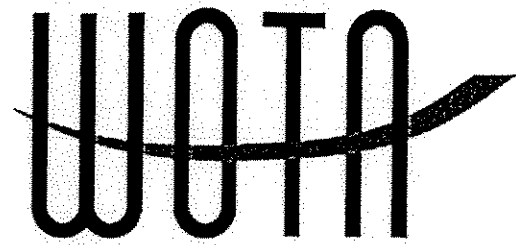


SB 406



Wisconsin Occupational Therapy Association

February 20, 2002

Senate Health, Utilities, Veterans and Military Affairs Committee
Post Office Box 7882
Madison, WI 53707-7882

Dear Committee:

On behalf of the Wisconsin Occupational Therapy Association, I would like to express our support for SB 406, which would repeal unnecessary penalties inflicted on Medical Assistance providers. SB 406 would repeal language that was included in the 2001-2003 biennial budget and deals with the treatment of Medicaid providers. Among the provisions included in the budget that would be repealed by this bill include:

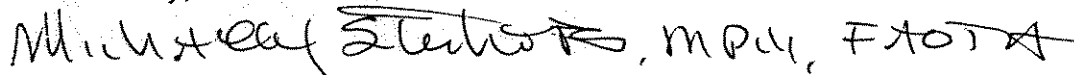
- Authorizing DHFS to limit the number of Medicaid providers for any reason they feel necessary.
- Authorizing DHFS to suspend a health care professional's participation in the Medicaid program before the professional has the opportunity for a hearing, if DHFS determines that the professional's participation may lead to the loss of public funds.
- Requiring surety bonds from a health care professional if DHFS determines that *other* providers of the same services have violated Medicaid requirements in the past.
- Authorizing DHFS to limit staff and resources a provider can utilize if DHFS determines that the *potential* for fraud and abuse exists if additional staff or resources are used.
- Authorizing DHFS, in addition to recoveries and other sanctions that may be available, to charge a fee if DHFS determines that a provider has failed to follow similar billing procedures or program requirements. The fee would be at least \$1,000 and up to two times that amount of the violation.

All of these provisions ultimately treat providers as "guilty until proven innocent." While understanding that DHFS and DOJ should pursue fraud and abuse in the Medicaid program, providers should have the same due process rights as any other individual or business.

I believe DHFS is performing its duties under the current rules and regulations for audit and post payment reviews and is exercising all its appropriate authority to safeguard against inappropriate acts by providers. There is simply no need for a significant number of new rules that cross the line of fairness, due process and reasonable accomodation.

I would like to ask that you support SB 406 and if you have any questions, please feel free to contact me directly.

Sincerely,

Handwritten signature of Michael J. Steinhauer in black ink, including the letters "MPH, FAOTA" at the end.

Michael J. Steinhauer, OTR, MPH, FAOTA
Executive Director

Cc: file
Ms/MJS



Wisconsin Personal Services Association, Inc.

106 South Beaumont
Prairie du Chien, WI 53821
608-988-4556

February 27, 2002

Dear Chairman Moen and Senate Health Committee Members:

Good afternoon. My name is Nancy Anderson. I am a board member of the Wisconsin Personal Services Association (WPSA) and Co-Chair of the board' Audit/Compliance/Best Practices Committee. I am here to testify to WPSA's support of SB 406.

WPSA's members provide Medical Assistance Personal Care (MAPC) card services primarily as direct county agencies, county sub-contractor agencies and independent living centers. As a service to our members WPSA has coordinated the findings and outcomes of the Department of Health and Family Services (DHFS) MAPC provider audits of its members since they began in 1998. In our initial August, 2000 WPSA audit survey ten counties, two independent living centers and four home health agencies had been audited. As of today only two of those audits are not yet resolved through the settlement process, but those two audits are proceeding through the routine standard audit process at DHFS. To our knowledge none of the initial MAPC audits or subsequent settlement stipulated follow-up audits in 2001 have demonstrated any allegations of fraud or abuse in their audit findings. The current rules governing these DHFS audits have allowed the Department to proceed with these audits of MAPC providers without any hindrance.

WPSA does believe that new budget language and subsequent rules associated with the DHFS audits will give the Department authority that is excessive to the purpose and scope of these audits. WPSA believes that the department should audit and refer for prosecution willfully fraudulent providers, which they do right now without this new language. The other provider audits that are conducted by DHFS are not found to be fraudulent in nature and therefore further extending the Department's authority is not needed in either case.

WPSA does not believe that DHFS audit staff should be the designated governmental authority to decide the number of statewide providers, the staff and resources available to providers, the requirement of surety bonds and/or additional fees or eliminate the due process rights of providers. To audit and refer for prosecution the fraudulent providers or settle audit finding with non-fraudulent providers is the role of the DHFS audit staff.

WPSA appreciates the ability to testify in support of SB 406 before this committee.
Thank you.

Nancy Anderson
WPSA Board Member
1310 Mendota Street
Madison, Wisconsin 53714
608/242-8335
andersonn@wpp.org



To: Members of the Wisconsin State Senate Committee on Health, Utilities, Veterans, and Military Affairs
From: Alice O'Connor, Vice President of Advocacy and Policy
Date: February 27, 2002
Re: **Support for Senate Bill 406, Repeal of Wisconsin Act 16 Provisions Regarding Providers of Medical Assistance**

The State Medical Society, representing 9000 physicians and their patients in Wisconsin expresses its support for SB 406 and urges members of the Senate Health Committee to recommend passage of this legislation to the full Senate.

Many provisions included in Wisconsin Act 16 are exceedingly detrimental to Medical Assistance recipients and have the potential to **substantially** limit the access to healthcare for these individuals. SB 406 repeals these ill-conceived provisions and ensures all Medicaid recipients have both access to necessary health care and a choice in the provider of these services.

These items deprive Medicaid program participants of their due process rights and interfere with the business decisions of health care professionals. The fiscal effect on the state for these provisions, as estimated by the Department of Health and Family Services, is nominal (\$86,000). This estimate does not consider the tremendous impact these provisions will have on health care professionals, their patients, and other insurers as participation in the Medicaid program becomes more cumbersome and expensive. These items will cause the program's reimbursement level to fall further below the cost of providing care.

Everyone can agree that when a health care professional abuses a government program that the government has a duty to protect public funds. In Wisconsin, those professionals should be referred to the Department of Justice for prosecution. DHFS and DOJ have tools available to deal appropriately with these providers. Health care professionals, however, who mistakenly fail to comply with complicated regulations that are often unclear and inconsistently applied should not be penalized by the loss of their business. Nor should their patients be penalized by the loss of their health care provider.

The State Medical Society of Wisconsin strongly urges the Senate Health Committee to recommend SB 406 to the full Senate for adoption. If you have any questions, please contact Alice O'Connor at AliceO@wismed.org or R.J. Pirlot at RJP@wismed.org, or you may contact them by telephone at 257-6781.

Thank you.

February 27, 2002

Senator Rodney Moen
and Members of the Senate Health, Utilities,
Veterans and Military Affairs Committee

I am writing to express my support for SB406 in order to repeal language in the 2001/2002 Biennial Budget, which originated as SB 55, which the Department of Health and Family Services (DHFS) refers to as the "Medicaid fraud and abuse" provisions.

Our agency provides Medicaid Personal Care services to over 600 recipients each month. We are one of the few Medicaid providers of personal care in Southeastern Wisconsin.

We fully concur with all reasonable efforts and processes to identify and eradicate fraud and abuse in the system whose success depends upon integrity. However, the fraud and abuse prevention rules incorporated in the 2001/2002 Biennial Budget accomplish little but to enhance bureaucratic processes at great potential expense to Wisconsin residents.

These provisions empower a State Agency to decertify, shut down, impede opening, refuse payment of undisputed charges, and charge punitive interest to Medicaid providers based on the Department's unreviewable decisions that money was misspent. All this would be at the expense of fundamental fairness and due process for the agencies. These types of rules would enact fundamentally bad policy and create opportunity for abuse, and ultimately damage to the interests of Wisconsin taxpayers who use and rely on good Medical Assistance services.

The aforementioned "fraud and abuse" language provisions in the budget bill only allow providers to appeal audit findings to the party responsible for the audit, which is clearly not in keeping with due process. These provisions take on even more serious tones when the Department seeking these provisions is under current investigation by the Legislative Audit Bureau (LAB) for questionable audit practices over the past four years. We hope that the forthcoming findings of the LAB audit would be given consideration in any deliberations regarding the granting of any additional fraud and abuse regulatory authority to DHFS.

We support SB406 in order to repeal the aforementioned provisions for the following reasons:

- Authorizing DHFS to limit the number of providers participating in the Medicaid program, for no other reason than there are already some undefined number of providers, is unjustifiable at a time when there are fewer and fewer Medicaid providers and access to services is already severely limited in many areas of the state.

- Authorizing DHFS to require surety bonds from a provider if DHFS determines that other providers of those services have violated Medicaid requirements in the past amounts to unjustifiable penalizing one provider for the misconduct of another.
- Authorizing DHFS to limit the staff and resources a provider can utilize if DHFS determines that the potential for fraud and abuse exists if additional staff or resources are used is allowing DHFS to make business decisions for providers. It is inappropriate for DHFS to be given the authority to make these types of decisions.
- The current penalties in the Medicaid program are already dramatic. Authorizing DHFS, in addition to recoveries and other sanctions that may be available, to charge a fee if DHFS determines that a provider has failed to follow similar billing procedures or program requirements in the past places excessive additional punitive demands on providers already struggling with low reimbursement rates.
- Extending liability for repayment of past erroneous or excessive payments to new owners that have no responsibility for the former owner's conduct or practices is wholly unsupportable.

We do not contest the fact DHFS and the Department of Justice should pursue fraud and abuse in the Medicaid program. However, to eliminate due process rights for providers and authorize the other provisions cited above is indefensible.

Please act to repeal these mislabeled (misrepresented) "Medicaid fraud and abuse" language provisions in order to ensure due process and a fair and reasonable audit process for providers. Please feel free to contact me at (262) 637-9128 if you have any questions.

Sincerely,

Bruce Nelsen
Executive Director
Society's Assets, Inc.