

Wisconsin Association of Homes and Services for the Aging, Inc.

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January 14, 2005

To: State Representative Jeff Fitzgerald, Chairperson
Members, Legislative Council Special Committee on Tax Exemptions
for Residential Property

From: John Sauer, Executive Director

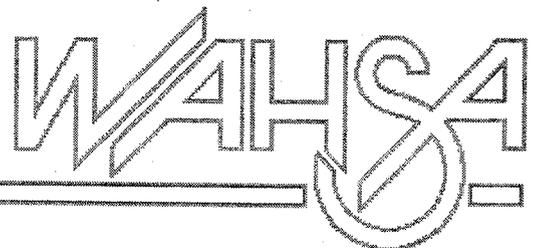
Subject: WAHSA Perspectives on Property Tax Exemptions and WLC:0086/1 and WLC:0090/1

The Wisconsin Association of Homes and Services for the Aging (WAHSA) is a statewide membership organization of 197 not-for-profit corporations principally serving the elderly and persons with a disability. WAHSA members own, operate and/or sponsor 198 nursing homes, 68 community-based residential facilities (CBRF), 47 residential-care apartment complexes (RCAC), 13 HUD Section 202 Supportive Housing for the Elderly complexes, and 104 independent living facilities/housing for older persons. Over 38,000 dedicated workers provide care and services to a nearly equal number of residents and tenants in our facilities. In addition, WAHSA members operate more than 310 community service programs, ranging from Alzheimer's support, homecare, hospice and adult/child daycare to Meals on Wheels.

Most of our members provide care and services on "continuum of care" campuses. These campuses comprise any combination of a nursing home, a CBRF, a RCAC and/or independent living. The principle is to allow a resident to "age in place" on the continuum care campus, beginning with independent living and, as age and disabilities increase, on to assisted living (CBRF or RCAC) and finally to the nursing home. The campus-setting provides a sense of community, a sense of security and minimizes "transfer trauma" when care needs require movement through the continuum.

WAHSA members own/operate 97 of these "continuum of care" campuses. Of the 68 CBRFs they operate, only 8 are freestanding; only 8 of the 104 independent living facilities operated by WAHSA members are freestanding; none of the 47 WAHSA member-operated RCACs is freestanding. Only nursing homes have a significant freestanding component: 79 of the 198 WAHSA member-operated nursing homes are freestanding; 36 of those are county-operated.

"Continuum of care" campuses are similar in philosophy, scope and approach to "continuing care retirement communities (CCRC), which are operated under a permit issued by the Office of the Commissioner of Insurance (OCI) and regulated under Chapter 647, Wis. Stats. The "continuing care contract" serves as a pre-paid health insurance policy which covers all the future long-term care needs of



the CCRC resident. Most “continuum of care” campuses offer similar contracts and future care assurances. As of October 4, 2004, there were 23 CCRCs in Wisconsin with permits from the OCI; 19 of the 23 are WAHSA members and we believe that all 23 CCRCs are operated by not-for-profits.

Throughout our special committee discussions, we heard from several members that the property tax system is being “abused” by “high-end” facilities which “screen out” the poor and provide only shelter and no services. The reason for describing the activities of WAHSA members is an attempt to illustrate that our members don’t fit that description.

Yet, it’s certain WAHSA members who appear to be the target of certain special committee members. **We’ve been told** of a \$446,000 home for seniors on Madison’s far west side whose owner(s) is not paying property taxes. The problem is that house has not yet even been built...and property taxes are being paid on the land where it may some day be built...and that the prospective owner of the unit has been told to expect to pay property taxes...and that the unit is part of a CCRC.

We’ve been told that these facilities collect personal income and asset information to “screen out” the poor. What we haven’t been told is that s.647.02(2)(g) requires CCRCs to provide the OCI with a figure depicting the actual or projected length of a resident’s stay as part of the CCRC contract and that the OCI, under s.647.03(2), is authorized to ensure that a CCRC has sufficient financial resources to meet the needs of the CCRC and the terms of its continuing care contracts and other obligations. We haven’t been told that Chapter 647 virtually requires a CCRC to conduct financial screens. Indeed, some seem to believe that the only purpose for conducting a financial screen is to “screen out the poor.”

They should tell that to Inspiration Ministries in Walworth, which conducts financial screens of its physically disabled prospective residents, 80% of whom have annual incomes below the Homestead Tax Credit eligibility level of \$24,500 (Because they only collect financial information at the time of admission, officials at Inspiration Ministries were uncertain whether they would qualify as “low-income housing” under Internal Revenue Service Procedure 96-32). Obviously, those screens are not intended to “screen out” the poor (or if they are, they aren’t very effective): They are intended to enable Inspiration Ministries to properly budget the resources they will need to pay for the services of those they’ve identified as most likely being unable to pay for all or part of the future services they will be provided. It’s for that very reason – to prepare for the possibility of residents running out of money – that most financial screens are conducted, because not-for-profits are not permitted to discharge residents who are no longer able to pay for the services they receive if they wish to be exempt from federal income taxation under s.501(c)(3) of the Internal Revenue Code.

Screens are indeed used in many instances to determine whether the organization has the resources necessary to provide the promised services. As noted above, the OCI considers this a necessity. So quite often do those who finance these operations. Screens are also used to attempt to determine if resources are being divested to avoid paying for services received. Divestment must be a major factor in any decision we as a special committee will make, especially if it relates to an income test. The practice is all too common today in nursing homes; imagine how commonplace it could become in settings where people actually wish to go.

We’ve been told that these independent living facilities house healthy 50-year olds who aren’t even retired. What we haven’t been told is the average age of a resident of a WAHSA independent living facility is 82.8 years of age. We haven’t been told that in a number of independent living facilities, the average age of their residents is higher than the residents of their campus nursing home. More

importantly, we haven't been able to look in the eyes of these residents to see how difficult the decision was to give up the home where they raised their children, the home with a lifetime of memories, because they are no longer able to maintain it. Nor are we able to see the sense of security and relief in their eyes in the knowledge that their future health care and lifestyle needs will be met. That may only be a consolation for the loss of their own home and previous lifestyle, but it's an important consolation.

We've been told that providing property tax exemptions to senior housing shifts the burden to the community's other property tax payers. To a degree, that's true, but too often we've ignored the fact that the homes which our senior housing residents left were sold to younger couples who will be able to raise their children in the same environment as those before them, and yes, will be paying property taxes. Indeed, they will be paying more in property taxes than their previous owners. It's misleading to state the property tax exemption for senior housing deprives municipalities of property tax revenue; it's more accurate to state the exemption limits any additional property tax revenue.

We wish to thank Representative Fitzgerald and Laura Rose and Mary Matthias of the Legislative Council for their leadership of this special committee, which I'm sure at times, maybe many times, they deservedly viewed as a thankless task. Their efforts are greatly appreciated. The disappointments we've experienced as members of this special committee were not of their making and out of their control.

- **We were disappointed** with the grandstanding at Monday's press conference held by the Wisconsin Alliance of Cities and the League of Wisconsin Municipalities. All of you are aware of the complexity of this issue; to boil it down to "rich v. poor" does everyone who has worked hard to address these many issues a great disservice. Worse yet, it unfairly paints a negative picture of people who have given a lifetime to make our lives better. Certainly, they deserve better.
- **We've been disappointed** that the societal value of pre-paying for future long-term care seemingly has been overlooked. We've been told of the inequity of "wealthy" people living in tax-exempt housing while "poor" people living in their own homes pay property taxes. Regardless of the fact that terms such as "wealthy" and "poor" and "high-end" remain both relative and undefined, both the "wealthy" and "poor" are subject to future catastrophic illness. The societal value of tax exempt housing is while the "poor" resident's future long-term care needs most likely will be paid for by state taxpayers through the Medicaid program, those living in "continuum of care" campuses intend to pay for their own future care. They don't have to; they most likely have the wherewithal to shelter their income and assets and let government provide for their care. Rather, they have chosen to pre-pay for their future care needs, benefiting the taxpayer by limiting the Medicaid exposure and benefiting the truly poor by helping to ensure that limited Medicaid dollars go to those who truly need it.
- **We're disappointed** there hasn't been more recognition of the societal benefit of rewarding those who are able to subsidize those who no longer are. Entrance and service fees are set on many campuses to permit the establishment of a "benevolence" fund to subsidize the care of those no longer able to pay for their own care. Some have derisively referred to this as "self benevolence;" we ask them this simple question: without that "self benevolence," who would pay for the care of those who can no longer do so for themselves? The answer: government. You and I. The taxpayer. The primary difference between a for-profit provider and a not-for-profit provider is if you run out of funds, the for-profit provider will ask you to leave. The not-for-profit provider finds ways to help you to stay. Is there a societal benefit in that?

- **We're disappointed** in the lack of recognition that the average nursing home in this state loses \$19.49 each day for every Medicaid resident it serves. The aggregate deficit between the cost of services nursing homes in this state incur in caring for their Medicaid residents and what government reimburses them through the Medicaid program is \$160.7 million. How do facilities address this deficit? They charge their private pay residents an average of \$50 a day more for the same care their Medicaid residents receive. In addition, they charge those private pay residents a \$75/month bed tax. Finally, on "continuum of care" campuses, they set certain entrance and service fees at levels which enable them to help offset those Medicaid deficits. Who is benefited by this "self benevolence?": the nursing home residents, both private pay and Medicaid, who now are able to be served and the taxpayer, because private funds, and not Medicaid funds, are being used to pay for those services. Is such "self benevolence" of value to society and worthy of a tax exemption?: A question we never addressed.
- Finally, **we are disappointed** our discussions seemed to focus on wealth and not on need. We seemed to conveniently ignore the fact we are talking about people (many widows) in their 80s who are no longer able to maintain their own homes. We seemed to have cavalierly chosen to ignore what the federal government has chosen to accept: that the elderly is a charitable class and relief of the distress of the elderly, regardless of socio-economic background, is a charitable activity. The Internal Revenue Service came to that conclusion in the 1970s, that senior citizens of whatever socio-economic background face the same barriers to their basic supportive needs as they age, such as the need for suitable housing, physical and mental health care, civic, cultural and recreational activities, and an overall environment conducive to dignity and independence.

Some chose to show us pictures of physical structures which purportedly house the wealthy elderly: they didn't show the weathered faces of those living inside. We weren't permitted to get past brick and mortar and listen to the fears and anxieties that often go hand-in-hand with the aging process. The irony is for many of those residents, there is a modicum of jealousy of those able to maintain their own homes; wealth, indeed, can be relative.

The remainder of this memo will attempt to explain WAHSA's suggested changes to the two bill drafts we have before us.

WLC:0090/1

We have two suggested changes to the draft:

- 1) It is our understanding the drafters inadvertently left out "registered" RCACs, on page 5, line 9. Registered RCACs only can serve private payors; certified RCACs can serve individuals whose care is paid for by Medicaid-waiver funding. If this change is not made and registered RCACs no longer would be considered benevolent associations and would be subject to property taxation, it is a certainty that virtually all not-for-profit RCACs would become certified (currently, 32 WAHSA RCACs are registered and 15 are certified). Operationally, this change would be insignificant. But the change could be costly to the Department of Health and Family Services, which might be forced to hire additional surveyors (certified RCACs are surveyed; registered are not). In addition, there could be significant additional costs to the Medicaid program if a significant number of RCAC residents were to run out of funds and become Medicaid-waiver eligible. Regardless of payor source, all RCAC tenants are eligible for up to 28 hours per week of personal, supportive and nursing care, an amount that exceeds that provided to many nursing home residents.

- 2) We suggest lines 14-15 on page 5 of the draft be deleted and replaced with: "8. Housing for older persons as defined in s.106.50(1m)(m) that satisfies the requirements under s.106.50(5m)(a)."

We assume this provision was included to eliminate the property tax exemption for "high-end" independent living facilities. If that was the intent, this language fails to achieve that goal. It would eliminate the property tax exemption for organizations such as Inspiration Ministries which we mentioned above, organizations which "require a showing of the person's income or economic assets" but serve a population that no one could consider "high end." Organizations such as Luther Haven in Milwaukee, Morrow Memorial Home in Sparta, Avalon Square in Waukesha, Franciscan Skemp Village Apartments on Ninth in La Crosse, Regency Senior Communities in New Berlin, Cedar Community in West Bend and Homme Heights in Wausau, which conduct financial screens but serve a population in their independent living facilities with as many or more residents below the Homestead tax credit eligibility level of \$24,500 as above. (These figures are guestimates; less than 20% of WAHSA independent living facilities which conduct financial screens do so at any time other than prior to admission; at those organizations, no ongoing screens are conducted).

Our proposed change would enable not-for-profit independent living facilities/"housing for older persons" to continue to be considered "benevolent associations" and eligible for the "rent use" exception in WLC:0090/1. However, we would feel more comfortable if these facilities ("housing for older person") were required to meet the requirements of IRS Revenue Ruling 72-124, which would require, among other things, that federally tax-exempt independent living facilities be prohibited from discharging residents for inability to pay for services provided. This change would not be necessary for WAHSA members, who all are tax exempt under s.501(c) of the Internal Revenue Code and must adhere to IRS Revenue Ruling 72-124 if they wish to remain exempt. However, we can't speak for other entities (if there are any) which would meet the definition of "housing for older persons "under s.106.50(1m)(m) and the requirements under s.106.50(5m)(a) but are not tax exempt under s.501(c) of the Internal Revenue Code.

WLC:0086/1

- 1) We suggest the elimination of all the provisions referencing the annual request for a property tax exemption by certain benevolent associations, specifically independent living facilities which conduct financial screens. This procedure would be overly time-consuming and needlessly costly for both the taxation clerk and the property owner; ultimately, it also is unnecessary.

We were of the impression that what special committee members were seeking was more accurate data on who is property tax exempt, how much property is tax exempt and the value of that property. We believe those goals can be accomplished in two steps: A) Require all tax-exempt property owners by January, 2006, to have on file with the assessor of the taxation district a copy of the Department of Revenue's Property Tax Exemption Request form (see the attached DOR form PR-230). This form contains virtually all the material required in Section 4 of WLC:0086/1; many municipalities already required it to be filed by not-for-profit independent living facilities in the aftermath of the *Columbus Park* decision. Rather than refile annually, s.70.11(intro.) requires this form to be refiled if and when the tax-exempt property's use, occupancy or ownership changes in a way to make the property taxable; B) Expand the current "Tax Exemption Report" under s.70.337 to include the owner's good faith estimate, within 10%, of the fair market value of the property on

January 1 of every even-numbered year and any municipal service fee payments or payments in lieu of taxes made by the owner. That will permit a biennial updating of the tax exempt property's fair market value without the prohibitive cost of a mandated appraisal. In addition, we are suggesting the clerk of the taxation district calculate the amount of property tax, classified by type of owner, that would have been collected from tax entities exempt from taxation under s.70.11 if their exemptions had not been granted. That information would be shared with the Department of Revenue, which would aggregate it on a statewide basis.

- 2) The changes we suggested to the definition of "benevolent association" in WLC:0090/1 should be made in WLC:0086/1 by deleting lines 20-22 on page 8 of the draft and substituting the definition of "housing for older persons." The rationale is the same as described under our proposed changes to WLC:0090/1.
- 3) We believe Milwaukee Mayor Tom Barrett (along with Mary Reavey) is on to something in seeking voluntary municipal service fee payments from tax-exempt property owners in Milwaukee. We are suggesting the statute be clarified to permit municipalities to request a municipal service fee of not-for-profit independent living facilities. We don't believe the fees should be applied to low-income housing nor to medically-oriented entities such as nursing homes (where Medicaid reimburses service fees), CBRFs, or RCACs. And, since this really is "changing the rules in the middle of the game" to current residents of independent living facilities, we would object to mandating service fees at this time. There are some organizations, and their residents, which simply could not incur the 24-30% increase in payments that would occur if service fees were mandated. We believe voluntary municipal service fees on independent living facilities would be quite acceptable to those with the ability to incur the additional costs.

I would like to conclude by stating what an honor and privilege it has been to serve on a committee with such knowledgeable and dedicated members. The best of luck to all of you in your future endeavors.