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

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Overview of the Long Term Care Provisions Included in 2007 Senate Bill 40, Governor Doyle's 2007-09 Biennial Budget Bill

2007 Senate Bill 40, the 2007-09 biennial budget bill, was introduced at the request of Governor Jim Doyle on February 14, 2007 and referred to the Legislature's Joint Committee on Finance (JFC). The next stop for the $57.7 billion budget proposal, which is 1,757 pages in length, is a series of six statewide public hearings to be conducted by the JFC in late March and early-to-mid April (a copy of the JFC budget public hearings schedule is in your seminar packet of materials).

After the hearings conclude, the JFC will begin an approximately four week period of deliberations on SB 40, with the revised budget bill expected to be forwarded to the State Senate by mid-to-late May. Once the Senate makes its modifications to the bill, SB 40 then will be sent to the Assembly for a further round of revisions. When the two houses have completed their actions, the differences between their two versions of the budget must be ironed out before the final budget bill is sent to the Governor. The goal is to have SB 40 on the Governor's desk no later than June 30th, the end of the current fiscal year. But with Republicans in control of the Assembly and Democrats in control of both the Senate and the Governor's office, meeting that June 30th goal might prove to be difficult. Once the budget bill is sent to the Governor, review of the bill generally takes 3-4 weeks until the budget is signed into law and any line-item vetoes are announced.

The following is a brief description of the key provisions of interest to long-term care providers contained in 2007 SB 40 ***(Note: The Governor's proposals related to the bed tax/MA nursing home rate increase are addressed in a separate WAHSA briefing paper):***

Cigarette Tax/Hospital Tax/Patient Compensations Fund

The Governor's budget would raise/transfer cash from a variety of sources to fund health-related expenditures. He proposes to raise the cigarette tax by $1.25 per pack (generating $546 million), impose a 1% tax on hospital gross revenues ($418 million), withdraw $175 million from the Injured Patients and Families Compensation Fund, and expend $50 million annually in interest earnings from the state permanent tobacco endowment fund and deposit those newly-generated revenues into a new Health Care Quality Trust Fund. Dollars from these funding sources would be used to reduce Medicaid state general purpose revenues (GPR), increase Wisconsin's draw of federal Medicaid matching funds, and finance antismoking programs. Revenues in the new Trust Fund also would be used to "increase payments to hospitals by $296 million, make $20 million in grants for electronic medical records development, support $60 million in tobacco control activities and invest $6 million of new funding and $10 million of existing state and local resources to leverage $23 million in federal Medicaid funding to expand health care to childless adults."

Price-Based Payments

On a positive note, the Governor REJECTED the DHFS proposal to convert nursing home direct care payments to a price-based system. No such provision is contained in SB 40.

Nursing Home Medicaid Labor Region/Regulatory Changes

SB 40 contains a provision which would add Rock County to the single nursing home labor region speficified for Dane, Iowa, Columbia and Sauk Counties. In addition, the statutory nursing home minimum occupancy standards are repealed. The budget bill also contains several modifications to Chapter 50, Wis. Stats. relating to nursing homes: SB 40 would:

> 1) Provide nursing homes with 60 days, rather than the current 10 days, to appeal a notice of violation(s) and/or a forfeiture assessment(s);
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> 2) Repeal the requirement that the DHFS submit a report to the Legislature annually which specifies the number of Class "A" violations issued the previous year, the amount of forfeiture assessments for each of those violations, and the amount of forfeitures actually paid with respect to those violations; and
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> 3) Permit the DHFS to place a monitor in a nursing home or appoint a receiver if the Department or the facility determines that estimated operating expenses of the facility significantly exceed anticipated facility revenues and if the facility or its operator has been charged with or convicted of Medicaid offenses, abuse or neglect of patients and residents, or Medicare violations. SB 40 would permit a nursing home monitor to assist in the financial management of the facility.

Family Care Expansion

The Governor would provide $22.4 million all funds (AF) in the first year of the biennium and $60.8 million AF in the second year to expand Family Care, with the goal of achieving statewide coverage within five years. The total biennial cost of the statewide expansion of Family Care is projected at $338.3 million but the Administration claims that only $60.8 million in new funds are needed, with reduced MA fee-for-service payments making up $215.4 million of that difference and "savings" and fund transfers making up the rest. According to budget projections, this funding will permit Aging and Disability Resource Center (ADRC) coverage in 75% of the state and Care Management Organization (CMO) coverage in 62% of the state by June 30, 2009.

SB 40 would make the following additional changes in the Family Care program:

> 1) The bill eliminates the requirement that DHFS obtain the approval of the Joint Committee on Finance prior to entering into a new contract with an ADRC or a CMO, and before entering into a contract with a private entity to operate a CMO;

2) The Family Care "cap," which currently limits the Family Care benefit to a geographic area of the state where no more than 50% of individuals eligible for Family Care reside, is lifted;

3) Only individuals eligible for MA would be "entitled" to Family Care;

4) SB 40 renames a "Family Care district" a "long-term care district" and allows these long-term care districts to operate a PACE or Partnership program as long as the district also does not operate an ADRC;

5) The bill modifies the operations of long-term care districts and specifies that counties are not responsible for providing or paying for the services that a long-term care district is required to provide or pay for;

6) SB 40 eliminates the local long-term care councils and assigns some of their duties to the ADRC governing boards and some to the newly-created regional long-term care advisory committees;

7) The bill directs the DHFS to establish regions for these new advisory committees, whose duties include evaluating the performance of ADRCs and CMOs, monitoring CMO grievances and appeals, reviewing long-term care services utilization, identifying gaps in long-term care service availability and performing long-range planning for the regional long-term care system;

8) The Family Care functional eligibility levels are changed under SB 40 from "comprehensive" and "intermediate" to "nursing home level of care" and "non-nursing home level of care;" and

9) SB 40 requires CBRFs and RCACs to provide information regarding ADRCs and the Family Care benefit to prospective residents and, if a referral is required, refer prospective residents to the ADRC when the CBRF or RCAC first provides the prospective residents with written material regarding their facilities. In addition, in counties that do not have ADRCs, CBRFs must refer prospective residents who are 65 or older or have a physical or developmental disability to the county department responsible for administering the COP, COP-W and/or CIP II programs; in turn, that department must offer the prospective residents counseling concerning public and private long-term care benefit programs.

Certified Public Expenditure Program

SB 40 includes a reestimate of funds generated under the Certified Public Expenditure program that are allocated to fund base Medicaid program expenditures (i.e., the amounts not returned to governmental facilities) from $43.0 million in 2006-07 to $40.0 million in 2007-08 and $37.0 million in 2008-09. Governmental facilities would continue to receive $37.1 million annually under SB 40, no change from the amount allocated to these facilities in 2006-07.

Modifications to the CBRF Statutes

SB 40 would modify current statutes pertaining to community-based residential facilities (CBRF) as follows:

1) Within a timeframe specified by the Department, direct the county department or aging unit selected in a given county to administer the COP or the CIP II programs to offer counseling specified by the DHFS concerning public and private benefit programs to prospective residents of CBRFs who are required to be referred to a Family Care resource center prior to admission;

2) Repeal the requirement that a prospective CBRF resident seeking COP, COP-W, or CIP II funding undergo a COP assessment;

3) Direct the DHFS to promulgate rules outlining the method for CBRFs to make the mandated referrals of prospective residents to Family Care resource centers;

4) Repeal the mandated CBRF Statement of Financial Condition which is required of prospective private pay CBRF residents;

5) Repeal the requirement that CBRFs inform all prospective residents of the COP assessment requirement for access to COP, COP-W, or CIP II funding; and

6) After March 31, 2008, direct the DHFS to establish by rule the biennial CBRF fee, including any per-resident fee. That rule must be submitted to the Legislature no later than November 1, 2007.

Modifications to the RCAC Statutes

The Board on Aging and Long-Term Care (BOALTC) Ombudsman program would be given oversight authority in residential care apartment complexes (RCAC); however, unlike past proposals, SB 40 would not require RCACs to pay a per-apartment fee to fund this expansion of the ombudsman program. SB 40 contains neither additional funding nor position authorization for BOALTC to undertake these new responsibilities. SB 40 also would:

1) Direct the DHFS to develop by rule the method by which RCACs should make mandated pre-admission referrals of prospective tenants to Family Care resource centers;

2) Require RCACs to post in a conspicuous location a notice, provided by the BOALTC, of the name, address, and telephone number of the Long-Term Care Ombudsman Program; and

3) The rights of nursing home and CBRF residents under s. 50.09, Wis. Stats., would be extended to RCAC tenants as well, despite the fact that specific RCAC tenant rights are contained in HFS 89.34.

Ombudsman Program

As noted above, the Governor would expand the statutory authority of the Ombudsman program to include oversight of residential care apartment complexes and to act as an advocate for Family Care enrollees (SB 40 authorizes one ombudsman specialist position to serve as the Family Care enrollees advocate). In addition, the Volunteer Ombudsman Program would receive an additional four coordinator positions under SB 40 and be expanded statewide ($385,000 AF and 4.0 positions over the biennium).

Medicaid Noninstitutional Provider Increases

These providers (e.g., physicians, dentists, therapies, chiropractic, ambulances) would receive a 1% MA rate increase in 2007-08 and a 2% increase in 2008-09 ($14.1 million AF in 2007-08 and $44.1 million AF in 2008-09), funded through the Health Care Quality Trust Fund.

Department of Health Services

With the creation of a new Department of Children and Families under SB 40, the “Department of Health and Family Services” will be renamed the “Department of Health Services” as of July 1, 2008. Under the Department’s reorganization plan, the current Division of Disability and Elder Services will be split into two separate divisions: (1) Division of Long Term Care; and (2) Division of Mental Health and Substance Abuse. The Office of Quality Assurance will be given separate division status and will report directly to the Department Secretary. Sinikka Santala will serve as Administrator of the Division of Long Term Care and joining her division will be the Nursing Home Services Section (formerly housed in the Division of Health Care Financing), which provides nursing home policy, reimbursement and auditing services. John Easterday will be the Interim Administrator of the Division of Mental Health and Substance Abuse. The Division of Quality Assurance will be directed by Otis Woods who will continue as a classified, civil service Administrator for this division.

Nursing Home Diversions

The DHFS would be authorized to expand the nursing home diversion program for persons at risk of “imminent entry into a nursing home” beyond the 150-person “cap” (which already has been reached) if approval is granted by the secretary of the Department of Administration, rather than the JFC. No new revenues are provided for the diversion program.

Medicaid Divestment Provisions

Wisconsin would adopt federal Deficit Reduction Act provisions to curtail transfer of assets and other divestment schemes by an individual for the sole purpose of achieving Medicaid eligibility. These changes are expected to save $2.0 million in 2007-08 and $5.4 million in 2008-09. The most significant revision would change the “look-back” date from 3 years to 5 years for transfers that occur on or after February 8, 2006. In addition, the bill permits a continuing care contract, subject to the spousal impoverishment standards, to require a CCRC resident to spend on his/her own care the resources declared for purposes of admission to the CCRC prior to applying for Medical Assistance.

Nursing Home Bed Cap/Distribution

SB 40 reduces the statewide licensed nursing home bed cap from 51,795 to 42,000 and provides that when a licensed bed is transferred, the receiving nursing home must be in the same bed allocation area or in an adjoining area.

False Claims Act

The budget would adopt other Deficit Reduction Act provisions related to the federal False Claims Act. Under these provisions, a person who knowingly presents a false claim to a state agency or local government is subject to a forfeiture of between $5,000 and $10,000 and three times the amount of damages sustained by the government. States are authorized to retain 10% of the Medicaid expenditure amounts recovered under the Act and the Governor's budget assumes these provisions will reduce Medicaid GPR expenditures by $1.3 million.

Quality Home Care Commission

SB 40 would provide $124,000 in 2007-08 and $135,800 in 2008-09 to create the Commission, whose purpose ostensibly would be to help link community clients with caregivers. The Commission would maintain a registry of available caregivers

Youth Apprenticeship Program

The Governor intends to double the size of the program over the next two years at a cost of $412,600 in 2007-08 and $500,000 in 2008-09.

Veterans Home

SB 40 provides an additional 30.0 direct care positions at the King Home ($2.5 million) and $100,000 to conduct a market study to assess how the veterans homes might best serve their clients.

WHEFA

Under SB 40, any organization seeking financing through the Wisconsin Health and Educational Financing Authority (WHEFA) would be required to demonstrate to the newly-created Health Care Quality and Patient Safety Board that it was making efforts to improve medical technology in its facilities.

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