

increased injuries, which leads to further understaffing. Nursing home workers are suffering an epidemic of work place injuries. 200,000 injuries are reported each year, making nursing home work the third most dangerous job in America—more dangerous than construction or mining.<sup>5</sup> Second, recent research indicates that frustration over short staffing is the number one reason CNAs leave the profession. There is not a shortage of people willing to take CNA positions, but a retention crisis. Turnover rates in Wisconsin's proprietary nursing homes are over 94% per year.<sup>6</sup> These turnover rates also waste an immense amount of resources. It is estimated that it costs \$2,000 dollars to hire a new worker, and train them to become a CNA.

Nursing home operators say that they will use Medicaid increases to improve staffing, but there is overwhelming evidence that the only way to assure better staffing is to require specific staffing ratios. Many nursing homes, especially for-profit facilities, deliberately short staff in order to squeeze more money out of their operations. A comprehensive federal study, the HCFA Report to Congress, concluded that "*There is virtually no link between what an individual facility spends and the rate it receives. . . . higher rates might be taken in as profit or spent on capital improvement rather than on staffing.*"<sup>7</sup> The experience with the wage pass through in the last budget should be enough to show that many Wisconsin nursing homes cannot be trusted to do the right thing with state money, unless they are specifically required to do so.<sup>8</sup>

Current Wisconsin staffing standards are not only too low, they are also very difficult to enforce. Our members tell us that the only time the standards are faithfully followed is the day that state surveyors are actually in the facility. There is an overwhelming national consensus that the only way to assure decent nursing home staffing levels is to convert to a ratio system. A ratio system, unlike the current Wisconsin hours per resident day system, requires a specific number of CNAs to residents and nurses to resident for each shift.

The SEIU proposal is for CNA to resident ratio of 1 to 5 on day shift, 1 to 10 on evening shift, and 1 to 15 on night shift, and a nurse staffing ratio of 1 to 15, 1 to 25, and 1 to 35. This proposal was editorially endorsed by the *Milwaukee Journal Sentinel* last week, which concluded that the proposal "makes sense" and that "lawmakers should make that proposed change a priority."<sup>9</sup>

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<sup>5</sup> SEIU Fact Sheet, "Nursing Home Workers: Caring 'Til it Hurts," November 2, 2001.

<sup>6</sup> Iowa Caregivers Association, "*Certified Nursing Assistant Recruitment and Retention Pilot Project Phase I: Survey Results*" (1998); Bureau of Health Information, Department of Health and Family Services, *Wisconsin Nursing Homes and Facilities for the Developmentally Disabled, 1999* (November, 2000)

<sup>7</sup> HCFA, "Report to Congress" (2000).

<sup>8</sup> "Audit: Nursing Homes Didn't Pass Along Wage Increases," *Milwaukee Business Journal*, February 2, 2001; Robert Kraig, "Nursing Home Industry Needs Protection from Itself," Op Ed, *Milwaukee Business Journal*, February 16, 2001.

<sup>9</sup> "The Nursing Home Crisis," Editorial, *Milwaukee Journal Sentinel*, April 11, 2001.

## II The Operating Deficits of Wisconsin Nursing Homes Have Been Exaggerated

The Wisconsin nursing home industry claims that it cannot increase staffing until its operating deficits are eliminated. Their own audit report specifically says that the increases they are seeking will not be used to improve staffing or wages.

The two nursing home associations commissioned a private audit report of the Wisconsin nursing home industry by BDO Seidman which claims that the industry needs an increase of \$79 million in the Wisconsin Medicaid formula.<sup>10</sup> This report has been widely circulated in the State Legislature. It has also been given to journalists throughout the state, and been repeatedly used by industry spokesmen in committee hearings and press interviews. It has also been specifically quoted by members of the Executive Branch.

It is not good public policy to rely on audit reports that are paid for by special interests. The distortions in the Seidman report are a good case in point.

First, the report uses statistical slights of hand to overstate the depth of the financial crisis facing Wisconsin nursing homes.

The centerpiece of the report is the claim that Wisconsin nursing homes lose, on average, approximately \$11.00 per patient day on Medicaid residents. Actually, it is impossible to tell what the actual cost of care for Medicaid residents is because the cost reports are not broken down that way. The average cost per patient day quoted in the report includes sicker Medicare patients, and sicker county facility residents, which skews the average upward. The other numbers that come from this calculation--such as the average loss per year by each facility and the amount of the proposed rate increase--are thus inflated.

The industry report also claims that Wisconsin nursing homes have a negative operating margin of 4.74%. This is an aggregate number which is not facility specific and includes county facilities that have very large operating deficits. The median rate is a better measure, and it is slightly positive (.13%). That means that half of the homes in the state are not losing money and half are. Increased Medicaid rates, it should be noted, will not fix broken homes. Bad managers and low occupancy rates, which according to the state numbers are concentrated in a few homes, are factors that will not be corrected by a general rate increase. In addition, a general rate increase will funnel money into profitable homes. According to the industry's own numbers, for-profit homes are doing much better in the state Medicaid formula than non-profit and government homes, and increasing the rate may invite further financial abuse in that sector.

There is another major methodological slight of hand in the industry report. The report inflates 1998 cost report data forward rather than comparing '98 cost reports to '98 rates. Policy experts

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<sup>10</sup> "Special Report: On the Financial Condition of Nursing Homes in Wisconsin," BDO Seidman, September 2000.

we have discussed this with, including some that work for the state, believe that this procedure skewed the cost projections in the report high and the rate projections low.

Second, the industry report makes a number of misleading assertions which confound the relationship between federal Medicare and the state Medicaid formula.

The report claims both that a rise in the acuity of nursing home residents and the shift to a prospective payment system in federal Medicare have financially burdened the industry. They also blame increased admissions, and resultant patient turnover, for increasing the nursing home industry's Medicaid resident costs.

The report fails to mention that nursing homes have aggressively pursued higher acuity residents to capture more Medicare money. They have continued to do this because Medicare business is still lucrative, despite federal cutbacks designed to curtail profiteering by the large nursing home chains. In fact, Medicare payments increased by over a billion dollars each of the last two years. In addition, the report fails to mention that this pursuit of Medicare money, when it is not accompanied by the increased staffing needed to care for a sicker resident population, has exasperated the quality of care and staffing crisis in Wisconsin nursing homes. Perhaps this is why there has been such a shocking increase in serious jeopardy violations.

The report also asserts an erroneous link between bankruptcies and the Wisconsin Medicaid reimbursement rate. The report notes that Wisconsin's bankruptcy rate is higher than that of other midwestern states, but fails to clarify that this is a function of federal Medicare policy, not state Medicaid rates. In point of fact, Wisconsin happens to have a higher percentage of for-profit chains that were involved in Medicare speculation, and were hit hard by federal Medicare reform. These chains went bankrupt because they loaded up on bank debt to expand into the lucrative Medicare business. Now, the financial prospects for the major chains are looking brighter. Because of the Medicare increases approved by Congress in the Fall of 2000, investment bankers are again investing in nursing homes. As a result, many of the major nursing home chains will come out of bankruptcy this summer.<sup>11</sup> In addition, according to their own report, for-profit nursing homes are doing much better in the state Medicaid formula than not-for-profit and government facilities. Given the track record of these chains, and their need to free up capital to make up for their own financial miscalculations, it is predictable that an overgenerous Medicaid rate increase will be used for purposes other than increased staffing, wages, or improvements in the quality of care.

It is disturbing that a very flawed and slanted industry audit report is serving as a basis for a very large run-up in the Medicaid reimbursement rate. Amazingly, the Governor's budget actually includes more money than the nursing home industry's own report requests. The industry report asks for an extra \$79 million per year, and includes the county homes in its calculations. The Governor's budget includes a \$115 million increase in the first year and \$157 million in the second year of the biennium. Since the release of the Governor's budget, industry officials have

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<sup>11</sup> "The Refurbishing Begins: With Medicare Reimbursements Back, Health Care Services Taps Capital Markets," *Investment Dealers Digest*, April 16, 2001.

begun asserting that this is the actual amount they need.<sup>12</sup>

### III The IGT and the Future Long Term Care Structural Deficit

The effect of this over-generous rate increase will be the creation of a large structural deficit in long term care either in 2003 or 2006. The Governor's budget assumes the state can capture \$604 million extra dollars over three years. Under this scenario the MA Trust Fund created to hold the proceeds of the transaction will be exhausted in 2006. But Wisconsin may get much less money than the Governor's budget assumes. On April 3<sup>rd</sup>, the Health Care Financing Administration promulgated a rule that would reduce the window for receiving extra IGT funds from three years to one, which would reduce Wisconsin's take from \$604 million to \$258.7 million.<sup>13</sup> Under this scenario, the trust fund would be exhausted in 2003. In fact, the fiscal picture may be worse still. \$62 million in Wisconsin's base IGT money from the 2000-2001 fiscal year is currently being deferred, because HCFA has concluded that Wisconsin claimed more than it is entitled to. If this deferral is upheld—and our latest information from Washington is that there is a very good chance that it will be upheld—than Wisconsin will lose this amount from its IGT base every year in perpetuity. In this biennium alone, this would reduce the net IGT increase to \$103.3 million.

Even in the best case scenario--the \$604 million extra assumed in the Governor's budget--the money is spent down much too quickly. Not unlike the Tobacco settlement, this trust fund could produce revenue for many years, if it is well managed. But if it is spent down relatively quickly, the Medicaid rate increases in the Governor's budget will produce a large structural deficit in future budgets (GPR will have to be used to fund the continuation of the Medicaid formula increases funded in in the current biennium with IGT money). This will happen at the same time that there is a large spike in the elderly population toward the end of the decade.

This structural deficit will make it very difficult for the state to adjust to the growing consensus that higher nursing home staffing levels are required to provide a decent level of care. The nursing home industry's private audit report specifically states that the increased money that is being sought *will not* to be used to increase staffing or wages. The report concludes that the industry's funding request "*does not represent adequate funding for other initiatives such as rectifying staffing shortages, [or] meeting nurse aide staffing levels for optimum care as defined in the Health Care Financing Administration's (HCFA) recent report to Congress on minimum nurse staffing. . . .*"<sup>14</sup>

It would surely be tragic if the state were to invest a large amount money in the nursing home system, and yet in the end do nothing to rectify the deepening staffing crisis. It is the solemn responsibility of the Legislature, as the ultimate guardian of the broad public interest, to take concrete steps to safeguard the well being of the most fragile and vulnerable among us.

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<sup>12</sup> See *Milwaukee Journal Sentinel*, April 8, 2001.

<sup>13</sup> Legislative Fiscal Bureau Memo to Representative John Gard and Senator Brian Burke, April 4, 2001.

<sup>14</sup> BDO Seidman, "Special Report," p. 13.

## Coalition of Wisconsin Aging Groups

### Testimony Before the Senate Committee on Human Services and Aging

April 25, 2001

by

**Thomas L. Frazier**

I am here today to talk about the "other death tax." Probably not the one you are thinking about because in Wisconsin we have already eliminated estate taxes, regardless of the value of the estate. At the federal level, estates of more than \$1 million are already exempt from estate taxes and President Bush has proposed phasing it out completely over the next few years.

Even if that happens we will still have a death tax in Wisconsin and this country, except that it only applies to older persons who are poor and sick. It is euphemistically called estate recovery, but a tax by any other name is still a tax.

Estate recovery is a federal law that was initiated in Wisconsin in 1991 to recover money from the estates of people who were age 55+ for nursing home care and some other long-term care services (e.g., COP-Waiver). Since 1991, however, Wisconsin has become one of the most aggressive and least consumer-sensitive programs in the country. And in the current budget proposal, the Governor and DHFS proposes that estate recovery be applied to all Medicaid services and include real property as well as homestead property (LFB analysis attached). We believe estate recovery is a bad, if not terrible, policy for the following reasons:

1. At a time when the Wisconsin Legislature and Congress have eliminated and proposed eliminating estate taxes on wealthy people, it is not fair to impose a similar tax only on people who are older (55+), people who are sick (in need of long-term care or

other MA health care services) and people who are already poor (they have had a spend down to gain eligibility for MA services).

2. At a time when Wisconsin is promising to reform its long-term care programs (i.e., Family Care) to give greater choices to consumers, it has created a huge disincentive for people to accept those services. For example, in Milwaukee, a very large percentage (up to 80%) of persons on waiting lists for Family Care services are refusing services specifically giving estate recovery as the reason. One older couple refused services because the husband, who was considerably older than his wife, wanted his wife to be able to sell their home and live on the money after he died. With estate recovery, a lien would be placed on the home and, if the man lived long enough, the state would recover all or most of the value of the home leaving the wife with nothing.
3. If additional expansion of estate recovery passes in this budget, Wisconsin will turn the Medicaid program into a loan program for poor older persons. In fact, other than specifically named loan programs, I do not know of any other public programs that we require people to pay back (e.g., farm subsidies and fire protection).
4. Estate recovery basically only applies to people who are unable to hire lawyers to engage in sophisticated estate planning. Those who play by the rules, lose.

I urge this committee to be the first legislators to study this issue and recommend to the Joint Finance Committee that estate recovery in Wisconsin be rolled back to the minimum required by federal law. To the extent possible home and community-based services and other MA health care services (e.g., personal care) should be excluded in view of the state's stated objectives for Family Care (i.e., eliminate the institutional bias, provide consumer choices, etc.).

We believe that a very large percentage of the \$15 million recovered under this

program is from nursing home care so the actual fiscal impact would be limited. DHFS was not able to give us a breakdown of where the money comes from, despite our recent open records request for that information (response attached).

Finally, I would just like to mention that one of our neighboring states, Michigan, and the state of Texas have never implemented estate recovery despite federal law. In a state that has already eliminated estate taxes for the wealthy it seems hypocritical to so aggressively pursue the estates of old, sick, poor people.

Under the federal Breast and Cervical Prevention and Treatment Act of 2000, states may provide MA coverage to women who have no access to creditable health care coverage and who are under age 65 and diagnosed with breast or cervical cancer, regardless of income. States that exercise this option are eligible for enhanced federal matching funds equal to the enhanced matching rate available under the state children's health insurance program (SCHIP), currently 71.19% for Wisconsin.

[Bill Sections: 1748, 1822 and 9423(11)]

**15. MA STATE CENTER ADJUSTMENTS**

GPR	\$223,500
FED	975,800
Total	\$1,199,300

**Governor:** Increase MA benefits funding by \$430,700 (\$60,600 GPR and \$370,100 FED) in 2001-02 and \$768,600 (\$162,900 GPR and \$605,700 FED) in 2002-03 to reflect increases relating to the operation of the three State Centers for the Developmentally Disabled. Funding for the state Centers is budgeted in the MA benefits appropriation and transferred to the Division of Care and Treatment Facilities as program revenue. The major requests relating to the state Centers are summarized under "Care and Treatment Facilities."

**16. MA ESTATE RECOVERY**

	Funding	Positions
GPR	-\$550,100	1.00
FED	- 798,500	1.00
PR	1,467,400	0.00
Total	\$118,800	2.00

**Governor:** Provide \$1,000 (-\$68,500 GPR, -\$95,600 FED and \$165,100 PR in 2001-02) and \$117,800 (-\$481,600 GPR, -\$702,900 FED and \$1,302,300 PR) in 2002-03 and 2.0 positions (1.0 GPR position and 1.0 FED position), beginning in 2002-03, to reflect the net fiscal effect of: (a) authorizing additional staff to administer the program (\$58,900 GPR and \$58,900 FED in 2002-03) and making statutory changes that would increase recoveries under the program and reduce MA benefits costs (-\$68,500 GPR, -\$95,600 FED and \$165,100 PR in 2001-02 and -\$540,500 GPR, -\$761,800 FED and \$1,302,300 PR in 2002-03). The bill includes the following statutory changes.

*Expand Services Covered by Estate Recovery.* Authorize estate recoveries for all MA services provided under the MA state plan to noninstitutionalized recipients age 55 or older. This provision would first apply to MA paid for health care services that are provided to an individual on the bill's general effective date.

Specify that if the health care services were provided by a managed care organization under a program of all-inclusive care for the elderly (PACE) or under the Wisconsin Partnership program, DHFS must calculate the amount of MA as the capitation rate that was paid on behalf of the recipient. Specify that if the health care services were provided under Family Care, DHFS must calculate the amount of MA paid as the actual cost of those health care services, as reported to DHFS by a care management organization. Finally, clarify that the estate recovery



provisions under Family Care do not apply if the benefit is recoverable under the MA estate recovery provisions.

Currently, the state can only recover amounts MA paid for long-term care services (home- and community-based waiver services, home health, personal care and related inpatient hospital services and drug costs). Under current law, all MA services for institutionalized recipients are recoverable. MA benefits are recovered through two methods: (a) claims submitted against the estate during the probate process; and (b) liens filled against the recipient's home when the recipient is not reasonably expected to return home to live and there is not a spouse, minor child, or disabled child residing in the home.

*Allow All Real Property To Be Subject To Liens.* For current situations in which DHFS may place a lien on property, authorize DHFS to place a lien on all real property in which the recipient has an ownership interest. Under current law, the state may place a lien on the homestead (but not other types of real property) of nursing home residents who are not expected to return to their home to live, except that DHFS may not file a lien if a spouse or minor, disabled or blind child resides in the home.

*Transfers by Affidavit.* Eliminate the current prohibition that prevents DHFS from recovering the following types of property of a decedent under the transfer by affidavit process: (a) interests in or liens on real property; (b) wearing apparel and jewelry; (c) household furniture, furnishings and appliances; and (d) motor vehicles and recreational vehicles. Instead, require DHFS to reduce the amount of any recovery under the transfer by affidavit process by up to the amount allowed (\$5,000 currently) if necessary to allow the decedent's heirs or beneficiaries to retain the following personal property: (a) wearing apparel and jewelry held for personal use; (b) household furniture, furnishings and appliances; and (c) other tangible personal property not used in trade, agriculture, or other business, not exceeding the allowed amount (\$3,000 currently).

In addition, when an interest in real property of a decedent is transferred to an heir by affidavit, authorize DHFS to: (a) place a lien on that interest in real property if the decedent does not have a surviving spouse or child who is under age 21 or disabled; and (b) place a lien on any interest in the decedent's home. Specify that DHFS may enforce the lien by foreclosure in the same manner as a mortgage on real property, except that a lien on a decedent's home could not be enforced if the decedent has a surviving spouse or child under age 21 or disabled.

Transfers by affidavits are permitted when a decedent leaves solely owned property in the state that does not exceed \$20,000 in value. DHFS may recover for services provided under MA by the transfer by affidavit process if: (a) no person files a petition for administration or summary settlement of the decedent's estate within 20 days of death; (b) the decedent is not survived by a spouse, a child who is under age 21 or a child who is disabled; and (c) the value of the property does not exceed \$20,000.

[Bill Sections: 1539, 1824 thru 1835, 3843 thru 3851 and 9323(9)&(11)]



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Scott McCallum  
Governor

Phyllis J. Dubé  
Secretary

State of Wisconsin

Department of Health and Family Services

March 29, 2001

MAR 30 2001

Attorney Mitchell Hagopian  
2850 Dairy Drive, Suite 100  
Madison, WI 53718-6751

RE: Public Records Request

Dear Mr. Hagopian:

Thank you for your letter to Mr. Joe Leean that letter requested records from the Medical Assistance Lien Law and the Estate Recovery Program. Your request was made under the Wisconsin Public Records Law. Your request was referred to me for a response.

First I want to apologize to you for the delay in our responding. Thank you for your patience.

Staff of the Estate Recovery Program has reviewed your request and has gathered the information that is available. That information is included in this letter.

I will go through each of your requests individually and give you the information we have. Where we do not have the information you requested, I will also explain why the information is not available.

You requested that the following information be provided to you.

- a. The Total amount Wisconsin has recovered under the Medical Assistance Lien Law and the Estate Recovery Program every year since 1998.

The total amount Wisconsin has recovered for Medicaid through its Estate Recovery Program is as follows:

State Fiscal Year 1998	\$13,404,188
State Fiscal Year 1999	\$13,529,021
State Fiscal Year 2000	\$15,537,621

These amounts include the incentive fees of five percent that are paid to county and tribal agencies. The net amount recovered for State Fiscal Year 1999 includes a payout of \$766,238 as settlement of a class action lawsuit and one other suit regarding the

recovery of Medicaid payments from surviving spouses' estates. Information for State Fiscal Year 2001 is not reconciled and, therefore, not currently available.

- b. The amount Wisconsin has recovered pursuant to the Medical Assistance Lien Law (s.49.496(2)) in 1998, 1999, and year to date for 2000.

The total amount Wisconsin has recovered for Medicaid through liens is as follows:

State Fiscal Year 1998	\$2,302,319
State Fiscal Year 1999	\$2,809,548
State Fiscal Year 2000	\$2,477,178

These amounts include the incentive fee of five percent that is paid to county and tribal agencies. Information for State Fiscal Year 2001 is not reconciled and, therefore, not currently available. These figures are included in the total amounts listed in a. above.

- c. The amount Wisconsin has recovered pursuant to the Medical Assistance Estate Recovery Law (s.49.496(3)) since 1998 broken down by the following estate sizes.

- \$0-\$10,000
- \$10,000-\$20,000
- \$20,000-\$50,000
- \$50,000-\$70,000
- \$70,000-\$100,000
- \$100,000+

The Department does not have records that compile that information. To obtain that information all of the estate files would have to be reviewed by Department staff because of confidentiality issues. That would involve thousands of files. It would be unduly burdensome to have program staff go through the estate files, extrapolate information from the files and create new documents to present the requested data. In addition, that information is not received from every estate. If the state's claim is paid in full there is no need to request the estate size.

- d. The amount of the total collection received in 1998, 1999, and year to date for 2000 that was recovered from COP-waiver recipients.

The Department does not have records that compile that information. Since COP-waiver services are recoverable Medicaid services, they are not treated differently than any other Medicaid claim. The Estate Recovery Program does not separately identify recipients of Medicaid waiver services from recipients of other Medicaid services. Regular Medicaid services and waiver services are recovered through one claim that combines all services paid. To obtain the information you requested every estate file would have to be reviewed by staff. There are thousands of estate files. In addition, there will be many files in which both waiver and non-waiver services were provided and billed. To determine how much was received for the COP-waiver services, staff would have to calculate how much of the amount received should be allocated to waiver, non-waiver

and possibly a chronic disease aid claim and a COP-GPR claim. This would be unduly burdensome for staff for the same reasons mentioned in c. and d. above.

- e. The number of accounts under the Lien Law and Estate Recovery that had to be adjusted due to lack of funds in the estate.

The Department does not maintain records that compile that information. All estate files of the Estate Recovery Program would have to be reviewed by staff to obtain this information. Again, that means reviewing thousands of files, extrapolating information from the files and creating new documents. This would be unduly burdensome for staff.

- f. The total collection from the accounts that had to be adjusted under the Lien Law and Estate Recovery due to lack of funds in the estate.

See e. above.

- g. The number of requests for "undue hardship" waivers filed since that process was created in 1995 and how those requests were disposed of (i.e. denied or granted).

There have been 148 "undue hardship" waiver requests since the legislation became effective on April 1, 1995. Of the 148 requests, 46 have been approved, 99 have been denied and three are pending.

- h. The amount Wisconsin has recovered pursuant to the Community Options Program estate recovery law (s. 46.27(7g)) in 1998, 1999, and year to date for 2000.

The total amount Wisconsin has recovered for the Community Options Program through its Estate Recovery Program is as follows:

State Fiscal Year 1998	\$64,373
State Fiscal Year 1999	\$134,760
State Fiscal Year 2000	\$248,867

These amounts are prior to the incentive fee of five percent paid to county departments and aging units. Information for State Fiscal Year 2001 is not reconciled and, therefore, not currently available.

- i. The amount Wisconsin has recovered pursuant to the Disease Aids estate recovery law (s.49.682) in 1998, 1999, and year to date 2000.

The total amount Wisconsin has recovered for the Wisconsin Chronic Disease Program through its Estate Recovery Program is as follows:

State Fiscal Year 1998	\$70,699
State Fiscal Year 1999	\$72,156
State Fiscal Year 2000	\$95,001

Information for State Fiscal Year 2001 is not reconciled and, therefore, not currently available.

As you can see from the above, many of the questions you want answered are not answerable without staff going through hundreds, or in some cases thousands, of files which may or may not contain the information you want. In addition to reviewing the files, staff would have to compile information extracted from those files and create new documents containing that information. For any one of these requests it would be a truly burdensome task and would severely interfere with the normal functioning of the Program.

Thank you for your interest in the Estate Recovery Program.

Sincerely,

A handwritten signature in cursive script that reads "Peggy Wichmann". The signature is written in dark ink and is positioned above the typed name.

Peggy Wichmann, Attorney  
Medicaid Estate Recovery Program

# THE HOPE OF WISCONSIN

Hospice Organization and Palliative Experts/PO Box 259808, Madison, WI 53725

Phone: 608-233-7166

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E-mail: MELR217@aol.com

**Human Services and Aging**

**April 25, 2001**

**Senator Robson and Members of the Committee:**

**I am Melanie G. Ramey, Executive Director of The Hospice Organization and Palliative Experts (HOPE) of Wisconsin. We are the state organization of all hospice and palliative care programs in the state.**

**I am sure that you are familiar with the Health Insurance Risk Sharing Plan (HIRSP). However, you may not be aware that enrollees in this plan are denied access to hospice care. Since HIRSP is available to people who are medically high risk, some of whom have paid large premiums for many years because of their life-threatening disease, it comes as a rude awakening to discover that HIRSP does not cover hospice services.**

**Our organization has obtained the support of the Department of Health and Family Services and the HIRSP Board for including hospice as a specific covered service under HIRSP. A previous legislative glitch created this problem. There needs to be a bill granting hospice services to HIRSP enrollees. The present HIRSP plan says that enrollees can obtain hospice care via home health. However, that is not possible as hospice services can only be provided by a licensed hospice. Medicare and Medicaid coverage are only available for care provided by a licensed hospice and some HIRSP enrollees may also be eligible for coverage under those programs.. Hospices are licensed and regulated by the State of Wisconsin.**

**There have been a number of very unfortunate situations where the claims of terminally ill persons covered by HIRSP were denied because of this situation. We urge the committee to introduce a bill to correct this problem.**

**SENATE COMMITTEE ON HUMAN SERVICES & AGING**  
**Hearing of April 25, 2001**

Thank you for the opportunity to appear before this Committee on Human Services and Aging. I will not repeat the statistics you have already heard about the critical need for increased funding for services to people with disabilities. Rather, I would like to put a face on it.

Let me tell you about a resident I'll call Jeremy. He recently came to live in one of the homes provided by Ranch Community Services, after being on the waiting list for more than ten years. Much of that time he was forced to live in a nursing home. Does it make much sense for the State to pay double the amount it costs for a group home to have someone live in a place they don't want to be? Community living funding is not sufficient and not flexible, so the waiting continues, and the State and Counties spend more money than they need to!

Then there is Scott. His physical and mental status has changed, so his present home can no longer adequately meet his needs. He could be properly served in another home, at a higher rate, but no funding is available – so he will return to an institution. Again, more money spent, with much less desirable results.

For the remaining residents of our homes, the future is tenuous. Costs are increasing at amazing rates: our health insurance went up 63% this year, and energy and fuel increases cannot even be calculated, as they are still rising! The job market in the Metropolitan Milwaukee area is very tight, and competition for caregivers is fierce. Nursing homes are guaranteed regular increases, and hospitals can raise rates as they see fit. We are increasingly unable to compete with the health care field – let alone the hospitality industry! Our staff are committed, innovative and caring individuals who love their work and find satisfaction in it. Many, even those with second jobs, cannot afford to stay without the expectation of increases.

Over the past decade, community rehabilitation programs have had no appreciable increases. We have become creative and businesslike in our operations, eliminating positions and squeezing out ways to increase wages and insurance to attract and retain quality staff. We have started small business enterprises to underwrite our services, and we have endlessly fundraised. We will continue these endeavors, but, given the softening of the economy, they are not the only answer.

We do not come here to cry "save us!" We stand strong and proud of the work we do, and ask only that we be paid fairly for services rendered. Our staff have a right to be valued for what they do. I know that this budget process is difficult, with competing priorities. Hubert Humphrey once said "The measure of any society is how it cares for its most vulnerable citizens." How do the leaders and citizens of Wisconsin wish to be measured?

Thank you for your consideration.

Submitted by Colleen Kennedy, President/CEO  
Ranch Community Services, Inc.  
W187 N8661 Maple Road  
Menomonee Falls, WI 53051  
262-251-8670

Elizabeth Hecht  
1483 Sunrise La.  
Belleville, WI 53508  
608-845-9499

April, 25, 2001

Good afternoon Senator Robson and committee members. Thank you for your time and consideration today.

My Name is Elizabeth Hecht and I am the parent of a 12 year old with significant disabilities. We are parents of children with disabilities and are here to talk to you about funding and improving the system that supports children with disabilities and their families.

Specifically, we will talk about B-3; Family Support; Respite and Children's Redesign. Together these, as well as other county funded supports, make up the puzzle pieces of funding in human services for children with disabilities. Over the past 6-8 years they have been consistently underfunded with state dollars which is what brings us here today.

The B-3 program enrollment has grown 27% since the last funding increase in 1996. The Family Support Program now has a waiting list of over 2600 families, more than are currently served by the program; the Lifespan Respite initiative passed in the last budget currently has 5 pilots around the state while the need for respite across the age span is one of the most frequently identified needs by caregivers; and children's redesign which is a system improvement initiative designed in partnership with families, WCDD and DHFS and other community partners and is intended to in part draw down federal dollars to serve children and families living in the community which we currently do not do.

The current budget recommendations from the governor do not include an increase in funding for any of these programs and continues the lack of commitment and partnership with families to support some of our most vulnerable children. We are here to request that you support, through a recommendation to Joint Finance, a budget ammendment or draft legislation, an increase in funding for the programs that support children with disabilities and their families.

Respectfully,



Elizabeth Hecht  
Chair, Children's Committee on Long term Support Redesign



# AUTISM SOCIETY OF WISCONSIN

Public Hearing – April 25, 2001

Senator Judy Robson, Chair, and Members, Senate Committee on Human Services and Aging:

Members of the Autism Society of Wisconsin know that the State of Wisconsin has not kept its promises for community services for adults and children with disabilities. Many counties have provided significant “overmatch” in an attempt to meet the needs of people in their counties who are on waiting lists. These counties can no longer add to the burden on the property tax. The time has come for Wisconsin to keep its promises.

Thousands of individuals are on waiting lists for vocational and residential services. People with autism and other developmental disabilities are waiting for services that can be provided if the CIP IB funding increases by \$6 million in the first year of the biennium and \$32 million in the second year of the biennium. This will bring Wisconsin about \$60 million in federal funds.

Wisconsin has moved away from dependence on institutional care but has not provided the funding for the services needed by citizens in the communities of the state. Many elderly parents continue to care for their adult sons and daughters with autism. They need to know that community services will be available in the near future.

Parents of children need to know that the state will provide the funding promised in the past for Family Support services, respite care and the interventions that can help to minimize the effects of disabilities.

The existing service system is in crisis. Many agencies cannot hire the staff that is needed to provide residential and vocational services. Staff turnover and vacancy rates are high because wages and benefits are not competitive with other positions. It is difficult to provide high quality services for our most vulnerable citizens. Thirty million dollars is needed in year 1 of the biennium and \$60 million in year 2 just to make these direct care positions competitive in our communities. These workers are just as valuable and deserving as are employees in nursing homes whose needs are being recognized.

We urge you to amend the Governor’s budget to meet the crises in the communities of Wisconsin and to meet the needs of citizens with disabilities.

Thank you.

Frances Bicknell, Governmental Affairs Chair.

Autism Society of Wisconsin  
103 W. College Ave. Suite 601 Appleton WI 54911-5744

Statement To Human Services And Aging Committee April 25, 2001

By Floss Whalen, 406 W. Third St. Oconomowoc

I have been appearing before legislative committees since 1973, but I confess this is the first time I have ever done so, wearing a T-shirt! This particular T-shirt means a lot to me because I have a personal understanding of the frustration, the worry, the loss and yes, even the terror that lies behind these simple words, "waiting list." No parent should ever have to wish that her child will die before she does because she is so afraid of what will happen when she is no longer able to care for him. Yet, many parents of disabled children have felt that way at one time or another in their lives. I am one of them.

Forty-six years ago, our oldest son, Patrick, was born with Down syndrome. We were advised to institutionalize him. We chose to raise him at home along with his three younger brothers. We have never regretted that decision. In his early years there was no outside help, no schooling for him until he was eight years old, and then only for half days until he was twelve. But in time some community resources were developed, including a good emphasis in Waukesha County on day programming for adults with developmental disabilities. During those "best of times" I was able to serve 16 years as the Mayor of Oconomowoc, a job that provided the flexibility I needed to care for him as I could pretty much choose which 60 hours a week I would put in on the job.

Our concern with waiting lists came later, when he developed serious health challenges, including the need to take all his nourishment through a G tube. We were growing old and our greatest worry was what was going to happen to him. We did not want his brothers to be burdened with his care as they had families and responsibilities of their own. It was then we discovered the infamous "waiting lists." What was particularly frustrating to us was to see the preferential treatment given to persons who were coming out of the Wisconsin institutions into the community.

We were happy for them, but we resented that our son was denied the same treatment. Those of us who have chosen to care for our children at home have saved the state millions and millions of dollars over the years. Yet, when we reach an age, when our children need help, it is not there for them. They are placed on waiting lists, and even when they finally receive services, the funding for them is significantly less than the funding for persons who have transferred out of the institutions. Our son requires complete personal care; his needs are equal to those who have been in the DD Centers, yet the funding for him is much less.

He is, however, in a group home now. We bring him home almost every weekend and he is happy to come home, but just as happy to go back. He has a good, fulfilling life and we no longer worry about what will happen to him when we're gone. I no longer secretly hope I will outlive him. But we're the lucky ones. It is Wisconsin's shame that there are thousands and thousands like Patrick, still waiting. These are God's own special people. And the people can't wait.



Stronger Together

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Written Testimony of Dr. Robert Kraig,  
Political Director, SEIU Wisconsin State Council,  
On Nursing Home Staffing and the 2001-2003 Biennial Budget,  
Senate Committee on Human Services and Aging  
April 25, 2001

*Author to determine  
based on  
Nursing Home  
System*

We understand that this Committee has been asked to make budget recommendations to the Joint Finance Committee. As such, we urge you to recommend that any substantial increases in the state budget for nursing homes be specifically tied to improved staffing.

There is no longer any doubt that there is a major crisis in the quality of care in Wisconsin's nursing homes. Recent press reports have made clear what those who actually deliver the care have known for sometime: that Wisconsin nursing homes are not adequately staffed, and that short staffing is a grave risk to the well being of our most fragile and vulnerable citizens.

As a health care union that represents over 4,000 nursing home workers in Wisconsin, and over 100,000 nationally, we are deeply concerned that the Governor's budget contains a large increase in nursing home Medicaid reimbursement rates, but does not tie this increase to improved staffing.

We are also concerned that the proposed run-up in nursing home rates is based on a flawed and slanted financial analysis paid for by the nursing home industry itself.

In addition, we are concerned that a large long term care structural deficit will be created by this rate increase that will hamper future efforts to bring Wisconsin nursing home staffing standards into line with the latest research on what is necessary to provide quality care.

I The Nursing Home Staffing Crisis

Beneath the recent press reports of dangerous conditions in many Wisconsin nursing homes is a deeper crisis in the delivery of nursing home care.<sup>1</sup>

1. See, for example, *Milwaukee Journal Sentinel*, April 8, 2001, April 10, 2001, April 11, 2001; WISN TV 12 (Milwaukee), April 21, 2001; *Waukesha Freeman*, January 17, 2001; *Wisconsin State Journal*, April 8, 2001; *Milwaukee Labor Press*, February 22, 2001, *Union Labor News*, March 2001; WTMJ TV 4 Milwaukee, January 15, 2001; WISN TV 12 Milwaukee, January 15, 2001, WDJT TV-58 Milwaukee, January 15, 2001; Wisconsin Radio Network, October 18, 2000, January 14, 2001, March 16, 2001; Wisconsin Public Radio, April 16, 2001; *Capital Times*, October 19, 2000, WMT-TV 15 Madison, October 18, 2000; WKOW -TV 27 Madison, October 18, 2000.

Local 150 (Statewide)

District 1199W/United Professionals (Statewide)

Local 21, School District  
of LaCrosse

Local 180, LaCrosse  
City Employees Union

Local 152, Racine  
Unified School District

Local 168, Kenosha  
Unified School District

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Over the last decade, the acuity (relative illness) of nursing home residents has skyrocketed, but staffing has not kept pace. Seniors who used to reside in nursing homes increasingly turn to community-based programs as an alternative to institutionalization. In addition, hospitals are discharging patients into nursing homes sooner and sicker than ever before.

Despite the dramatic increases in the acuity of nursing home residents, there has been no major change in Wisconsin's staffing standards in a quarter century. Nursing home staffing levels have been flat nationally, and in fact have declined slightly in Wisconsin over the past four years. A large body of research demonstrates that direct care staffing levels are the most important variable in quality care.<sup>2</sup>

Nursing homes are still necessary to take care of the sickest and frailest seniors--a segment of the population which will dramatically increase during this decade--but better staffing is needed to provide them with the decent level of care they deserve. According to a comprehensive ten year study by the Health Care Financing Administration (HCFA) released last year, 54% of U.S. nursing homes have dangerously low Certified Nurse Assistant (CNA) staffing levels. Contrary to its good government traditions, Wisconsin ranked 44<sup>th</sup> in the country in CNA staffing levels, and 48<sup>th</sup> in nurse staffing levels.<sup>3</sup>

Short staffing leads to unconscionable suffering, including painful pressure sores, dehydration, and malnutrition. Increased medical complications caused by inadequate staffing result not only in needless pain, but also increased costs associated with increased nursing care and avoidable hospitalization.

In addition, there is shocking evidence that many Wisconsin nursing homes are threatening the lives of their residents. Immediate jeopardy violations, the most serious class of violation, have increased nearly 14 fold since 1997. In the year 2000, Wisconsin nursing homes shattered the record for these life-threatening violations and are on a pace to break the record again in 2001.<sup>4</sup> Our union representatives regularly get reports from our members about shocking conditions. For example, one SEIU CNA was assigned to be the only caregiver for 50 residents on two consecutive shifts. After the second shift, she quit her job. (Two days later she told her story in a Senate Health Committee hearing).

Short staffing is also the fundamental cause of the CNA shortage. First, understaffing results in

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<sup>2</sup> Health Care Financing Administration (HCFA). *Report to Congress: Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes* (2000); Institute of Medicine, National Academy of Sciences, *Nursing Staff in Hospitals and Nursing Homes: Is it Adequate?* (1996); United States General Accounting Office, "Nursing Home Care: Enhanced HCFA Oversight of State Programs Would Better Ensure Quality" (1999); Harrington, et al, "Experts Recommend Minimum Staffing Standards for Nursing Facilities in the United States," *The Gerontologist* 40 (2000): 5-16; Inspector General, Department of Health and Human Services, *Quality Care in Nursing Homes: An Overview* (1999).

<sup>3</sup> HCFA, "Report to Congress" (2000).

<sup>4</sup> Board on Aging and Long Term Care Statistics (2001).

increased injuries, which leads to further understaffing. Nursing home workers are suffering an epidemic of work place injuries. 200,000 injuries are reported each year, making nursing home work the third most dangerous job in America—more dangerous than construction or mining.<sup>5</sup> Second, recent research indicates that frustration over short staffing is the number one reason CNAs leave the profession. There is not a shortage of people willing to take CNA positions, but a retention crisis. Turnover rates in Wisconsin's proprietary nursing homes are over 94% per year.<sup>6</sup> These turnover rates also waste an immense amount of resources. It is estimated that it costs \$2,000 dollars to hire a new worker, and train them to become a CNA.

Nursing home operators say that they will use Medicaid increases to improve staffing, but there is overwhelming evidence that the only way to assure better staffing is to require specific staffing ratios. Many nursing homes, especially for-profit facilities, deliberately short staff in order to squeeze more money out of their operations. A comprehensive federal study, the HCFA Report to Congress, concluded that "*There is virtually no link between what an individual facility spends and the rate it receives. . . . higher rates might be taken in as profit or spent on capital improvement rather than on staffing.*"<sup>7</sup> The experience with the wage pass through in the last budget should be enough to show that many Wisconsin nursing homes cannot be trusted to do the right thing with state money, unless they are specifically required to do so.<sup>8</sup>

Current Wisconsin staffing standards are not only too low, they are also very difficult to enforce. Our members tell us that the only time the standards are faithfully followed is the day that state surveyors are actually in the facility. There is an overwhelming national consensus that the only way to assure decent nursing home staffing levels is to convert to a ratio system. A ratio system, unlike the current Wisconsin hours per resident day system, requires a specific number of CNAs to residents and nurses to resident for each shift.

The SEIU proposal is for CNA to resident ratio of 1 to 5 on day shift, 1 to 10 on evening shift, and 1 to 15 on night shift, and a nurse staffing ratio of 1 to 15, 1 to 25, and 1 to 35. This proposal was editorially endorsed by the *Milwaukee Journal Sentinel* last week, which concluded that the proposal "makes sense" and that "lawmakers should make that proposed change a priority."<sup>9</sup>

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<sup>5</sup> SEIU Fact Sheet, "Nursing Home Workers: Caring 'Til it Hurts," November 2, 2001.

<sup>6</sup> Iowa Caregivers Association, "*Certified Nursing Assistant Recruitment and Retention Pilot Project Phase I: Survey Results*" (1998); Bureau of Health Information, Department of Health and Family Services, *Wisconsin Nursing Homes and Facilities for the Developmentally Disabled, 1999* (November, 2000)

<sup>7</sup> HCFA, "Report to Congress" (2000).

<sup>8</sup> "Audit: Nursing Homes Didn't Pass Along Wage Increases," *Milwaukee Business Journal*, February 2, 2001; Robert Kraig, "Nursing Home Industry Needs Protection from Itself," Op Ed, *Milwaukee Business Journal*, February 16, 2001.

<sup>9</sup> "The Nursing Home Crisis," Editorial, *Milwaukee Journal Sentinel*, April 11, 2001.

## II The Operating Deficits of Wisconsin Nursing Homes Have Been Exaggerated

The Wisconsin nursing home industry claims that it cannot increase staffing until its operating deficits are eliminated. Their own audit report specifically says that the increases they are seeking will not be used to improve staffing or wages.

The two nursing home associations commissioned a private audit report of the Wisconsin nursing home industry by BDO Seidman which claims that the industry needs an increase of \$79 million in the Wisconsin Medicaid formula.<sup>10</sup> This report has been widely circulated in the State Legislature. It has also been given to journalists throughout the state, and been repeatedly used by industry spokesmen in committee hearings and press interviews. It has also been specifically quoted by members of the Executive Branch.

It is not good public policy to rely on audit reports that are paid for by special interests. The distortions in the Seidman report are a good case in point.

First, the report uses statistical slights of hand to overstate the depth of the financial crisis facing Wisconsin nursing homes.

The centerpiece of the report is the claim that Wisconsin nursing homes lose, on average, approximately \$11.00 per patient day on Medicaid residents. Actually, it is impossible to tell what the actual cost of care for Medicaid residents is because the cost reports are not broken down that way. The average cost per patient day quoted in the report includes sicker Medicare patients, and sicker county facility residents, which skews the average upward. The other numbers that come from this calculation--such as the average loss per year by each facility and the amount of the proposed rate increase--are thus inflated.

The industry report also claims that Wisconsin nursing homes have a negative operating margin of 4.74%. This is an aggregate number which is not facility specific and includes county facilities that have very large operating deficits. The median rate is a better measure, and it is slightly positive (.13%). That means that half of the homes in the state are not losing money and half are. Increased Medicaid rates, it should be noted, will not fix broken homes. Bad managers and low occupancy rates, which according to the state numbers are concentrated in a few homes, are factors that will not be corrected by a general rate increase. In addition, a general rate increase will funnel money into profitable homes. According to the industry's own numbers, for-profit homes are doing much better in the state Medicaid formula than non-profit and government homes, and increasing the rate may invite further financial abuse in that sector.

There is another major methodological slight of hand in the industry report. The report inflates 1998 cost report data forward rather than comparing '98 cost reports to '98 rates. Policy experts

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<sup>10</sup> "Special Report: On the Financial Condition of Nursing Homes in Wisconsin," BDO Seidman, September 2000.

we have discussed this with, including some that work for the state, believe that this procedure skewed the cost projections in the report high and the rate projections low.

Second, the industry report makes a number of misleading assertions which confound the relationship between federal Medicare and the state Medicaid formula.

The report claims both that a rise in the acuity of nursing home residents and the shift to a prospective payment system in federal Medicare have financially burdened the industry. They also blame increased admissions, and resultant patient turnover, for increasing the nursing home industry's Medicaid resident costs.

The report fails to mention that nursing homes have aggressively pursued higher acuity residents to capture more Medicare money. They have continued to do this because Medicare business is still lucrative, despite federal cutbacks designed to curtail profiteering by the large nursing home chains. In fact, Medicare payments increased by over a billion dollars each of the last two years. In addition, the report fails to mention that this pursuit of Medicare money, when it is not accompanied by the increased staffing needed to care for a sicker resident population, has exasperated the quality of care and staffing crisis in Wisconsin nursing homes. Perhaps this is why there has been such a shocking increase in serious jeopardy violations.

The report also asserts an erroneous link between bankruptcies and the Wisconsin Medicaid reimbursement rate. The report notes that Wisconsin's bankruptcy rate is higher than that of other midwestern states, but fails to clarify that this is a function of federal Medicare policy, not state Medicaid rates. In point of fact, Wisconsin happens to have a higher percentage of for-profit chains that were involved in Medicare speculation, and were hit hard by federal Medicare reform. These chains went bankrupt because they loaded up on bank debt to expand into the lucrative Medicare business. Now, the financial prospects for the major chains are looking brighter. Because of the Medicare increases approved by Congress in the Fall of 2000, investment bankers are again investing in nursing homes. As a result, many of the major nursing home chains will come out of bankruptcy this summer.<sup>11</sup> In addition, according to their own report, for-profit nursing homes are doing much better in the state Medicaid formula than not-for-profit and government facilities. Given the track record of these chains, and their need to free up capital to make up for their own financial miscalculations, it is predictable that an overgenerous Medicaid rate increase will be used for purposes other than increased staffing, wages, or improvements in the quality of care.

It is disturbing that a very flawed and slanted industry audit report is serving as a basis for a very large run-up in the Medicaid reimbursement rate. Amazingly, the Governor's budget actually includes more money than the nursing home industry's own report requests. The industry report asks for an extra \$79 million per year, and includes the county homes in its calculations. The Governor's budget includes a \$115 million increase in the first year and \$157 million in the second year of the biennium. Since the release of the Governor's budget, industry officials have

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<sup>11</sup> "The Refurbishing Begins: With Medicare Reimbursements Back, Health Care Services Taps Capital Markets," *Investment Dealers Digest*, April 16, 2001.

begun asserting that this is the actual amount they need.<sup>12</sup>

### III The IGT and the Future Long Term Care Structural Deficit

The effect of this over-generous rate increase will be the creation of a large structural deficit in long term care either in 2003 or 2006. The Governor's budget assumes the state can capture \$604 million extra dollars over three years. Under this scenario the MA Trust Fund created to hold the proceeds of the transaction will be exhausted in 2006. But Wisconsin may get much less money than the Governor's budget assumes. On April 3<sup>rd</sup>, the Health Care Financing Administration promulgated a rule that would reduce the window for receiving extra IGT funds from three years to one, which would reduce Wisconsin's take from \$604 million to \$258.7 million.<sup>13</sup> Under this scenario, the trust fund would be exhausted in 2003. In fact, the fiscal picture may be worse still. \$62 million in Wisconsin's base IGT money from the 2000-2001 fiscal year is currently being deferred, because HCFA has concluded that Wisconsin claimed more than it is entitled to. If this deferral is upheld—and our latest information from Washington is that there is a very good chance that it will be upheld—than Wisconsin will lose this amount from its IGT base every year in perpetuity. In this biennium alone, this would reduce the net IGT increase to \$103.3 million.

Even in the best case scenario--the \$604 million extra assumed in the Governor's budget--the money is spent down much too quickly. Not unlike the Tobacco settlement, this trust fund could produce revenue for many years, if it is well managed. But if it is spent down relatively quickly, the Medicaid rate increases in the Governor's budget will produce a large structural deficit in future budgets (GPR will have to be used to fund the continuation of the Medicaid formula increases funded in in the current biennium with IGT money). This will happen at the same time that there is a large spike in the elderly population toward the end of the decade.

This structural deficit will make it very difficult for the state to adjust to the growing consensus that higher nursing home staffing levels are required to provide a decent level of care. The nursing home industry's private audit report specifically states that the increased money that is being sought *will not* to be used to increase staffing or wages. The report concludes that the industry's funding request "*does not represent adequate funding for other initiatives such as rectifying staffing shortages, [or] meeting nurse aide staffing levels for optimum care as defined in the Health Care Financing Administration's (HCFA) recent report to Congress on minimum nurse staffing. . . .*"<sup>14</sup>

It would surely be tragic if the state were to invest a large amount money in the nursing home system, and yet in the end do nothing to rectify the deepening staffing crisis. It is the solemn responsibility of the Legislature, as the ultimate guardian of the broad public interest, to take concrete steps to safeguard the well being of the most fragile and vulnerable among us.

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<sup>12</sup> See *Milwaukee Journal Sentinel*, April 8, 2001.

<sup>13</sup> Legislative Fiscal Bureau Memo to Representative John Gard and Senator Brian Burke, April 4, 2001.

<sup>14</sup> BDO Seidman, "Special Report," p. 13.



**Coalition of Wisconsin Aging Groups****Testimony Before the Senate Committee on Human Services and Aging**

April 25, 2001

by

**Thomas L. Frazier***request to  
repeal  
in Wisconsin  
Fed.*

I am here today to talk about the "other death tax." Probably not the one you are thinking about because in Wisconsin we have already eliminated estate taxes, regardless of the value of the estate. At the federal level, estates of more than \$1 million are already exempt from estate taxes and President Bush has proposed phasing it out completely over the next few years.

Even if that happens we will still have a death tax in Wisconsin and this country, except that it only applies to older persons who are poor and sick. It is euphemistically called estate recovery, but a tax by any other name is still a tax.

Estate recovery is a federal law that was initiated in Wisconsin in 1991 to recover money from the estates of people who were age 55+ for nursing home care and some other long-term care services (e.g., COP-Waiver). Since 1991, however, Wisconsin has become one of the most aggressive and least consumer-sensitive programs in the country. And in the current budget proposal, the Governor and DHFS proposes that estate recovery be applied to all Medicaid services and include real property as well as homestead property (LFB analysis attached). We believe estate recovery is a bad, if not terrible, policy for the following reasons:

1. At a time when the Wisconsin Legislature and Congress have eliminated and proposed eliminating estate taxes on wealthy people, it is not fair to impose a similar tax only on people who are older (55+), people who are sick (in need of long-term care or

other MA health care services) and people who are already poor (they have had a spend down to gain eligibility for MA services).

2. At a time when Wisconsin is promising to reform its long-term care programs (i.e., Family Care) to give greater choices to consumers, it has created a huge disincentive for people to accept those services. For example, in Milwaukee, a very large percentage (up to 80%) of persons on waiting lists for Family Care services are refusing services specifically giving estate recovery as the reason. One older couple refused services because the husband, who was considerably older than his wife, wanted his wife to be able to sell their home and live on the money after he died. With estate recovery, a lien would be placed on the home and, if the man lived long enough, the state would recover all or most of the value of the home leaving the wife with nothing.
3. If additional expansion of estate recovery passes in this budget, Wisconsin will turn the Medicaid program into a loan program for poor older persons. In fact, other than specifically named loan programs, I do not know of any other public programs that we require people to pay back (e.g., farm subsidies and fire protection).
4. Estate recovery basically only applies to people who are unable to hire lawyers to engage in sophisticated estate planning. Those who play by the rules, lose.

I urge this committee to be the first legislators to study this issue and recommend to the Joint Finance Committee that estate recovery in Wisconsin be rolled back to the **minimum** required by federal law. To the extent possible home and community-based services and other MA health care services (e.g., personal care) should be excluded in view of the state's stated objectives for Family Care (i.e., eliminate the institutional bias, provide consumer choices, etc.).

We believe that a very large percentage of the \$15 million recovered under this

program is from nursing home care so the actual fiscal impact would be limited. DHFS was not able to give us a breakdown of where the money comes from, despite our recent open records request for that information (response attached).

Finally, I would just like to mention that one of our neighboring states, Michigan, and the state of Texas have never implemented estate recovery despite federal law. In a state that has already eliminated estate taxes for the wealthy it seems hypocritical to so aggressively pursue the estates of old, sick, poor people.

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**Coalition of Wisconsin Aging Groups****Testimony Before the Senate Committee on Human Services and Aging****April 25, 2001**

by

**Thomas L. Frazier***Repeat to  
in Wisconsin  
Fed. level of law*

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Under the federal Breast and Cervical Prevention and Treatment Act of 2000, states may provide MA coverage to women who have no access to creditable health care coverage and who are under age 65 and diagnosed with breast or cervical cancer, regardless of income. States that exercise this option are eligible for enhanced federal matching funds equal to the enhanced matching rate available under the state children's health insurance program (SCHIP), currently 71.19% for Wisconsin.

[Bill Sections: 1748, 1822 and 9423(11)]

**15. MA STATE CENTER ADJUSTMENTS**

GPR	\$223,500
FED	975,800
Total	\$1,199,300

**Governor:** Increase MA benefits funding by \$430,700 (\$60,600 GPR and \$370,100 FED) in 2001-02 and \$768,600 (\$162,900 GPR and \$605,700 FED) in 2002-03 to reflect increases relating to the operation of the three State Centers for the Developmentally Disabled. Funding for the state Centers is budgeted in the MA benefits appropriation and transferred to the Division of Care and Treatment Facilities as program revenue. The major requests relating to the state Centers are summarized under "Care and Treatment Facilities."

**16. MA ESTATE RECOVERY**

	Funding	Positions
GPR	-\$550,100	1.00
FED	- 798,500	1.00
PR	1,467,400	0.00
Total	\$118,800	2.00

**Governor:** Provide \$1,000 (-\$68,500 GPR, -\$95,600 FED and \$165,100 PR in 2001-02) and \$117,800 (-\$481,600 GPR, -\$702,900 FED and \$1,302,300 PR) in 2002-03 and 2.0 positions (1.0 GPR position and 1.0 FED position), beginning in 2002-03, to reflect the net fiscal effect of: (a) authorizing additional staff to administer the program (\$58,900 GPR and \$58,900 FED in 2002-03) and making statutory changes that would increase recoveries under the program and reduce MA benefits costs (-\$68,500 GPR, -\$95,600 FED and \$165,100 PR in 2001-02 and -\$540,500 GPR, -\$761,800 FED and \$1,302,300 PR in 2002-03). The bill includes the following statutory changes.

*Expand Services Covered by Estate Recovery.* Authorize estate recoveries for all MA services provided under the MA state plan to noninstitutionalized recipients age 55 or older. This provision would first apply to MA paid for health care services that are provided to an individual on the bill's general effective date.

Specify that if the health care services were provided by a managed care organization under a program of all-inclusive care for the elderly (PACE) or under the Wisconsin Partnership program, DHFS must calculate the amount of MA as the capitation rate that was paid on behalf of the recipient. Specify that if the health care services were provided under Family Care, DHFS must calculate the amount of MA paid as the actual cost of those health care services, as reported to DHFS by a care management organization. Finally, clarify that the estate recovery

provisions under Family Care do not apply if the benefit is recoverable under the MA estate recovery provisions.

Currently, the state can only recover amounts MA paid for long-term care services (home- and community-based waiver services, home health, personal care and related inpatient hospital services and drug costs). Under current law, all MA services for institutionalized recipients are recoverable. MA benefits are recovered through two methods: (a) claims submitted against the estate during the probate process; and (b) liens filled against the recipient's home when the recipient is not reasonably expected to return home to live and there is not a spouse, minor child, or disabled child residing in the home.

*Allow All Real Property To Be Subject To Liens.* For current situations in which DHFS may place a lien on property, authorize DHFS to place a lien on all real property in which the recipient has an ownership interest. Under current law, the state may place a lien on the homestead (but not other types of real property) of nursing home residents who are not expected to return to their home to live, except that DHFS may not file a lien if a spouse or minor, disabled or blind child resides in the home.

*Transfers by Affidavit.* Eliminate the current prohibition that prevents DHFS from recovering the following types of property of a decedent under the transfer by affidavit process: (a) interests in or liens on real property; (b) wearing apparel and jewelry; (c) household furniture, furnishings and appliances; and (d) motor vehicles and recreational vehicles. Instead, require DHFS to reduce the amount of any recovery under the transfer by affidavit process by up to the amount allowed (\$5,000 currently) if necessary to allow the decedent's heirs or beneficiaries to retain the following personal property: (a) wearing apparel and jewelry held for personal use; (b) household furniture, furnishings and appliances; and (c) other tangible personal property not used in trade, agriculture, or other business, not exceeding the allowed amount (\$3,000 currently).

In addition, when an interest in real property of a decedent is transferred to an heir by affidavit, authorize DHFS to: (a) place a lien on that interest in real property if the decedent does not have a surviving spouse or child who is under age 21 or disabled; and (b) place a lien on any interest in the decedent's home. Specify that DHFS may enforce the lien by foreclosure in the same manner as a mortgage on real property, except that a lien on a decedent's home could not be enforced if the decedent has a surviving spouse or child under age 21 or disabled.

Transfers by affidavits are permitted when a decedent leaves solely owned property in the state that does not exceed \$20,000 in value. DHFS may recover for services provided under MA by the transfer by affidavit process if: (a) no person files a petition for administration or summary settlement of the decedent's estate within 20 days of death; (b) the decedent is not survived by a spouse, a child who is under age 21 or a child who is disabled; and (c) the value of the property does not exceed \$20,000.

[Bill Sections: 1539, 1824 thru 1835, 3843 thru 3851 and 9323(9)&(11)]



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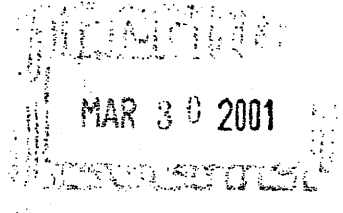
Scott McCallum  
Governor

State of Wisconsin

Department of Health and Family Services

Phyllis J. Dubé  
Secretary

March 29, 2001



Attorney Mitchell Hagopian  
2850 Dairy Drive, Suite 100  
Madison, WI 53718-6751

RE: Public Records Request

Dear Mr. Hagopian:

Thank you for your letter to Mr. Joe Lekan that letter requested records from the Medical Assistance Lien Law and the Estate Recovery Program. Your request was made under the Wisconsin Public Records Law. Your request was referred to me for a response.

First I want to apologize to you for the delay in our responding. Thank you for your patience.

Staff of the Estate Recovery Program has reviewed your request and has gathered the information that is available. That information is included in this letter.

I will go through each of your requests individually and give you the information we have. Where we do not have the information you requested, I will also explain why the information is not available.

You requested that the following information be provided to you.

- a. The Total amount Wisconsin has recovered under the Medical Assistance Lien Law and the Estate Recovery Program every year since 1998.

The total amount Wisconsin has recovered for Medicaid through its Estate Recovery Program is as follows:

State Fiscal Year 1998	\$13,404,188
State Fiscal Year 1999	\$13,529,021
State Fiscal Year 2000	\$15,537,621

These amounts include the incentive fees of five percent that are paid to county and tribal agencies. The net amount recovered for State Fiscal Year 1999 includes a payout of \$766,238 as settlement of a class action lawsuit and one other suit regarding the



recovery of Medicaid payments from surviving spouses' estates. Information for State Fiscal Year 2001 is not reconciled and, therefore, not currently available.

- b. The amount Wisconsin has recovered pursuant to the Medical Assistance Lien Law (s.49.496(2)) in 1998, 1999, and year to date for 2000.

The total amount Wisconsin has recovered for Medicaid through liens is as follows:

State Fiscal Year 1998	\$2,302,319
State Fiscal Year 1999	\$2,809,548
State Fiscal Year 2000	\$2,477,178

These amounts include the incentive fee of five percent that is paid to county and tribal agencies. Information for State Fiscal Year 2001 is not reconciled and, therefore, not currently available. These figures are included in the total amounts listed in a. above.

- c. The amount Wisconsin has recovered pursuant to the Medical Assistance Estate Recovery Law (s.49.496(3)) since 1998 broken down by the following estate sizes.

- \$0-\$10,000
- \$10,000-\$20,000
- \$20,000-\$50,000
- \$50,000-\$70,000
- \$70,000-\$100,000
- \$100,000+

The Department does not have records that compile that information. To obtain that information all of the estate files would have to be reviewed by Department staff because of confidentiality issues. That would involve thousands of files. It would be unduly burdensome to have program staff go through the estate files, extrapolate information from the files and create new documents to present the requested data. In addition, that information is not received from every estate. If the state's claim is paid in full there is no need to request the estate size.

- d. The amount of the total collection received in 1998, 1999, and year to date for 2000 that was recovered from COP-waiver recipients.

The Department does not have records that compile that information. Since COP-waiver services are recoverable Medicaid services, they are not treated differently than any other Medicaid claim. The Estate Recovery Program does not separately identify recipients of Medicaid waiver services from recipients of other Medicaid services. Regular Medicaid services and waiver services are recovered through one claim that combines all services paid. To obtain the information you requested every estate file would have to be reviewed by staff. There are thousands of estate files. In addition, there will be many files in which both waiver and non-waiver services were provided and billed. To determine how much was received for the COP-waiver services, staff would have to calculate how much of the amount received should be allocated to waiver, non-waiver

and possibly a chronic disease aid claim and a COP-GPR claim. This would be unduly burdensome for staff for the same reasons mentioned in c. and d. above.

- e. The number of accounts under the Lien Law and Estate Recovery that had to be adjusted due to lack of funds in the estate.

The Department does not maintain records that compile that information. All estate files of the Estate Recovery Program would have to be reviewed by staff to obtain this information. Again, that means reviewing thousands of files, extrapolating information from the files and creating new documents. This would be unduly burdensome for staff.

- f. The total collection from the accounts that had to be adjusted under the Lien Law and Estate Recovery due to lack of funds in the estate.

See e. above.

- g. The number of requests for "undue hardship" waivers filed since that process was created in 1995 and how those requests were disposed of (i.e. denied or granted).

There have been 148 "undue hardship" waiver requests since the legislation became effective on April 1, 1995. Of the 148 requests, 46 have been approved, 99 have been denied and three are pending.

- h. The amount Wisconsin has recovered pursuant to the Community Options Program estate recovery law (s. 46.27(7g)) in 1998, 1999, and year to date for 2000.

The total amount Wisconsin has recovered for the Community Options Program through its Estate Recovery Program is as follows:

State Fiscal Year 1998	\$64,373
State Fiscal Year 1999	\$134,760
State Fiscal Year 2000	\$248,867

These amounts are prior to the incentive fee of five percent paid to county departments and aging units. Information for State Fiscal Year 2001 is not reconciled and, therefore, not currently available.

- i. The amount Wisconsin has recovered pursuant to the Disease Aids estate recovery law (s.49.682) in 1998, 1999, and year to date 2000.

The total amount Wisconsin has recovered for the Wisconsin Chronic Disease Program through its Estate Recovery Program is as follows:

State Fiscal Year 1998	\$70,699
State Fiscal Year 1999	\$72,156
State Fiscal Year 2000	\$95,001

Information for State Fiscal Year 2001 is not reconciled and, therefore, not currently available.

As you can see from the above, many of the questions you want answered are not answerable without staff going through hundreds, or in some cases thousands, of files which may or may not contain the information you want. In addition to reviewing the files, staff would have to compile information extracted from those files and create new documents containing that information. For any one of these requests it would be a truly burdensome task and would severely interfere with the normal functioning of the Program.

Thank you for your interest in the Estate Recovery Program.

Sincerely,

A handwritten signature in cursive script that reads "Peggy Wichmann". The signature is written in dark ink and is positioned above the typed name.

Peggy Wichmann, Attorney  
Medicaid Estate Recovery Program

# WISCONSIN ASSOCIATION OF AREA AGENCIES ON AGING

## THE NEED FOR ELDER ABUSE STATUTORY REFORM AND FUNDING: 2001-2003 BIENNIAL BUDGET PROPOSAL

**1. Elder Abuse is a serious and growing problem.**

Since Wisconsin began to fully operate the elder abuse reporting system in 1986, there has been an increase of 139% in the number of cases reported. And because Wisconsin is experiencing an even more dramatic increase in the number of elders than the nation as a whole, the state will most likely see in the next decade a similar increase in the number of reports of elder neglect or physical, financial, emotional and sexual abuse as well as self-neglect.

**2. Counties and Tribes need staff to address elder abuse reports.**

County boards are required by state statute to designate a county "lead elder abuse agency" to receive and investigate elder abuse reports. Although this statute was passed into law in 1985, there have been only limited legislative appropriations to carry out the assigned duties. As a result, the great majority of counties report serious staffing problems for this growing need and critical function.

**3. The need for public awareness is growing as the seriousness of this problem increases.**

While public awareness is high for other types of family violence (e.g., child abuse and domestic violence), the public's understanding of the growing and shocking problem of elder abuse lags behind. Public awareness is needed to demonstrate to the public the systems in place and resources available to help with victim safety and to hold abusers accountable.

**4. Training of professionals is crucial to addressing elder abuse issues.**

Elder abuse is a complex issue that requires sensitive and competent staff who understand the interrelationship between the civil and criminal laws, the dynamics of domestic violence, the dynamics of sexual assault/abuse, working with clients who may have compromised competency, family issues and/or long-term care concerns. Sophisticated, regular training for law enforcement, domestic violence and sexual assault service providers, county social service staff, attorneys, financial institutions, health care professionals, clergy and others is badly needed.

**5. More direct service funds are needed for health and social services.**

Current state spending for Elder Abuse Direct Services is \$625,000 per year. This is less than one dollar per older person in Wisconsin. The lack of funds for services such as assessment and case management, in-home care, respite, emergency shelter, legal assistance and remedies to counter financial exploitation may force elders to remain in extremely dangerous situations and/or lead to unnecessary expensive institutionalization. Lack of direct service funds jeopardizes the health and safety of Wisconsin's elderly.

- 6. Elder abuse professionals need the necessary tools to do their job.**  
Elder abuse investigators and service providers need special equipment such as cameras and film to record evidence of abuse and property damage, cellular phones for both staff and victims to obtain emergency assistance, locks and outside nightlights to safeguard homes, lock-boxes for securing personal items, cleaning services including dumpster rentals, and access to "lending closets" (where emergency items such as blankets, air conditioners, tarps, medical equipment, etc. are stored).
- 7. Professional services are needed to remedy financial exploitation.**  
Remedying the fast-growing and complex area of financial exploitation requires the purchase of services from financial and legal professionals (e.g. accountants, financial planners, representative payees and lawyers). Counties and Tribes have no special funds to address this problem.
- 8. Education for prevention can minimize abuse and neglect.**  
Communities need to be more aware of all types of elder abuse, warning signs, where to call for help and what services are available. Early identification and preventive measures should be employed so that abuse, neglect and exploitation can be avoided or minimized, thereby reducing the need for more expensive interventions. The elderly, especially the isolated and homebound, need to know that they have options for safe living environments in their later years.
- 9. State staffing is inadequate to meet current elder abuse programming demands.**  
Funds are needed for the Department of Health and Family Services to expand its leadership and coordination of the elder abuse and adult protective services systems. There is a high demand from lead elder abuse and domestic violence agencies for model program information, a statewide public awareness campaign, technical assistance in numerous areas including service development, alcohol abuse, development of elder abuse interdisciplinary teams, individual case consultations, and both statewide and regional training on elder abuse. Currently, DHFS has only one employee to respond to all of the above requests.
- 10. Numerous statutory language changes are needed to enable investigators, law enforcement and others to better protect vulnerable adults.**  
After over 15 years of elder abuse experience in Wisconsin, there is a significant number of statutory language changes needed to correct problems that inhibit lead elder abuse agencies and law enforcement agencies from performing their jobs efficiently and effectively. As we continue to expand Family Care it becomes even more important to have a cogent, comprehensive and well-coordinated system in place for all areas of adult protective services.

January 11, 2001

# ELDER ABUSE REPORTS BY COUNTY\*

Total Reports for 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, and 1999

COUNTY	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999
Adams	8	4	0	14	14	6	10	22	18	15
Ashland	8	6	6	8	9	9	6	3	0	2
Barron	33	32	13	24	24	35	19	27	19	34
Bayfield	5	6	8	0	6	5	16	15	16	28
Brown	147	159	160	223	201	190	197	170	170	217
Buffalo	0	6	1	0	0	1	0	2	3	0
Burnett	18	23	11	5	12	3	1	7	2	3
Calumet	3	3	2	3	2	0	1	1	2	3
Chippewa	13	15	18	17	6	15	7	15	11	8
Clark	3	6	5	3	3	2	1	0	10	6
Columbia	35	39	35	33	25	51	34	44	35	27
Crawford	0	0	0	0	2	1	2	0	5	6
Dane	279	278	296	315	330	300	223	226	237	272
Dodge	2	15	9	13	10	5	5	9	14	15
Door	9	3	4	7	13	9	6	9	7	9
Douglas	12	10	8	9	5	8	14	11	13	14
Dunn	5	11	13	12	12	10	14	3	17	22
Eau Claire	13	24	42	20	30	22	25	28	25	18
Florence	10	11	9	4	0	6	4	2	1	3
Fond du Lac	23	42	42	37	70	44	66	0	88	47
Forest	2	5	9	0	0	6	10	1	2	2
Grant	8	8	14	21	19	20	26	14	28	15
Green	0	44	27	37	32	27	17	6	23	33
Green Lake	16	22	24	19	27	29	14	21	26	43
Iowa	13	12	16	28	42	26	17	22	12	12
Iron	0	1	1	3	3	1	9	0	6	0
Jackson	16	14	24	16	18	29	13	22	14	21
Jefferson	4	5	3	5	6	2	2	1	9	4
Juneau	5	6	8	2	6	5	5	4	13	6
Kenosha	107	175	158	183	171	162	172	190	180	203
Kewaunee	1	0	7	4	7	10	2	7	5	4
La Crosse	34	42	30	15	39	37	15	15	29	31
Lafayette	9	2	3	0	1	3	0	1	2	1
Langlade	3	20	28	41	26	45	54	39	48	57
Lincoln	4	6	3	4	6	5	11	17	25	17
Manitowoc	22	24	16	19	23	11	18	3	35	39
Marathon	51	52	25	30	29	39	77	79	66	57
Marinette	25	27	25	22	20	24	14	28	39	39
Marquette	5	7	11	5	3	1	2	1	1	4
Menominee	4	3	6	2	0	0	0	3	4	8

\* Gross total prior to editing

Elder Abuse  
Reports by  
County\*

COUNTY	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999
Milwaukee	518	527	452	435	520	518	514	501	717	780
Monroe	3	4	0	2	2	0	5	2	4	7
Oconto	3	4	0	0	0	0	7	18	21	22
Oneida	3	21	31	24	40	44	36	35	46	57
Oneida Tribe	**	**	**	**	10	0	0	3	15	23
Outagamie	39	51	40	37	24	61	118	57	108	109
Ozaukee	23	29	24	28	33	73	64	75	46	25
Pepin	1	1	1	1	0	4	1	1	2	0
Pierce	5	5	0	4	1	1	0	2	6	7
Polk	9	5	13	9	8	9	17	16	33	19
Portage	7	15	9	18	17	9	9	12	19	12
Price	14	10	18	13	11	13	12	20	20	32
Racine	29	47	75	48	37	34	17	44	89	84
Richland	8	19	13	9	5	7	9	9	13	15
Rock	18	31	37	51	59	43	25	37	48	52
Rusk	7	0	0	3	5	14	20	6	14	4
St. Croix	11	12	23	27	26	43	45	41	36	46
Sauk	21	0	0	0	43	29	49	44	32	48
Sawyer	13	11	10	20	33	4	9	7	8	0
Shawano	1	8	3	10	10	14	26	26	36	22
Sheboygan	16	9	5	4	2	3	7	14	11	24
Taylor	17	7	10	9	10	14	25	12	10	12
Trempealeau	3	13	17	3	1	3	6	6	21	9
Vernon	20	36	60	83	0	61	49	53	57	44
Vilas	36	39	104	102	89	80	86	110	85	104
Walworth	36	38	36	42	71	48	53	48	65	88
Washburn	16	21	23	18	28	32	42	28	26	30
Washington	11	26	21	33	32	24	30	47	23	37
Waukesha	54	74	59	92	80	96	103	66	88	79
Waupaca	8	16	21	19	11	16	27	29	24	20
Waushara	12	11	30	30	18	43	35	25	26	28
Winnebago	37	39	46	49	70	56	51	59	64	80
Wood	0	2	1	2	1	3	3	0	0	2
Stockbridge Munsee	0	0	1	0	0	0	0	0	0	0
<b>TOTAL</b>	<b>1,954</b>	<b>2,299</b>	<b>2,303</b>	<b>2,428</b>	<b>2,549</b>	<b>2,603</b>	<b>2,629</b>	<b>2,521</b>	<b>3,073</b>	<b>3,266</b>

\* Gross total prior to editing

\*\* Oneida Tribe Elder Abuse Reporting System began operation in 1994

Compiled by the Wisconsin Bureau of Aging and Long Term Care Resources  
Phone: (608) 266-2536  
Aug-00

ENDORSEMENTS FOR ELDER ABUSE STATUTORY REFORM AND  
FUNDING 2001-2003 BIENNEAL BUDGET PROPOSAL.

WISCONSIN COALITION AGAINST DOMESTIC VIOLENCE

BOARD ON AGING AND LONG TERM CARE

AGEADVANTAGE, INC.

ELDERLY SERVICES NETWORK OF DANE COUNTY

AARP WISCONSIN

WISCONSIN ASSOCIATION OF NUTRITION DIRECTORS

WISCONSIN ASSOCIATION OF BENEFIT SPECIALISTS

COALITION OF WISCONSIN AGING GROUPS

AREA AGENCY ON AGING OF DANE COUNTY

MILWAUKEE COUNTY DEPARTMENT ON AGING

SOUTHEASTERN WISCONSIN AREA AGENCY ON AGING

WISCONSIN ASSOCIATION OF AGING UNIT DIRECTORS

NORTHERN AREA AGENCY ON AGING

WISCONSIN COUNTY HUMAN SERVICES ASSOCIATION

WISCONSIN COALITION FOR ADVOCACY

OFFICE OF CRIME VICTIMS SERVICES

WISCONSIN INDIAN ELDERS ASSOCIATION

PORTAGE COUNTY DEPARTMENT ON AGING

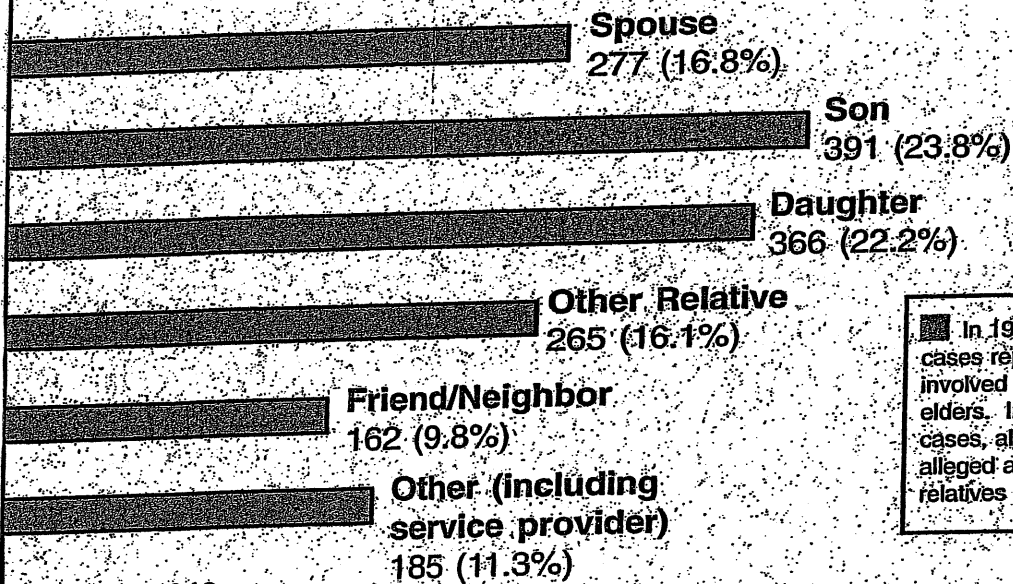
VILAS COUNTY COMMISSION ON AGING

OCONTO COUNTY COMMISSION ON AGING

AGING & DISABILITIES RESOURCE CENTER OF MARATHON CO.



## RELATIONSHIP OF ABUSER(S) TO VICTIM



N = 1,646

Note: Data on abusers reflect total reports made, not number of substantiated cases.  
The number of alleged abusers includes situations where there were more than one abuser.

■ In 1999, of the 3,257 cases reported, 1,707 involved self-neglecting elders. In the remaining cases, almost 79% of the alleged abusers were relatives of the victim.

## SAMPLES OF ACTUAL WISCONSIN ELDER ABUSE CASES

An elder in a northeastern Wisconsin county was being financially abused by his care provider, who was "helping" him as agent under a financial power of attorney. The lead elder abuse agency was able to assist in having his power of attorney revoked and getting caught up with the delinquent bills that the dishonest agent had not paid. Without proper financial management, the elder was at great risk of losing all of the services that enabled him to remain at home. The agency was also able to put in new services to replace the abusive care provider.

A local police department in south-central Wisconsin referred "Joe" to the elder abuse agency after Joe's son-in-law beat him. Joe's daughter and son-in-law had moved into Joe's farmhouse and convinced Joe that in exchange for care they said he needed and they would provide, that he must deed over portions of his house, farm and land to them. The daughter and son-in-law did not provide the services but they systematically took over all of his property, fencing off portions, until eventually Joe could only go from the house to his driveway. The elder abuse agency was able to earn Joe's trust and hook him up with legal assistance to reverse the original gifts, get restraining orders against his daughter and son-in-law and civil suits for his injuries in their assaults.

An elder in east-central Wisconsin was living in a filthy basement apartment with no ventilation. He had many health risks including untreated mental illness. His person, all of his household items and everything else in the apartment was filthy, broken, moldy and/or insect-infested. His family had severed all relationships. The elder abuse agency was able to assist him in moving to low-income senior housing, purchasing needed household items, setting up homemaker services and getting his insurances and health care re-started. His family has now resumed relations as well.

In central Wisconsin the elder abuse agency evacuated three elderly individuals from their home, which harbored 20 dogs and 30 cats, some of which had died in the home. The lead elder abuse agency worked with public health, social services, law enforcement and a local group home to hospitalize one and relocate the other two. The house was condemned. The two relocated individuals were placed in adult family homes and community housing. Elder Abuse funds paid for respite, clothing, some furniture and the housing itself.

An elder in southeastern Wisconsin was living in an apartment with two abusive, drug-dependent sons. The elder abuse agency was able to move her out of the apartment into senior housing and prohibited her sons from entering the building. They provided the woman with a protective payee and chore services, enabling her to live alone - safely.

Some "friends" took an elderly northern Wisconsin man in a wheelchair to Texas. They used his car and charge cards to make the trip and promised to care for him in Texas, taking all of his belongings out of his home. They neglected his needs in Texas and he somehow escaped to the police. He wanted to return to northern Wisconsin. The elder abuse agency used elder abuse funds to relocate him back home and supply him with basic essentials. They are now providing him with on-going home care, transportation and adult day care through the COP program.

A hospital home worker called the elder abuse agency in central Wisconsin about an 80 year old woman being beaten by her husband. She had numerous bruises, cuts and hair pulled out. She was locking herself in the bathroom to escape the abuse. The husband took her walker away and banged on the bathroom door and walls until she came out; there were dents in the door and a hole in the wall. The agency was able to call police and put the husband on a 72 hour detention and then placed in a nursing home. The wife was hospitalized to recover and then provided with in-home services.

**SENATE COMMITTEE ON HUMAN SERVICES AND AGING**

**WED. APRIL 25, 2001**

MY NAME IS RICHARD SICCHIO AND I AM THE EXECUTIVE DIRECTOR OF THE NORTHERN AREA AGENCY ON AGING, LOCATED IN RHINELANDER. THE NORTHERN AREA INCLUDES TWENTY-THREE COUNTY, AND SEVEN TRIBAL AGING OFFICES THAT GOES FROM ADAMS COUNTY IN THE SOUTH TO DOUGLAS COUNTY IN THE NORTH, AND FROM FLORENCE COUNTY IN THE EAST TO POLK COUNTY IN THE WEST.

I WOULD LIKE TO THANK THE CHAIR AND OTHER COMMITTEE MEMBERS FOR THIS OPPORTUNITY TO TESTIFY ON THE PROBLEM OF ELDER ABUSE AND NEGLECT AND THE NEED FOR ELDER ABUSE RESOURCES TO MEET THE INCREASING DEMANDS FOR SERVICES AND PROGRAMS TO HELP THOSE WHO ARE SUFFERING FROM THE MANY FORMS OF ABUSE AND NEGLECT IN TODAY'S SOCIETY.

I WOULD LIKE TO BEGIN MY TESTIMONY BY SHARING WITH YOU A COUPLE OF EXAMPLES OF ELDER ABUSE CASES THAT HAVE BEEN HANDLED BY LEAD AGENCIES IN WISCONSIN. I DO SO TO EMPHASIZE THE SERIOUS NATURE OF THIS PROBLEM. (REFER TO HANDOUT)

TODAY IT IS ESTIMATED THAT FOR EVERY CASE OF ABUSE OR NEGLECT OF AN OLDER PERSON THAT IS REPORTED, THERE ARE BETWEEN FIVE AND FOURTEEN CASES THAT GO UNREPORTED.

IF WE APPLY THESE ESTIMATES TO WISCONSIN IT MEANS THAT BASED ON THE NUMBER OF REPORTS IN 1999, WHICH WAS 3266, THERE ARE SOMEWHERE BETWEEN 16,330 AND 45,724 OF OUR OLDER RESIDENTS WHO ARE CURRENTLY BEING ABUSED OR NEGLECTED.

IF WE THINK ABOUT CHILD ABUSE AND DOMESTIC VIOLENCE AND ELDER ABUSE IN TERMS OF A FAMILY VIOLENCE SPECTRUM AND WE THINK ABOUT OUR ATTEMPTS TO AID VICTIMS OF ABUSE AS PROTECTIONS ACROSS THE LIFESPANS, THERE IS AN IMBALANCE IN OUR SYSTEM THAT IS RATHER DRAMATIC.

IN WISCONSIN, APPROXIMATELY \$24 MILLION OF STATE AND FEDERAL FUNDING IS SPENT EACH YEAR ON CHILD ABUSE INVESTIGATIONS AND ASSESSMENTS.

\$7.5 MILLION IS THE TOTAL STATE AND FEDERAL AMOUNT AVAILABLE TO THE DOMESTIC VIOLENCE NETWORK.

YET THE TOTAL AMOUNT OF STATE SPENDING FOR ELDER ABUSE IS \$625,000.

THAT IS LESS THAN ONE DOLLAR FOR EVERY OLDER PERSON IN WISCONSIN.

THERE IS BASICALLY NO FEDERAL FUNDING AVAILABLE FOR INVESTIGATIONS OR DIRECT SERVICES SINCE THE FEDERAL OLDER AMERICANS ACT ALLOCATION OF APPROXIMATELY \$95,000 IS COMMITTED TO SUPPORT THE ELDER ABUSE PROGRAM COORDINATOR'S

POSITION AT THE DEPARTMENT OF HEALTH AND FAMILY SERVICES  
BUREAU OF AGING AND LONG TERM CARE RESOURCES.

(BEFORE I CONTINUE I WANT TO MAKE IT CLEAR THAT I AM NOT SAYING  
THAT THE \$24 MILLION FOR CHILD ABUSE INVESTIGATIONS OR THE \$7.5  
MILLION FOR DOMESTIC VIOLENCE IS TOO MUCH OR THAT SOME OF  
THOSE DOLLARS SHOULD BE REDIRECTED. WE HAVE NO WISH TO  
COMPETE WITH THOSE AGENCIES FOR MONEY WHICH THEY  
DESPERATELY NEED)

WHAT I AM SAYING IS THAT THERE IS A SERIOUS IMBALANCE WHEN WE  
LOOK AT THE WHOLE SPECTRUM OF FAMILY VIOLENCE AND OUR  
COMMITMENT TO DEALING WITH IT. AND MAKE NO MISTAKE ABOUT IT,  
ELDER ABUSE AND NEGLECT IS A FAMILY VIOLENCE SITUATION MORE  
OFTEN THAN NOT. I HAVE GIVEN YOU A HANDOUT THAT SHOWS THE  
RELATIONSHIP OF THE VICTIM TO THE ABUSER AND IT TELLS US THAT  
THE ABUSER IS A FAMILY MEMBER ALMOST EIGHTY PER CENT OF THE  
TIME.

I AM HERE TO TELL YOU THAT \$625,000 IS WOEFULLY INADEQUATE FOR  
THE ELDER ABUSE AND NEGLECT NEEDS IN OUR STATE.

WHAT WE ARE SEEKING TO DO IS TO ASSURE THAT IN WISCONSIN, NO  
MATTER WHAT AGE YOU ARE, NO MATTER WHERE YOU LIVE, THAT  
THERE IS IN PLACE, SYSTEMS THAT PROTECT INDIVIDUALS FROM HURT  
AND HARM. FROM CHILDHOOD TO OLD AGE, EVERYONE DESERVES TO  
LIVE THEIR LIFE FREE FROM ABUSE, NEGLECT AND EXPLOITATION.

IN JUNE OF LAST YEAR THE WISCONSIN ASSOCIATION OF AREA AGENCIES ON AGING FORMED A TASK FORCE TO LOOK AT AND EVALUATE THE CURRENT STATUS OF ELDER ABUSE NEEDS AND RESOURCES IN WISCONSIN.

WE SURVEYED ALL ELDER ABUSE LEAD AGENCIES, COUNTY AND TRIBAL AGING UNITS, SOCIAL AND HUMAN SERVICE AGENCIES, AND DOMESTIC VIOLENCE AND SEXUAL ASSAULT AGENCIES.

THEY TOLD US LOUD AND CLEAR THAT THERE IS NOT ENOUGH LOCAL STAFF TO DEAL WITH ELDER ABUSE AND NEGLECT ISSUES.

THERE IS NOT ENOUGH MONEY TO PROVIDE DIRECT SERVICES TO INDIVIDUALS.

THERE IS NOT ENOUGH MONEY TO MAINTAIN THE TYPE OF EQUIPMENT THAT IS USED TO DOCUMENT CASES AND PROVIDE IMMEDIATE SECURITY TO VICTIMS.

THERE IS NOT ENOUGH TRAINING FOR LAW ENFORCEMENT AND LEAD AGENCY STAFF TO PROVIDE THEM WITH THE NECESSARY SKILLS TO DO PROPER INVESTIGATIONS AND DOCUMENT CASES OF ABUSE ESPECIALLY WHEN PHYSICAL AND SEXUAL ASSUALTS ARE INVOLVED.

THERE IS NOT ENOUGH SUPPORT AT THE STATE LEVEL TO PROVIDE TECHNICAL ASSISTANCE IN ALL AREAS OF THE STATE.

THERE IS NOT ENOUGH MONEY TO DO AN EFFECTIVE PUBLIC AWARENESS AND INFORMATION CAMPAIGN TO COMBAT THE PROBLEM.

ALL THIS AT A TIME WHEN THE FASTEST GROWING SEGMENT OF OUR POPULATION ARE PEOPLE AGE 85 AND OVER. THE OLDEST AND MOST FRAIL PEOPLE IN THE STATE. ARGUABLY THE MOST VULNERABLE PEOPLE IN OUR STATE.

IT IS OUR REQUEST THAT YOU TAKE NOTE OF OUR CAUSE AND SEEK THE RESOURCES TO HELP US ADDRESS THIS WIDESPREAD AND TERRIBLE PROBLEM. I KNOW HOW TOUGH THE CURRENT BUDGET SESSION WILL BE, BUT WE MUST REMEMBER THAT ELDER ABUSE AND NEGLECT ARE CRIMES AND WE HAVE AN OBLIGATION TO COME TO THE AID OF THOSE WHO ARE SUFFERING AT THE HANDS OF THEIR FAMILY MEMBERS, THEIR CAREGIVERS AND THEIR FRIENDS.

THANK YOU VERY MUCH

ROCK COUNTY, WISCONSIN



Board of Supervisors

51 South Main Street  
Janesville, WI 53545  
(608)757-5510  
Fax (608)757-5511

April 17, 2001

Senator Judith Robson, Chair  
Senate Committee on Human Services

SUBJECT: Public Hearing

I am here to testify on behalf of Rock County, Wisconsin. Rock County owns and operates a nursing home/long-term care facility for the provision of health care and related services as defined under Wisconsin Statutes, sec. 49 (6)(m).

Pursuant to sec. 49.45 of the Wisconsin Statutes and Title XIX of the Social Security Act, Rock County receives reimbursement, in part, of costs associated with the County's health care operation. However, over the past several years, the Intergovernmental Transfer Program money has been practically eliminated.

In 2001, Rock County budgeted nearly \$9.1 million in tax levy to support the nursing home. In addition, the nursing home has accumulated a \$5 million retained earnings deficit over the last three years. We are now seeking help through the Wisconsin Intergovernmental Transfer Program and the federal government. Should the State of Wisconsin receive this funding, it is especially important to Rock County that this money go only for nursing homes.

Further, we ask that the next State Budget reflect an adequate percentage of federal funds be given to counties with nursing homes.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Herb Christiansen", is written over the typed name.

Herbert Christiansen, Chair  
Health Services Committee  
Rock County, Wisconsin

cc: Terry Scieszinski



# WISCONSIN ASSOCIATION OF AREA AGENCIES ON AGING

## THE NEED FOR ELDER ABUSE STATUTORY REFORM AND FUNDING: 2001-2003 BIENNIAL BUDGET PROPOSAL

- 1. Elder Abuse is a serious and growing problem.**

Since Wisconsin began to fully operate the elder abuse reporting system in 1986, there has been an increase of 139% in the number of cases reported. And, because Wisconsin is experiencing an even more dramatic increase in the number of elders than the nation as a whole, the state will most likely see a similar increase in the number of reports of elder neglect or physical, financial, emotional and sexual abuse as well as self-neglect.
- 2. Counties and Tribes need funding for elder abuse staff.**

County boards are required by state statute to designate a county "lead elder abuse agency" to receive and investigate elder abuse reports. Although this statute was passed into law in 1985, there have been only limited legislative appropriations to carry out the assigned duties. As a result, the great majority of counties report serious staffing problems for this growing need and critical function.
- 3. More funds are needed for public awareness.**

While public awareness is high for other types of family violence (e.g., child abuse and domestic violence), the public's understanding of the growing and shocking problem of elder abuse lags behind. Public awareness is needed to demonstrate to the public the systems in place and resources available to help with victim safety and to hold abusers accountable.
- 4. More funds are needed for training of professionals.**

Elder abuse is a complex issue that requires sensitive and competent staff who understand the interrelationship between the civil and criminal laws, the dynamics of domestic violence, the dynamics of sexual assault/abuse, working with clients who may have compromised competency, family issues and/or long-term care concerns. Sophisticated, regular training for law enforcement, domestic violence and sexual assault service providers, county social service staff, attorneys, financial institutions, health care professionals, clergy and others is badly needed.
- 5. More direct service funds are needed for health and social services.**

Current state spending for Elder Abuse Direct Services is \$625,000 per year. This is less than one dollar per older person in Wisconsin. The lack of funds for services such as assessment and case management, in-home care, respite, emergency shelter, legal assistance and remedies to counter financial exploitation may force elders to remain in extremely dangerous situations and/or lead to unnecessary institutionalization.

**6. More funds are needed to provide elder abuse professionals with the necessary tools to do their job.**

Elder abuse investigators and service providers need special equipment such as cameras and film to record evidence of abuse and property damage, cellular phones for both staff and victims to obtain emergency assistance, locks and outside nightlights to safeguard homes, lock-boxes for securing personal items, cleaning services including dumpster rentals, and access to "lending closets" (where emergency items such as blankets, air conditioners, tarps, medical equipment, etc. are stored).

**7. More funds are needed to purchase professional services to remedy financial exploitation.**

Remedying the fast-growing and complex area of financial exploitation requires the purchase of services from financial and legal professionals (e.g. accountants, financial planners, representative payees and lawyers). Counties and Tribes have no special funds to address this problem.

**8. More funds are needed for prevention.**

Communities need to be more aware of all types of elder abuse, warning signs, where to call for help and what services are available. Early identification and preventive measures should be employed so that abuse, neglect and exploitation can be avoided or minimized, thereby reducing the need for more expensive interventions. The elderly, especially the isolated and homebound, need to know that they have options for safe living environments in their later years.

**9. Position authority and funds are needed to expand state staff.**

Funds are needed for the Department of Health and Family Services to expand its leadership and coordination of the elder abuse and adult protective services systems. There is a high demand from lead elder abuse and domestic violence agencies for model program information, a statewide public awareness campaign, technical assistance in numerous areas including service development, alcohol abuse, development of elder abuse interdisciplinary teams, individual case consultations, and both statewide and regional training on elder abuse. Currently, DHFS has only one employee to respond to all of the above requests.

**10. Numerous statutory language changes are needed to enable investigators, law enforcement and others to better protect vulnerable adults.**

After over 15 years of elder abuse experience in Wisconsin, there is a significant number of statutory language changes needed to correct problems that inhibit lead elder abuse agencies and law enforcement agencies from performing their jobs efficiently and effectively. As we continue to expand Family Care it becomes even more important to have a cogent, comprehensive and well coordinated system in place for all areas of adult protective services.