell & Roper, s.c.*
In this program the focus will be on common billing problems; the appeals process for coverage denials and considerations for a cost-benefit analysis of alternate responses; and handling special situations that potentially increase exposure (e.g., Wedge audits, surveys).

Staff Productivity with Deborah Ondeck, *Advantage HCMR Consultants.*
After attending this session, participants will be able to define the importance of productivity: who, what, when, where, and why?; identify internal and external forces affecting productivity; and develop a plan to improve productivity in their organizations using the techniques that are provided.

Corporate Compliance for Hospice with Mary H. Michal, *Reinhart, Boerner, Van Deuren, Norris & Rieselbach s.c.*
At the culmination of this session, participants will gain an understanding of the basics of OIG Compliance Guidance and key risk areas. They will also gain an understanding of the elements of an effective compliance plan and have a checklist of preliminary implementation steps.

PPS: Financial and Operational Implementation & Strategies with Robert J. Simione, *Simione Central Consulting, Inc.*
In this session participants will learn to identify the differences in Medicare IPS and PPS methodologies; learn new payment terminologies and their meanings in preparing for PPS; and gain an understanding of what their organization should be doing now in preparation for PPS.

Joint Commission: The Most Troublesome Standards & Solutions for Compliance with MaryAnne Popovich, *JCAHO*
After attending this session participants will be able to: identify the top 5 Joint Commission Home Health non-compliant standards; gain an understanding of the meaning of the top 5 standards identified above; and articulate appropriate

methods of complying with the identified standards.

Re-engineering Documentation for PPS with Diane Omdahl, *Beacon Health Corp.*
Documentation will play an important role in the Prospective Payment System (PPS). This session will present strategies to help participants identify and shape critical components of documentation in order to meet the challenges of the PPS.

Home Health Care Updates with Andrea Henrich, *Bureau of Health* Care Financing (BHCF), Pam Owens, *United Government Services (UGS)*, and Barbara Woodford, Bureau of Quality Assurance (BQA).
Both Medicare and Medicaid representatives will report on any changes and any expected changes of importance to members. A question and answer period will follow. Please bring any questions you may have.

Exhibitors
Advantage HCMR
Beacon Health Corporation
Caravans, Inc.
EZ Way, Inc.
Ferris Manufacturing
McKesson HBOC
MedikMark
Purdue Pharma
Stony Hill Management Inc.
Universal Hospital Services, Inc.
U.W. Oshkosh College of Nursing
Wis.Health Information Network

For more information, please contact Judi Loos at WHO: 608-278-1115.

Shop without dropping and support WHO

Your Wisconsin Homecare Organization (WHO) enters the year 2000 with a new, innovative member benefit program called SupportMyAssociation.com. The program can be reached from WHO's website at http://www.wishomecare.org where a link to the Member's Section has been set. You can also find the site directly at www.supportmyassociation.com and locate WHO's area in the Association Members Directory. By registering as a WHO member, individuals are given access to this on-line community of North American associations, which features an exciting array of web services and on-line merchants.

"What we've done," says Adam Weedman, president of SupportMyAssociation.com, "is consolidate the online presence of association members. This, in turn, increases an individual's purchasing power on the Internet, plus gives the added benefit of creating a new source of non-dues revenue for their respective organization. Both the member and their association benefit from the program.

How does this happen? Weedman explains, "Through this consolidation of association memberships, (there are more than 135,000 associations in the U.S.) on-line merchants see our medium as an great alternative to traditional marketing and promotional expenditures. They'd rather bring value-added offers to association members, and pay their associations a royalty, as opposed to paying for advertisements that may or may not work. It's viewed as a more efficient way to build a customer base."

"Our objective," says Weedman, "is to continue to create a package of on-line features and bring them to the table in support of America's associations." The website, www.SupportMyAssociation.com is designed to offer associations both small and large an on-line

Who ya gonna call?
☆ UGS liaison:Terri Peterson 608-242-1516 (fax 608-242-1613); Carolyn Powell 414-327-2295 (fax 414-328-4496).
☆ Annual Convention Task Force: Martha Hoeger, chair, 608-326-6898 (fax 608-326-5403).
☆ Continuing Education Task Force: Sandy Roberts chair, 920-262-4262 (fax 920-262-4707).
☆ Financial Management Conference Task Force: Sharon Pfeifer, chair, 414-780-219 (fax 414-780-4210).
☆ Federal Regulatory Task Force: Terri Peterson, chair, 608-242-1516 (fax 608-242-1613).
☆ Long Term Care Redesign (HSS 133) Task Force: Deb Captain, chair, 920-436-4364 (fax 920-436-4379).
☆ PA Task Force: Rae Bauman, chair, 920-458-4314.
☆ Legislative Task Force: Cathy Rohling, chair, 715-845-8296; (fax 715-847-2607).
☆ QA Task Force: Ann Iverson, chair, 715-232-1518 (fax 715-232-1520).
☆ Visionary Task Force: chair is vacant
☆ Board of Directors: Ann Stevens, chair, 715-258-2130 (fax 715-258-8610).
☆ Foundation Board of Directors: Elaine Kopp, chair, 715-682-7028.

resource that members can use to keep abreast of association news and information, register for conventions, seminars, conduct real time voice conferencing, and enhance their individual on-line resources as part of the traditional "membership package."

"We want this to be a member-driven site," Weedman emphasizes. "Some of the better ideas we've had, in relation to developing the site, have come from members. We want to encourage that sort of involvement, since it is, after all, a member oriented concept."

As an added bonus, all members who register with WHO SupportMyAssociation.com area before March 1, 2000 will received a free SMA.com mouse pad and monitor icon. All registered members will also receive a free e-mail account. If WHO members have any questions about SMA.com they are encouraged to contact the company's Director of Marketing, Cody Young at 800-876-9790 or by email at cody@supportmyassociation.com.

Important WHO dates

March 21-22, 2000, WHO Annual Convention, Oshkosh
Nov. 8-9, 2000, WHO Financial Management Conference, Madison
March 28-29, 2001 WHO Annual Convention, Waukesha
Nov. 14-15, 2001, WHO Financial Management Conference, Brookfield
March 19-20, 2002, WHO Annual Convention, Green Bay
Nov. 6-7, 2002, WHO Financial Management Conference, Brookfield

National news

OSHA issues far-reaching "Ergonomics Rule"

by Gene Tischer
Association of Home Health Industries of Forida

OSHA has published a comprehensive rule that will affect every home health agency (HHA) in the nation. In the *Federal Register* of Nov. 23, OSHA proposes to set ergonomic standards that are potentially very costly to HHAs. What follows is just a brief summary to alert our members to a new set of OSHA mandates that will most likely be enacted in final form later this year. Here are the basic components.

1. The businesses covered are those with employees in (a) manufacturing, with (b) manual handling jobs or who c) work in other general industry jobs and experience a musculoskeletal disorder (MSD) that is covered by the OSHA standard. HHAs are affected by (b) (e.g. home health aides) and c) (all staff who work long hours at repetitive tasks, such as computer keyboards).

2. The standards apply differently to categories (b) and (c). For businesses with employees in category (b) (and that is every HHA with nurses, therapists or home health aides who regularly lift or transfer patients), the basic ergonomics program, which consists of the following elements, management leadership and employee participation and hazard information and reporting, must be implemented. Furthermore, if such an employee experiences an OSHA-recordable MSD that is additionally determined by the employer to be covered by the proposed standard, the employer would be required to implement the full ergonomics program for that job and all other jobs in the establishment involving the same physical work activities. The full program includes, in addition to the elements in the basic program state above, a hazard analysis of the job; the implementation of engineering, work practice, or administrative controls to eliminate or substantially reduce the hazards identified in that job; training the employees in that job and their supervisors; and the provision of MSD management, including, where appropriate, temporary work restrictions and access to a health care provider or other professional if a covered MSD occurs.

Thus, a back injury to a home health aide could trigger the requirement for a full-blown ergonomics program for a small HHA that could seriously jeopardize its survival. The "temporary work restrictions" (work restriction program or WRP) feature alone could prove to be quite costly.

3. The standards are job-based. This is good in that it means employers are required only to implement the ergonomics program required by the standard for those jobs specifically covered by the standard. They are not

required to have a program for all of the jobs in their workplace. Thus, the employer would identify which jobs fall within the ambit of the rule and apply its ergonomics program to those jobs only.

4. For employees in the third category (c), the standard is risk based. This is also good in that an HHA would only have to comply with all of the program elements in the standard when a covered MSD is reported. In other words, if a HHA's office staff suffers no reportable MSD, the HHA does not have to implement an ergonomics program for the office work force. Thus, the event that "triggers" coverage by the standard is the occurrence of an MSD that the employer determines to be covered. (There is also a "Quick Fix" option that abbreviates the remedial action an employer must take, but we will not go into that detail here.)

If an HHA has an office staff member who experiences a MSD, there are three aspects of the MSD to analyze to determine if the MSD is of the type that will create an obligation to implement an ergonomics program for the office staff:

1. The occurrence of the MSD is determined by the employer to be an OSHA-recordable MSD;

2. The MSD that has occurred is in a job in which the physical work activities are reasonably likely to cause or contribute to the type of MSDs reported;

3. The MSD that has occurred is in a job where the physical work activities and conditions are a core element of the job or make up a significant amount of the employee's work time. We understand that NAHC is going to submit comments on this proposed rule. While we certainly concur with the goal of the rule--to make the work environment as safe as possible--the length and breath of this proposal is well beyond the capabilities of many small HHAs. The one glaring feature that is missing is an accommodation for the size of the business affected. Any mandate for an ergonomics program must be tailored to the ability of the business to financially implement such a

program. We must communicate this point of view to OSHA and ask them to modify the proposal so it will take into this aspect of the "real world" into account.

Medicare fraud: Complex rules at fault

The rise in health care fraud cases results not from "widespread malfeasance" among providers but because Medicare regulations have become too complicated to understand, writes Princeton professor and health care pundit Uwe Reinhardt in the *Wall Street Journal*. Created in an attempt to handle complex and often subjective clinical "transactions," Medicare regulations are now estimated to be longer than the infamous Internal Revenue Code, which is so indecipherable that even highly trained accountants can arrive at vastly different income tax calculations when given the same data. While acknowledging it won't be easy, Reinhardt argues that a "compromise must be struck between ... rules so crude as to tolerate widespread abuse, and rules so finely honed as to become impenetrable"

WHO's regional leadership

Region 1 chair
Diane Porter
608-756-8206
Region 2 chair
Sharon Pfeifer
414-535-6900
Region 3 chair
Marilyn Lawson
715-735-6222
Region 4 chair
Holly Matucheski
715-627-6250
Region 5 co-chairs
Connie Troyanek
608-785-6440
Virginia Goehring
715-796-2223

From NAHC

Canadian study praises home care, criticizes US studies

Faced with rapidly growing use of home care, similar to the American experience, the Canadian government did not wield a clumsy budget axe, as the US did in BBA '97, but commissioned a series of studies on the cost-effectiveness of home care. The program consists of 15 inter-related studies attempting to assess the differences in costs and quality between home care and various forms of institutional care.

An interim report released in March 1998 reached the conclusion that home care was significantly cost effective as compared with all forms of institutional care and that home care should be increased, not restricted.

A new and final report has just been released and shared with NAHC. The new study is possibly the most comprehensive of its type ever conducted and confirms beyond doubt the cost effectiveness of home health care. The executive summary of the report states in part, "The central finding of this study was that, on average, the overall health care costs to the government for clients in home care are about half to three-quarters of the costs of clients in facility care."

The new Canadian study has profound significance because it also analyzes US studies, reaffirming those that demonstrate home care's cost effectiveness and criticizing those that have reached contrary conclusions.

From NAHC

HCFA offers $10 for OASIS

HCFA has issued a program memorandum to fiscal intermediaries (Pub. 60A, Trans. No. A-00-03) dated Jan. 7, 2000, that will govern disbursements to home health agencies to help cover the costs of OASIS. These one-time payments of $10 per beneficiary served during fiscal year 2000 were mandated by the Balanced Budget Refinement Act of 1999 (Public Law 106-113).

Of particular note with respect to the instruction to FIs are the following:

1. It appears that payments will be made for each beneficiary served during an agency's cost reporting year beginning during federal fiscal year 2000, even

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those served after IPS has been phased out; and

2. All agencies will be provided with an interim payment equal to half of the total payment (based on FI-projections of patient expected to be served) in April 2000, even if an agency's 2000 cost reporting year has not yet begun.

NAHC is concerned that the notice fails to provide a specific formula for FIs to use in projecting an agency's unduplicated patient count for 2000. NAHC staff are pursuing this issue with HCFA.

Some important dates for 2000

• *Feb. 21:* Final HHS patient privacy regulations on electronic records expected to be published,. Rules would take effect within two years.

• *Spring?:* Proposed new home health agency surety bond regulations to be revealed.

• *March 21-22:* WHO annual convention in Oshkosh. See the related story in this edition of *Newsline.*

• *March:* Advanced beneficiary notice instructions should be final.

• *March:* The Medicare Payment Advisory Commission is supposed to give its annual report to Congress. This should include further evaluation of Medicare patients' access to home care.

• *April 1:* You're supposed to get half of the $10 per patient that HCFA will pay for OASIS. Don't spend it all in one place.

• *July:* The final PPS rules are supposed to be published in the *Federal Register*, as are the final OSHA rules on protecting health care workers from TB.

• *July 1:* Deadline for JCAHO-accredited home health agencies to submit ORYX data.

• *Fall?:* The "final" revised conditions of participation are to be published, taking effect 30 days later.

• *Oct. 1:* The final PPS rules kick in.

• *November 8-9:* WHO Financial Management Conference in Madison.

• *December:* The final OSHA rules on ergonomics are expected to be published in the *Federal Register.* See the related story in this edition of *Newsline.*

Hospice issues
HCFA seeks your questions

Submit your questions about hospice and related issues for a special HCFA Panel of Hospice Experts to be held on Monday, April 3, 2000. This session is one of four special hospice track programs featured as part of NAHC's National Policy Conference in Washington, DC, April 2-5, 2000. Staff from HCFA will participate in an panel forum to answer questions from providers on such topics as: The effect of home health's PPS on hospice programs; *The Hospice Cost Report* and the status of new forms for provider based agencies; local medical review policies, core services and occasional high-tech treatments; hospice programs with multiple locations; regional differences in the interpretation of conditions of participation: and, any question you wish to ask.

Please send your questions for the HCFA panel of hospice experts to: Karen Woods kpw@nahc.org Fax: Attention K. Woods at (202) 547-9559 Phone: (202) 546-4759.

Questions & answers

The following questions and answers have been asked of the WHO office or asked and answered in Internet discussions involving home care providers, state associations and NAHC.

NAHC, in particular, has proven an invaluable resource of information.

Q. When it comes to UPIN for billing, residents do not have

numbers yet. I have heard that there is a "generic group" UPIN that can be used for residents. Do you have knowledge of this?

A. From NAHC: The HIM-11 states, in section 206.5 Services of Interns and Residents, that "home health services include the medical services of interns and residents-in-training under an approved hospital teaching program if the services are ordered by the physician who is responsible for the plan of care and the HHA is affiliated with or is under common control of a hospital furnishing the medical services."

Additionally the following UPINs should be used when the physician is an intern or resident:
INT000 - for intern
RES000 - for resident

This is also found in the HIM-11 in the section on completing the HCFA 1450 (Section 475, p. 67.45 and 67.46).

Q. Is there a good salary survey for the home health industry?

A. The Hospital and Healthcare Compensation Service (HCS), in cooperation with NAHC, publishes an annual report entitled *Homecare Salary & Benefits Report. It* contains detailed salary (hourly and per visit included) and benefits information for 69 job titles. The most current report was released in October 1999.

The copyright to the information contained in that report is held by HCS, so NAHC cannot reproduce or distribute it (you can order a copy from NAHC's Publications Department at 202/547-7424). NAHC does, however, have permission to use portions of the data in its publication, *Basic Statistics About Home Care*. Following is that data from the current report:

Per Visit Pay

RN		
	low $25.00	median $26.60
	high $30.93	
LPN	low $16.00	median $17.75
	high $20.00	
OT		
	low $40.00	median $43.00
	high $47.00	
PT		
	low $40.00	median $44.00
	high $48.00	
RT		
	low $42.49	median $46.00
	high $49.25	
S/LP	low $40.00	median $42.53
	high $48.28	
MSW	low $38.00	median $40.00
	high $46.49	
HCAIII		
	low $11.00	median $11.88
	high $13.00	

The survey does not differentiate between evaluation visits and daily visits.

Q. Where can I find a HCFA PPS Case Mix Grouper site that includes a calculator?

A. The site is www.hcfa.gov/medicare/grouper.xls If you want to use the data in the excel program you can "save as" and rename it under your C: drive then use it without having to be on line. To the right and below the calculator in column J there is the case mix adjustment, MSA/Non-MSA adjustment and Diagnosis adjustments.

Q. Can a one time skilled nursing visit (provided an ordered skilled nursing service covered in Section 200 of the HHA Manual) done on admission be billed if the patient is admitted with PT/ST orders.

A. From Gary Thietten: Yes. Remember that the patient must be in need of intermittent skilled nursing or physical therapy or speech pathology to be admitted to the agency. If the one time nursing visit was the only needed service provided then the one time nursing visit could not be billed because there was not a need or projected need for intermittent skilled nursing. But in this case, the patient qualified for the admission because of the need for therapy, therefore the one time skilled nursing visit may be paid.

Q. I attended a seminar in Wisconsin Rapids for the Wisconsin Homecare Organization. I need some clarification from my notes. If an RN does an initial assessment visit, including OASIS, determines SN not needed beyond this visit, but PT is needed and ordered intermittently, is the SN assessment visit covered? I guess what I am asking is does each discipline have to be intermittent, or can one ordered SN visit in combination with PT or ST meet intermittent criteria?

A. From Gary Thietten: Unless the SN had an order to provide a covered skilled nursing service during the visit, the first visit, including the assessment (OASIS or otherwise) would not be a

billable visit.

Q. I used to be able to bill Medicaid with my Homepro software. Now it won't work. What happened?

A. Although Homepro is not a Medicaid billing software, it used to have an electronic "bridge" that allowed you to use it as such. As of Jan. 1, 2000, that bridge does not exist. Use the PACE software for home health Medicaid billing (but read the manual first; most of the questions being asked about it are answered there).

Legal issues

HHAs are required to shred or erase records

by Catherine Mode Eastham and Mark S. Diestelmeier from von Briesen, Purtell & Roper, s.c.

A new law passed by the Wisconsin Legislature will require many health care providers, including most home health agencies, and others to shred, erase or otherwise dispose of materials containing a variety of health or personal financial information in prescribed ways to avoid unauthorized release of the information. For some, this legislation may simply codify precautions they already undertake. For others, the statute may require the implementation of a records destruction policy and methods of disposal they previously did not employ.

An entity covered by the "Dumpster Diving" statute may not dispose of a record containing protected information unless the entity, or a person that has contracted with the entity:

- ***shreds*** the record before disposing of it; or
- ***erases*** the information before disposing of the record; or
- ***modifies*** the record to make the information unreadable before disposing of the record; or
- ***takes actions*** that it ***reasonably believes*** will ensure that no unauthorized person will have access to the information before the record is destroyed.

The statute defines the organizations and kinds of information that it covers, and imposes civil and criminal liability on organizations that dispose of protected information in a manner inconsistent with its requirements. It also imposes civil and criminal liability on persons who obtain and seek to use records that contain such information. The new statute (Wisconsin Statutes Section 895.505) takes effect on Feb. 1, 2000.

Who is covered?

The new law applies to, among other things, ***medical businesses.*** The statute defines a ***medical business*** as any organization, whether or not for profit, that possesses information other than personnel records relating to a person's physical or mental health, medial history or medial treatment. This definition is expansive. It likely covers most health care providers and home health agencies, but it may also include other kinds of businesses associated with the home health industry based on their possession of any of these categories of information. The statute also applies to financial institutions and tax preparation businesses, both of which are defined in the statute.

What material are covered?

The statute applies to any ***record*** that contains protected information. It defines a ***record*** as any material on which information is recorded or preserved, regardless of the physical form of that material. This definition is quite broad, and covers not only paper records but computer disks and visual records such as film, microfilm, microfiche, CD-ROM, and other materials.

To be covered, a record must contain ***personal information***. To satisfy this requirement, the record must have information that is capable of being associated with a particular person, whether through some kind of identifier or from other information or circumstances. In addition, the record must contain one of several categories of information, including nonpublic data about an individual's medical condition. Because the statute also applies to financial institutions and tax preparation businesses, it also protects other kinds of information, including data containing an individual's account number, account balance, balance owing, credit owing, credit balance or credit limit relating to

an account or transaction with a financial institution; data provided by an individual upon opening an account or applying for credit; and data about an individuals federal, state or local tax returns.

What are the penalties for violating this statute?

The Dumpster Diving statute makes any covered entity liable for the full amount of damages caused to a person whose personal information is disposed of in violation of its terms. It also makes any person who uses personal information contained in a record disposed of by a covered entity liable to ***both*** the individual who is the subject of the information and the entity that disposed of the record for the damages resulting from such use.

The statute also provides for criminal liability, including the imposition of a fine not to exceed $1,000 against a covered entity that violates the statute. It likewise allows for a fine of up to $1,000 and up to 90 days' imprisonment of a person who possesses a record disposed of by a covered entity and who intends to use personal information contained in the record for any purpose. The statute exempts from its coverage any person who uses personal information with the consent of the individual whose personal information is contained in the record.

Some practical ideas for complying with the new law

Covered entities need to review record destruction policies to ensure compliance with the Dumpster Diving statute. If such a policy does not satisfy these requirements, now is the time to consult with counsel to change it. If no such policy exists, covered entities are well advised to obtain the assistance of counsel to develop and implement such a policy, and make sure that its is followed.

Probably the most effective way to comply with the statute in regard to paper records is simply to shred them. This method is contemplated expressly in the statute, and provides a high degree of comfort that the record cannot be used after disposal but before destruction. Relying on a manual process of obliterating protected information on paper records could be expensive, time-consuming and incomplete, and may not protect against unauthorized use.

Shredding all paper records makes sense for another reason under the Dumpster Diving statute as well. Imagine the result if a covered entity discloses protected information to a third party under circumstances that are entirely proper--for example, a health care provider releases patient health care records pursuant to an appropriate authorization--but the third party, who may or may not be covered by the new legislation, disposes of the records in a manner that allows unauthorized access to or use of the protected information. It might appear that the ***covered entity*** is the one that disposed of the records, and that it did so in violation of the statute, perhaps subjecting the entity to possible exposure. By establishing a policy under which all paper records are shredded before disposal, a covered entity may assert more credibly that the access or use did not result from its disposal of the records in question. In addition, adding some kind of unique identifier to all paper records only at the time

of their disposal also may help demonstrate that the covered entity was not the source of records that were obtained or used without authorization.

With respect to electronic records, covered entities should consult with qualified information technology personnel to ensure that protected information is completely erased or modified before disposal. With the proliferation of sophisticated recovery utilities, even erased records may remain accessible on certain kinds of electronic storage mediums. Covered entities may wish to erase the record and then render the medium unreadable, whether by damage or in some other fashion, to help ensure against unauthorized access.

In some circumstances, the use of locked disposal receptacles may satisfy the requirement of the statute. The location of the receptacle, the actual degree of security it provides, the manner in which the records are removed and disposed of, and other factors may bear on whether this alternative is reasonable under the circumstances to ensure against unauthorized access to the information.

If a covered entity has entered into a contract with an outside vendor to dispose of records that may contain protected information, or is contemplating such an arrangement, the agreement and the manner in which it is or will be performed on a day-to-day basis should be reviewed by counsel to determine whether the vendor's activities comply with the new law. In addition, covered entities should also have counsel determine whether the agreement requires the vendor to indemnify the entity--in essence, to satisfy on the entity's behalf any exposure resulting from the vendor's improper disposal of the records. That is particularly important if the vendor may dispose of large quantities of records containing protected information, because the potential exposure to the covered entity under these circumstance

could be very large. If the agreement does not do so, the covered entity would be well advised to have counsel draft provisions to this effect and arrange for their inclusion in the agreement.

Medical writing tip

Dose or dosage?

These words are not synonymous or interchangeable. A "dose" is the quantity administered at one time or the total quantity administered. The "dosage" is the regulation or frequency of doses. Think of "dose" as a one-shot deal, and "dosage" as the timing or periodicity. By the way, "dosage" is just about the same as "regimen," so "dosage regimen" is redundant.

Home care lite

Top 10 signs you've been in home care too darn long

1. You automatically do home safety assessments when you're having dinner at a friend's home.
2. If a relative calls seeking medical advice you first try to determine if they are homebound.
3. You can recite the location of every clean public restroom in the city and suburbs.
4. When you sit down to write your annual holiday letter you quantify exactly how many feet your son ran down the soccer field without considerable and taxing effort.
5. On your days off, you find yourself wanting to eat lunch in your car.
6. You can read a map better than your spouse.
7. Advertisements for vacation resorts described as an "OASIS" have lost their appeal.
8. You begin to feel guilty if you have been anywhere for more than 25 minutes.
9. You are extremely reluctant to throw away empty laundry detergent bottles and coffee cans.
10. You retrieve items from your purse using appropriate bag technique.

Who's who at WHO

- Comptroller: Rhonda King
- Conventions Director: Judi Loos
- President: Russell King

Newsline brings members news about the most current actions of the Board of Directors, the legislative and regulatory environment, new happenings in home care, and other items of interest. *Newsline* also highlights WHO activities, educational workshops and available materials and resources. Permission is granted to WHO members to make copies of *Newsline* for distribution to employees.

Newsline welcomes letters, comments and contributions from members. Articles and ads must be submitted by the 15th of each month. Address all correspondence to: WHO, 5610 Medical Circle, #33, Madison, WI 53719. Phone: (608) 278-1115. Fax: (608) 278-4009. E-mail: wishomecare@earthlink.net

"You don't get to choose how you're going to die, or when. You can only decide how you're going to live. Now."
--Joan Baez

WHO endorsed services

The Wisconsin Homecare Organization has endorsed the following services. Through these services, WHO members enjoy superior products and services at excellent prices. Your patronage of these companies also furthers the causes of home care in Wisconsin by providing WHO with non-dues revenue.

SMS Insurance Services for all your business insurance needs.

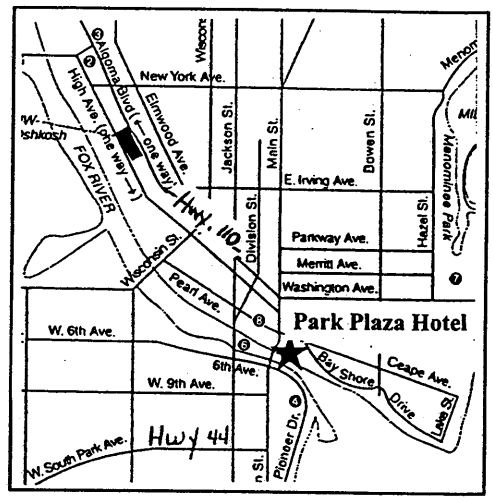
PIC Wisconsin for your medical liability insurance needs.

United Heartland for access to a special Worker's Compensation WHO group.

US Xchange-Wisconsin for your telephone needs.

2000 WHO Annual Convention

Tradition of Caring
Journey to Success
March 21 & 22, 2000



Park Plaza Hotel
1 North Main Street
Oshkosh, WI
920-231-5000

Guest Rooms: Standard /Single/Double Suites: $83. There is a $10 extra person charge. For reservations call **1-920-231-5000** and ask for WHO convention rates. Hotel room reservations should be made by February 23, 2000; if reservations are made after this date the discounted rate cannot be guaranteed.
Registration and Cancellation Policy: Registrations *must* be received in writing. Registration fee includes homecare exhibition, conference packet, keynote sessions, workshops, luncheon, continental breakfast and refreshments. *One registration may not be shared by more than one person.* However, a substitute may attend if the WHO office receives advance, written notice. *No-shows will be billed.* Cancellations received in writing before 2/21/00 will be refunded their fee minus $35. No refunds will be offered after that date. **Special Accommodations:** If a registrant needs physical or dietary accommodations, please list their name, phone number, and specific need and send to the WHO office.

2000 WHO Annual Convention Registration Form

Name(s) *(please indicate day attending)*

1. _____ ☐ **Full Conference** ☐ **One-Day** _____
2. _____ ☐ **Full Conference** ☐ **One-Day** _____
3. _____ ☐ **Full Conference** ☐ **One-Day** _____
4. _____ ☐ **Full Conference** ☐ **One-Day** _____

Agency: _____
Address: _____ **City:** _____ **State:** ____ **Zip:** _____
Telephone: _____ **Fax:** _____ **WHO Region:** 1 2 3 4 5

Please indicate the number attending each concurrent session:
Tues. 3/21 A___B___C___D___E___F___
Weds. 3/22 G___H___

Questions for presenters *(please indicate workshop)*
_____
_____
_____

Registration Fees

10% discount for 2nd registrant; 25% discount for each additional (*after the 2nd*) registrant.

Full Convention Early Bird Rate (*before* 2/21/00)

WHO & HOW members	**1st registrant $195** ☐	**2nd registrant $175** ☐	**additional registrant $146** ☐
Non-members	**1st registrant $255** ☐	**2nd registrant $229** ☐	**additional registrant $191** ☐

Full Convention Regular Rate (*after* 2/21/00)

WHO & HOW members	**$220** ☐
Non-members	**$280** ☐

One Day Rate (March 21 *or* 22)

WHO & HOW members	**$140** ☐
Non-members	**$175** ☐

If paying by credit card:
☐ Visa ☐ MasterCard Exp. Date___
Cardholder Name: _____
Card Number: _____

If paying by check: $_____(total enclosed)
Make checks payable and send to: WHO, 5610 Medical Circle, Suite # 33, Madison, WI 53719
Phone: 608-278-1115 Fax: 608-278-4009

For more information about the convention, please contact Judi Loos at 608-278-1115.