



TO: The Honorable Members of the Senate Committee on Government Operations and Consumer Protection

FROM: Kathy Markeland, Associate Director

DATE: February 4, 2016

RE: Support for Senate Bill 617 – Surplus Retention for Nonprofit Human Services

On behalf of the Wisconsin Association of Family & Children's Agencies (WAFCA) I would like to share our support for Senate Bill 617 and thank Representative Kooyenga and Senator Marklein for their leadership in our efforts to better secure the financial stability of the private human services sector in Wisconsin.

WAFCA is a member association working to improve the lives of children and families. Our member agencies provide a wide array of prevention and supportive services including adoption, foster care, in-home support, counseling and mental health treatment. Our agencies are the neighborhood organizations that partner with United Way to strengthen families. We respond to schools when they ask for help with students' mental health and behavioral issues. We respond when counties identify families in crisis and in need of care. We provide respite and support when children cannot live safely at home. We promote and invest in recovery, resilience and transformative change for children, families and communities.

At this time when policymakers are increasing their focus on vulnerable children and families and are seeking to improve the systems of protection and care for them, it is critical to preserve and sustain a strong network of service providers who are essential partners in our human services delivery system.

The state and counties contract for a variety of services from private human services agencies. Foster care, residential care and mental health treatment are some of the many vital child and family services provided for the state and counties by private for-profit and nonprofit agencies under these contracts. Many human services contracts are "rate-based" contracts, which are structured according to state regulations, including requirements that a provider charge the same rate for a unit of service to all purchasers of that service.

In fact, since 2010 the Department of Children and Families has been regulating the rates for all providers of rate-based, out-of-home care services (foster care, residential care, group home), which means there is no opportunity for a provider to negotiate the rate with purchasers in the annual contracting process.

For government, a rate-based payment contract is beneficial because only the units actually used must be paid for. The provider bears the financial risk if the number of units purchased falls short of projections. In recent years, counties have shifted more programs into rate-based contracts.

To mitigate some of the financial risk, current law allows nonprofit providers of rate-based services to keep up to 5% of surplus revenue, when a surplus is earned in a contract. The law also requires providers through annual independent audits to track losses and surpluses from rate-based services over multiple years.

While these laws were intended, in part, to address provider concerns about risk, in recent years, state administrators have authorized contracting variances, which have eroded the intended protections. In some instances, county contracts have limited the surplus cap to as low as 1% or incorporated contract restrictions that prohibit a provider from spending the surplus without county permission. Multi-year tracking of surplus and losses has also proven problematic due to ambiguity in the current law that effectively forces nonprofit providers to consider any surplus reserves as a potential future financial liability.

The changes proposed under SB 617 clarify state law regarding rate-based contracting, so that purchasers can no longer offer contracts for less than 5% surplus retention. In addition, the bill eliminates the problematic multi-year tracking of surplus/loss and establishes that surplus retained by a provider is under the sole control of the provider. As is true under current law, all surplus earnings retained by a provider must be reinvested in services to support children and families.

SB 617 is a simplified version of language that was approved by the Legislature in the 2015-17 Biennial Budget, but subsequently vetoed by the Governor due to concerns about possible unintended consequences. Over the past several months, our members have consulted with DCF, DHS, DOC and representatives of counties to consider areas of agreement and possible policy alternatives to address our concerns regarding the current rate-based contracting environment. We believe that SB 617 responds to issues raised in those conversations.

Private human services agencies are critical partners in the delivery of human services in Wisconsin. Our members are able to specialize and create some economies of scale so that individual counties do not need to build and staff these services as part of their internal government operations. A healthy human services system depends upon the fiscal health of our member agencies.

Thank you in advance for supporting SB 617 and for supporting those that serve a vital role in caring for Wisconsin's vulnerable children and families.

TO: Senate Committee on Government Operations and Consumer Protection

FROM: Debra Lemke, Director of Business Operations, Children's Hospital of Wisconsin

DATE: Thursday, February 4, 2016

RE: SB 617 – Support of Surplus Retention Limitations

Good afternoon Chairman Stroebel and committee members. Thank you for allowing me the opportunity to share testimony today. My name is Debra Lemke and I am the Director of Business Operations for Children's Hospital of Wisconsin. I have been with Children's for almost 20 years and have worked in not-for-profit financial leadership roles for 25 years. I have extensive experience in managing federal, state, and county contract requirements.

Children's Service Society of Wisconsin, a not-for-profit subsidiary of Children's Hospital of Wisconsin, serves children and families throughout the State of Wisconsin. Children's Hospital of Wisconsin's vision is for Wisconsin children to be the healthiest kids in the country, and Children's Service Society of Wisconsin works toward this vision through the provision of a variety of services including child and family counseling, child advocacy centers, foster care and adoption services, case management, intensive in-home services, home visiting, parent education and support, and family resource centers.

I am here today in support of SB 617. I thank Representative Kooyenga for authoring this legislation and for raising this important conversation. SB 617 would make certain changes with respect to the retention and disposition of surpluses generated by providers of rate-based client services purchased by the Department of Children and Families, the Department of Corrections, the Department of Health Services, or a county department of human services, social services, community programs, or developmental disabilities services. We appreciate the ongoing dialogue with the departments and hope to continue in partnership with them to find resolution to this very real business issue so that we can sustain these critical services.

Currently, not-for-profit providers of rate-based services have no ability to retain a surplus, but have all the risk for incurring losses. While the purchaser of a rate-based service benefits by only having to pay for actual units utilized, providers struggle to maintain core services and staff when referrals fluctuate. Current statutes permit purchasers to allow not-for-profit providers a reserve of up to 5%, but increasingly, many purchasers are electing to reduce or eliminate this reserve. Furthermore, any reserve that is permitted represents a liability on the not-for-profit's books because it can only be used in one of three ways: 1) To offset future losses from the same rate-based service, 2) To reduce the rate charged in future years, or 3) To be paid back to the purchaser if the contract ends. Whether the reserve is permitted or not, the bottom line is that not-for-profits cannot retain any type of surplus from the provision of rate-based services.

The changes outlined in SB 617 bill are critical to ensuring that the children and families in the State of Wisconsin receive the best services and support we can provide. One area that will be impacted is the social services workforce. Due to the fact that rate-based contract revenue can fluctuate a great deal, many not-for-profits must hire part-time, casual employees to perform the work. This results in great uncertainty for staff and the potential for children and families to experience turnover in their assigned worker.

Allowing not-for-profits the possibility of retaining a small surplus supports these organizations through fluctuations in referrals and is critical to efforts to attract and retain a stable workforce.

Secondly, because the bill only allows, but does not guarantee, a surplus up to 5%, it encourages efficiency and prudent financial operations by not-for-profits. Finally, because the success of any business depends on continually using experience, research and best practices to design and implement customer-focused, effective services, we believe that allowing not-for-profits to retain a surplus will improve the well-being of children and families. These funds would allow us to bring innovative, but currently unfunded, services to the State and support the ongoing development and maintenance of staff, facilities and infrastructure.

Chairman Stroebel and committee members, thank you for allowing me to submit testimony in support of SB 617. If you have any more questions you can contact me via email at DLeMke@chw.org or via telephone at 414-231-4911.



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Governor Scott Walker
Secretary Eloise Anderson

Secretary's Office

Date: February 4, 2016

To: Members of the Senate Committee on Government Operations and Consumer Protection

From: Sara Buschman, Assistant Deputy Secretary

Re: DCF Testimony 2016 SB 617

Senator Stroebel and members of the Senate Committee on Government Operations and Consumer Protection,

SB 617 represents a modified version of a provision vetoed in the 2015-17 biennial budget bill. In his veto message, Governor Walker recognized concerns raised by non-profit agencies and directed the Departments of Children and Families, Health Services, and Corrections to work with providers to address their concerns. The three state agencies have met with the Wisconsin Association of Family and Children's Agencies (WAFCA) and its member agencies since that time. Progress toward an agreement on how to best address the concerns being raised by the non-profit agencies and ensuring adequate protections of taxpayer dollars was being made. Unfortunately, WAFCA has moved forward with SB 617, which does not represent that progress and therefore, DCF cannot testify in support of the bill.

As state agencies we are responsible for exercising our stewardship of public funds responsibly and ensuring that public funding is used efficiently. The three state agencies contract with external agencies, both non-profit and for-profit, for a wide range of services and recognize the important role contracted agencies play in providing needed services to our clients. We need to ensure that our contracting procedures and provisions support the principle of being prudent purchasers and responsible stewards of taxpayer funding.

During the most recent discussions between the state agencies and WAFCA, we agreed that non-profit agencies should be treated similarly to for-profit agencies with respect to excess reserves. Our position is that statutes should not specify a percentage amount of excess reserve that a non-profit may retain. Rather, the amount of excess reserves to be retained by a non-profit contractor should be a point of contract negotiation between the purchaser and provider, similar to contract negotiations with for-profit agencies. SB 617 does not reflect this approach. SB 617 eliminates the current maximum amount of taxpayer dollars a non-profit may retain by changing the current "not more than 5%" ceiling to an amount that is "not less than 5%". The bill will impose increased and unnecessary costs on state and local public agencies. Public agencies will be required to fund contracts at a higher level, to enable non-profit agencies to retain a higher level

of excess reserves than would have been the case had the contract been negotiated without this requirement.

Many of the contracts executed by DCF and the two other state agencies are funded with federal funding, such as federal Title IV-E child welfare funding. The federal government requires states to conduct all procurement transactions in a manner providing full and open competition when using federal funding. By creating a minimum level of excess reserves that a non-profit agency would retain, SB 617 appears to be inconsistent with federal requirements by inhibiting competitive pricing.

A provision in Section 8 of the bill creates a strict six month limit on the amount of time a purchaser has to request its proportional share of any amount over the excess reserve, once notified by a provider of an existing excess reserve. This time frame is not adequate for the DCF audit/fiscal review cycle to adequately review providers' records and determine the appropriate amount of reserve that should be returned.

We encourage the Committee to support the continuation of discussions among WAFCA and the three state agencies and to defer acting on this issue until those discussions are successfully concluded. Thank you for the opportunity to testify on SB 617. We are pleased to answer any questions you may have.