



September 18, 2013

State Senator  
**Rick Gudex**

**District 18**

To: Members of the Senate Committee on Health and Human Services  
From: Sen. Rick Gudex  
Re: Senate Bill 251, relating to drug formularies in nursing homes and the performance of patient services by a pharmacist.

Madame Chair, and members of the committee, thank you very much for giving us this time today. The bill before you does two things, both of which, we believe, will help make health care delivery in Wisconsin easier and more efficient.

First, the bill allows nursing homes to create and maintain their own drug formularies. As you already know, a “drug formulary” is a list of guidelines which helps a hospital determine what medications they will use, and which suggests possible lower-price alternatives to more expensive drugs. Formularies create efficiencies that cut down on both medication expenses and staff time.

Under current law, hospitals and health plans are allowed to create drug formularies, but nursing homes are not. This bill will change that, and allow nursing homes in this state to establish and use drug formularies, if they establish a quality assessment and assurance committee to create and maintain it. The committee will have to include the director of nursing services, at least two other members of the nursing home staff, and both a physician and a pharmacist who are licensed to practice in Wisconsin.

As with hospitals and health plans, a formulary will always come in second to a doctor’s orders. If a physician has ordered that a drug cannot be substituted, those orders will trump the formulary. The patient’s safety and doctor-patient relationship come first.

Second, current practice allows physicians to delegate authority for patient care to a pharmacist, but the law is silent on whether a pharmacist is allowed to accept such delegation from a physician. This seems like a small thing, but it could cause a hitch in the physician-pharmacist relationship, and therefore affect patient care. The bill specifies that a pharmacist can accept delegation from a physician.

This bill has been drafted with a lot of input from nursing homes, pharmacists, and other health care providers. We appreciate all of their assistance, and hope we can count on your support.



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TO: Senator Leah Vukmir, Chair, and Members of the Health and Human Services Committee  
FROM: Gina Dennik-Champion, MSN, RN, MSHA  
Wisconsin Nurses Association Executive Director  
DATE: September 18, 2013  
RE: Opposition to SB 251 - therapeutic alternate drug selections in nursing homes, performance of patient services by a pharmacist, and the practice of pharmacy.

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On behalf of the Wisconsin Nurses Association, I would like to thank Chairperson Vukmir and the members of the Health and Human Services Committee for holding a public hearing on SB 251, which addresses therapeutic alternate drug selections in nursing homes, performance of patient services by a pharmacist, and the practice of pharmacy.

My name is Gina Dennik-Champion. I am a registered nurse and serve as the Executive Director of the Wisconsin Nurses Association (WNA). WNA is the professional association for Wisconsin's 80,000 registered nurses. Prior to my current employment, I was a nursing home administrator and director of nursing for a 200 bed long-term care facility for approximately 15 years. I personally understand the nature of this issue. I am here today to share with you WNA's opposition to SB 251. SB 251 creates the potential for discrepancies in care and is not harmonious with existing law.

Without question, our members support the concepts in SB 251 that allow for the use of therapeutic alternate drug selection in nursing homes. The concern we have however, is regarding the proposed language on page 3, Section 3, lines 10-12 that allows an advanced practice nurse prescriber, or APNP, the use of therapeutic alternate drug selection. The language interferes with the routine procedure of a physician admitting patients/residents into a nursing home. Currently, the patient's attending physician is informed of the policies and corresponding regulations that support quality care and is asked to support these policies via authorization. The same process and authority should be addressed by the patients attending physician when it comes to authorizing the use of therapeutic alternate drug selection. If SB 251 passes as written, it would allow for other physicians and non-physicians to override the attending physician's authorization of the substitution of medications. Having multiple practitioners sign off on the use of substitute medications could disrupt the continuum of care and create unintended discrepancies. For example, one practitioner may authorize certain substitution of a medication, while another practitioner may not. WNA believes that as long as the Federal law requires that only physicians can admit patients to a nursing home and that they are responsible for the overall medical plan of care, then he or she should be the only one authorizing the use of therapeutic alternate drug selection.

Another concern regarding SB 251 is that Section 3, lines 10-12, are inconsistent with Wisconsin State Statute 450.13(5)(b). This statute permits an APNP, in a hospital setting, to have a written agreement to collaborate with a physician when approving the use of therapeutic alternate drug selection. (Refer to the reference section below.) Section 3 in SB 251 creates a different condition for the APNP. It requires a written collaboration agreement with all attending physicians of the patients. This creates a very different situation for the APNP, the patient's attending physician, and their clinic. Documentation of

these multiple APNP/attending physician agreements would need to be on file in the nursing home, pharmacy, clinic, and in the personal file of the physician and APNP.

WNA would like to suggest two options to avoid these foreseeable problems. The first is to remove the language related to APNP on page 3, Lines 10 -12. The second is to make the language consistent with 450.13(5)(b).

WNA would like to thank Senator Gudex for sponsoring this legislation. It will make a difference for nursing homes and their patients. We appreciate the time and energy put forth by key stakeholders to address this issue. WNA will fully support SB 251 when the language we are concerned about is addressed to our satisfaction.

Thank you again Senator Vukmir for holding this public hearing on SB 251.

**Reference** related to the *use of therapeutic alternate drug selection*

**SB 251** – Proposed requirement for nursing homes Page 3, Section 3, Lines 10 -12 states; *“The patient’s advanced practice nurse prescriber, if the advanced practice nurse prescriber has entered into a written agreement to collaborate with the patient’s personal attending physician”*

**Current Statute:** requirements for hospitals 450.13(5)(b) states; *“The patient’s advanced practice nurse prescriber, if the advanced practice nurse prescriber has entered into a written agreement to collaborate with a physician.”*

**Advanced Practice Nurse Prescriber** – Administrative Code for Nursing N8.02 (2) defines an advanced practice nurse prescriber means an advanced practice nurse who has been granted a certificate to issue prescription orders under Wisconsin State Statute 441.16. N8.02 (1) defines the advanced practice nurse means a registered nurse who possesses the following qualifications: (a) The registered nurse has a current license to practice professional nursing in this state, or has a current license to practice professional nursing in another state which has adopted the nurse licensure compact; (b) The registered nurse is currently certified by a national certifying body approved by the board as a nurse practitioner, certified nurse-midwife, certified registered nurse anesthetist or clinical nurse specialist.





DATE: Monday, September 16, 2013

TO: Members of the Senate Committee on Health and Human Services

FROM: Pharmacy Society of Wisconsin, Wisconsin Health Care Association and LeadingAge Wisconsin

**RE: Please support Senate Bill 251**

The Pharmacy Society of Wisconsin (PSW), along with the two organizations representing nursing home providers in Wisconsin, Wisconsin Health Care Association (WHCA) and LeadingAge Wisconsin, worked cooperatively with the Wisconsin Medical Society to develop Senate Bill 251. When enacted, this legislation will implement efficiencies in the use of prescription drugs in nursing homes and promote collaboration between pharmacists and physicians.

We are asking for your support of Senate Bill 251.

There are two provisions of the legislation:

First, nursing homes in Wisconsin are asking that current law be revised to allow for the development and use of a prescription drug formulary. Under current law, hospitals are allowed to use formularies in order to perform similar therapeutic selections. Under both instances, the therapeutic selections would be done with the approval of a committee that will consist of a Wisconsin physician and pharmacist designated by the facility. This change would allow for nursing homes to better control the costs attributed to prescription drugs dispensed to residents of these facilities, especially in those instances when a nursing home resident does not have a health insurance plan with a specific formulary requirement. By working together, the facility, physicians, and pharmacists can better manage the prescription care for nursing home residents by reducing costs and increasing efficiencies for nursing home staff.

Secondly, current law allows physicians to delegate authority for patient care to a pharmacist. However, the law doesn't specify that a pharmacist may accept the delegation from a physician. Senate Bill 251 simply clarifies current law to allow a pharmacist to accept a physician delegated act. By working together through defined collaborative agreements, physicians and pharmacists are able to improve how their patients use medications through better coordination of care.

Please support Senate Bill 251 at the public hearing on Wednesday, September 18, 2013. Please contact any of our organizations for additional information.

# WHCA / WiCAL

Wisconsin Health Care Association

Wisconsin Center for Assisted Living

TO: Senator Leah Vukmir, Chair & Members of the Senate Health and Human Services Committee

FROM: Tom Moore, Executive Director  
Jim McGinn, Director of Government Relations

RE: Support for SB251 –Therapeutic Alternative – Nursing Home Formularies

DATE: September 18, 2013

A formulary is a continually updated list of medications that are deemed the most clinically and cost effective to address the health needs of a given population in a specific setting. Formularies are established through written protocols formally developed through a pharmacy and therapeutic committee which includes physicians, pharmacists, nurses and other health care professionals.

Medicare, Medicare Part D, Wisconsin's Medicaid Program, and commercial health insurers all utilize formularies to insure that their enrollees have access to the most clinically and cost effective prescription drugs. Indeed, the use of formularies is required in health care institutions seeking accreditation by the Joint Commission on Accreditation. The American Society of Health Systems Pharmacists considers the presence of a formulary in an institution as a minimum standard. They are perceived as an essential tool for health care organizations to assist in the use of quality medications.

Wisconsin law, written in the 1980s, affords only hospitals, under the leadership of a pharmacy therapeutic committee, the ability to develop a formulary for the organization. Senate Bill 251 essentially updates current law to reflect the evolution of the state's health care delivery system and afford nursing homes, their residents, and professional staff the opportunity to realize the improved quality of care, resident safety and cost savings formularies can facilitate.

For the past year, WHCA/WiCAL has worked in consultation with the Pharmacy Society of Wisconsin, LeadingAge Wisconsin, the Wisconsin Medical Society and the Wisconsin Department of Health Services to develop Senate Bill 251. The measure was expressly designed to enable nursing homes to utilize formularies if, and only if, they are developed and maintained in accordance with and adherence to the same professional standards, protocols, and statutory expectations that currently apply to hospitals. It was also crafted with the express intent of preserving the right of any resident's personal attending physician to direct that any prescription for a nursing home resident be dispensed as written.

WHCA/WiCAL submits that permitting the adoption of formularies in Wisconsin's skilled nursing facilities as envisioned under SB 251, will promote and facilitate all of the following:

- *Improved resident care:* The use of formularies will reduce delays in securing medications for new orders. In addition, quality will be enhanced by promoting healthcare professionals use and familiarity with preferred medications within a medication class as opposed to expecting familiarity with all medications within a class.

- *Improved resident safety:* The use of formularies will facilitate more efficient medication management and reduce the potential for transcription and medication errors.
- *Resident and Facility Cost Savings:* There are typically significant cost differences between medication classes that are considered clinically interchangeable. Savings will be generated through developing formularies that reflect the most medically appropriate and cost effective medications.
- *More Efficient Use of Physician Resources:* Absent the presence of pre-approved formulary protocols that authorizes pharmacists to interchange medications, the patient's personal attending physician will be contacted by pharmacists regarding the need to change orders to preferred medications. However, the adoption and use of a formulary by a nursing facility does not in any way impact the right of a resident's attending physician to direct that any prescription for that a nursing home resident be dispensed as written.

For the reasons expressed above, WHCA/WiCAL requests the members of Senate Health Committee approve Senate Bill 251.





September 18, 2013

To: Senator Leah Vukmir, Chair  
Members, Senate Health and Human Services Committee

From: John Sauer, President/CEO  
Tom Ramsey, Vice President of Public Policy & Advocacy

Subject: **2013 Senate Bill 251**

### **LeadingAge Wisconsin Position: SUPPORT**

Background: A drug formulary is loosely defined as a list of prescription medications or pharmaceutical products developed and approved by a healthcare organization or by a health plan to encourage greater efficiency in the dispensing of prescription drugs without sacrificing quality. The list will contain both generic and brand name drugs and is developed by a committee of doctors, pharmacists, and other health care professionals on the basis of a given drug's efficacy, safety, and cost effectiveness.

Hospitals are permitted to maintain their own drug formularies; LeadingAge Wisconsin, in concert with the Pharmacy Society of Wisconsin and Wisconsin Health Care Association, has worked with Senator Gudex to develop SB 251, which would permit the Quality Assessment and Assurance Committee that all nursing homes are required to maintain to also be granted the authority to develop its own drug formulary.

### **ARGUMENTS IN SUPPORT OF A NURSING HOME DRUG FORMULARY**

- Drug formularies, where utilized, generate savings, which primarily would accrue to individuals paying privately for their medications.
- Nursing home formularies would permit a more timely administration of needed medications because of less red tape.
- Nursing home formularies reduce the number of drugs administered in a facility, which has the potential to enhance resident safety.

- If, as expected, the use of drug formularies developed by skilled nursing facilities follows the path of hospitals, Medicaid, Medicare Part D plans and other commercial health plans which utilize their own drug formularies, the end result should be improved quality of care and better managed drug expenditures.

*LeadingAge Wisconsin, formerly WAHSA, is a statewide membership association of not-for-profit organizations principally serving seniors and persons with a disability. Membership is comprised of 195 religious, fraternal, private and governmental organizations which own, operate and/or sponsor 172 nursing homes, 7 facilities for the intellectually and developmentally disabled (FDD), 182 assisted living facilities, 102 apartment complexes for seniors, and over 300 community service agencies which provide programs ranging from Alzheimer's support, adult and child day care, home health, home care, and hospice to Meals on Wheels. LeadingAge Wisconsin members employ over 38,000 individuals who provide compassionate care and service to over 48,000 residents/tenants/clients each day. For more information, please contact John Sauer (jsauer@LeadingAgeWI.org), LeadingAge Wisconsin President/CEO, Tom Ramsey (tramsey@LeadingAgeWI.org), LeadingAge Wisconsin Vice President of Public Policy & Advocacy or Brian Schoeneck (bschoeneck@LeadingAgeWI.org), LeadingAge Wisconsin Vice President of Financial and Regulatory Services, at (608)-255-7060.*



September 18, 2013

My name is Philip J. Mersberger.

I reside at 9759 Middle Road, Oostburg, WI 53070.

I am a licensed registered Long Term Care Consultant Pharmacist employed by Roeschen's Omnicare<sup>Long Term Care</sup> Pharmacy, Milwaukee, WI. I have been a registered pharmacist since 1967.

I provide service to Administrators, Directors of Nursing, and the residents of nursing facilities in Sheboygan County, Manitowoc County, Calumet County, and Brown County.

I am here today to testify in support of Senate Bill 251 and to provide background and justification for use of formularies by nursing facilities.

## Background and Justification for Use of Formularies by Nursing Facilities

### Background

1. Formularies are a standard of practice utilization management approach for every payer of prescription drugs, including hospitals, Medicaid, Medicare Part D, and Commercial benefit plans.
2. Changes in reimbursement to hospitals have led to ever increasing acuity of residents of skilled nursing facilities. The increase in acuity of residents discharged to nursing homes has led to greater complexity of drug therapy administered by staff of nursing homes.
3. Nursing home admissions most commonly occur in early evening hours, increasing the challenges of contacting nursing home prescribers with issues in hospital discharge medications.
4. The class of trade of hospitals allow them to purchase drugs at much lower costs than the class of trade of retail pharmacies, which includes long term care pharmacies, the source of drugs for nursing facilities. As a result, drugs administered in a hospital that are then required for administration in a nursing home can be much more expensive to the nursing home than the hospital.
5. Many widely used brand name drugs have become available as generic products.

### Justification for Use of Formularies by Nursing Facilities

1. Pharmacy and Therapeutics Committees in nursing facilities are now commonplace.
2. With approval by a nursing facility Pharmacy and Therapeutic Committee, and under appropriate clinical protocols, nursing faculties can improve the safety of drug administration by reducing the number of drugs in a therapeutic class that need to be administered.
3. Nursing facility formularies allow timely administration of drugs to new admissions by reducing the need to communicate with prescribers regarding drug therapy issues.
4. Formularies allow nursing facilities to maintain the highest quality of drug use while managing the cost of the drug – just like hospitals, Medicaid, Medicare Part D plans and commercial prescription plans are allowed to do now.
5. Facility formularies in nursing homes <sup>will</sup> act in coordination with a <sup>committee that includes</sup> ~~state Medicaid~~ <sup>a Wisconsin</sup> physician and pharmacist <sup>designated by the nursing facility</sup>.
6. Other states allow the use of formularies by nursing facilities.  
*a/ready*

## Testimony in Support of Wisconsin Senate Bill 251

The average nursing home resident is approximately 85 years of age, has nearly eight different medical conditions and takes 10-12 drugs at any given time. In addition, more than half of nursing home residents have some level of cognitive impairment.

Consultant pharmacists are specialists in the management of complicated medication regimens in the elderly and are considered experts in collaborating with physicians in the care of the elderly.

Senate Bill 251 seeks to take advantage of the special skills of consultant pharmacists by including them in the care management team and allowing them to use their specialized knowledge to better manage the complex drug regimens of nursing home residents. This is accomplished, primarily through the establishment of therapeutic drug selection agreements involving the resident's primary physician and the nursing facility, with the involvement of the consultant pharmacist.

This important legislation provides two important benefits:

- It takes advantage of the advanced skills of the consultant pharmacist in identifying the best therapeutic alternatives for the condition being treated, taking into consideration the patient's medical diagnosis, history and other medications currently prescribed.
- It has the potential to reduce cost in the care of the nursing home resident, as the average generic dispensing rate in the nursing home environment exceeds 80 percent. If the highest quality care at the lowest possible cost is an important goal, this legislation can be an important stimulus to that end.

I ~~we~~ note and applaud the safeguards proposed in this legislation. The process would be governed by a committee of experts, guidelines would be transparent and all participants would be informed.

I ~~we~~ encourage the Wisconsin Legislature to adopt this important legislation.