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

204 South Hamilton Street • Madison, WI 53703 • 608-255-7060 • FAX 608-255-7064 • www.wahsa.org

# Overview of the Key Long-Term Care Provisions Contained in 2009 Assembly Bill 75, the 2009-11 Biennial Budget Bill

2009 Assembly Bill 75, the 2009-11 biennial budget bill, was introduced at the request of Governor Jim Doyle on February 17, 2009 and referred to the Legislature's Joint Committee on Finance (JFC). Although the co-chairs of the JFC, Senator Mark Miller (D-Monona) and Representative Mark Pocan (D-Madison), have yet to announce an official timetable for the joint committee's deliberations on the budget bill, typically the process begins with statewide public hearings in mid-to-late March and 4-6 weeks of executive action on the document. The co-chairs have indicated they plan to take final action on the bill on or around May 8th. From there, the amended version of the budget bill goes to the Assembly and once that house concludes its deliberations, the Senate will make its modifications. The goal is to have an agreed-upon bill adopted by both houses of the Legislature on the Governor's desk for his review by June 30th, the last day of the current biennium, although there have been some suggestions that the bill may be in the Governor's hands prior to that date. Historically, the Governor takes 3-4 weeks to review the bill, make his line-item vetoes, and sign the bill into law. Most of the provisions in the budget bill will go into effect July 1, 2009, or on the day after publication of the approved budget, whichever is later.

The State faces a projected $5.9 billion deficit as of June 30, 2011. In his 1,743-page biennial budget bill, Governor Doyle seeks to eliminate that projected deficit in part by cutting State agency budget requests by a net of $2.2 billion, imposing an across-the-board 1% reduction in state agency operations, utilizing $2.1 billion in federal stimulus funds, and generating $1.4 billion in new revenues through, among other things, targeted income tax increases, a reduction of the capital gains exclusion, and corporate tax increases. The proposed budget will spend $14.2 billion in general purpose revenues (GPR, or state tax dollars) in 2008-09, $13.7 billion GPR in 2009-10, and $14.2 billion GPR in 2010-11. The Governor projects a $270 million ending balance in the State's general fund as of June 30, 2011.

The following is a brief description of the provisions of interest to long-term care providers contained in 2009 AB 75, the 2009-11 budget bill. **(NOTE: The Governor's bed tax/MA nursing home rate increase proposals are addressed in a separate WAHSA Briefing Paper):**

> **Federal Stimulus Dollars:** Use $567.6 million in 2009-10 and $295.9 million in 2010-11 from the funds received from the federal stimulus legislation to replace Medicaid GPR funding.

**Other Medicaid Provider Rate Increases:** None. Only MA providers subjected to a tax/assessment increase (hospitals, ICFs-MR, and nursing homes) would receive a rate increase under AB 75.

**Family Care:** Provide an additional $5.6 million GPR and reallocate $112 million all funds to expand Family Care during 2009-11. Statewide implementation of Family Care, which originally was scheduled for the 2009-11 biennium, will be delayed until the 2011-13 biennium. The delayed phase-in will impact counties in the Northern Bridges Managed Care Organization (MCO) of northwestern Wisconsin (a two-month delay), Walworth County (a three-month delay), and the counties of Shawano, Menomonee, Oconto, Brown, Kewaunee, and Door, which will be pushed back to the 2011-13 biennium. The Department of Health Services (DHS) estimates that by June 30, 2011, approximately 90 percent of the State will offer Family Care managed care coverage and 95 percent of the State will be served by an Aging and Disability Resource Center. As Family Care expands, MCOs will be given three years (currently two years) to eliminate waiting lists for care/services. The capitation rates for the current MCOs would be increased by one percent annually; expanding MCOs would receive an annual increase of three percent. Also, the ombudsman organization serving persons with disabilities will be funded at a 1:3500 ombudsmen-to-client ratio, instead of 1:2500.

**Unspecified Medicaid Cuts/State Operations Cut:** Require the DHS to reduce Medicaid expenses by $153.6 million GPR by June 30, 2011. The Governor does not intend that the forced savings impact Medicaid eligibility.

**Assisted Living License Fee Increases:** Impose a 27 percent increase in the biennial license fees for community-based residential facilities (CBRF), adult family homes (AFH), and certified adult day care programs (ADC), but not on certified residential care apartment complexes (RCAC) as was proposed in the DHS budget request.

| Entity | Current Fee | AB 75 Proposed Fee |
|---|---|---|
| CBRF | $306, plus $39.60/ licensed bed | $389, plus $50.25/licensed bed |
| AFH | $135 | $171 |
| Adult Day Care | $100 | $127 |

These increases are requested to fully fund current assisted living licensing and certification staff in the Division of Quality Assurance. In addition, the DHS would be granted authority to increase CBRF and AFH fees in future years by administrative rule.

**User Fees:** Grant the DHS authority to assess a $200 inspection fee on nursing homes, ICFs- MR, hospitals, home health agencies, hospices, CBRFs, AFHs, RCACs, and ADCs when the DQA must make a second inspection visit to validate the provider's plan of correction for a violation of a licensing or certification requirement. The DHS argues the fee "is intended to cover the cost of the verification visit and to promote better regulatory compliance." The standard inspection or survey would count as the initial visit; any verification visit would trigger the $200 fee. Nursing facilities/ICFs-MR are projected to pay an estimated $60,200 in annual inspection fees; assisted living provider inspection fees are expected to generate approximately $109,000 per year.

**Certified Public Expenditures (CPE):** Specify that local government-operated nursing facilities receive $37.1 million annually in CPE payments but that any additional federal funds over this amount in *2008-09* and in each year of the 2009-11 biennium be used to offset general Medicaid expenses (the amount received in excess of the budgeted amounts would no longer be shared with governmental homes). Further, Family Care losses incurred by local governmental homes would be used to capture an additional $5.2 million in CPE payments. These additional funds would be allocated for Family Care expansion.

**ICFs-MR Bed Tax Increase:** The ICF-MR bed tax would be increased from $638/bed/month to $678/bed/month in 2009-10 and to $691/bed/month in 2010-11 to fund a 2% MA rate increase in each year of the biennium. Nearly $565,000 of the new dollars generated by the bed tax increase will be used to fund the Medicaid Relocation Waiver.

**DHS Monitors:** Expand current law provisions under which the DHS may place a state monitor in a nursing home or CBRF to include: (1) if the facility's expenses are projected to "significantly" exceed revenues; and (2) if the operator is charged or convicted of Medicaid/Medicare fraud or resident abuse or neglect. The bill also would permit a state monitor to "assist in the financial management" of the facility.

**Medicaid Transportation Manager:** Reduce Medicaid expenses by $7 million GPR over the biennium and implement a statewide transportation manager for Medicaid specialized medical vehicle transportation and common carrier services. The manager would provide centralized scheduling, dispatch, and provider reimbursement. Family Care clients would not be impacted by this initiative.

**Wisconsin Quality Home Care Authority:** Create the Wisconsin Quality Home Care Authority with the responsibility to: establish and maintain a registry of home care providers; provide referrals to individuals seeking home care services; determine the eligibility of providers for placement on the registry; develop a recruitment program for providers; operate a backup provider system with a 24-hour per day call service; and conduct activities to improve the quality and supply of home care providers.

**Nursing Home Appeals Board:** Eliminate the Nursing Home Appeals Board and its $1.3 million all funds annual appropriation.

**Nursing Home Bed Transfers:** Eliminate the current Chapter 150 prohibitions on the transfer of nursing home beds between facilities with separate ownership and in separate health planning areas. This provision would not allow the buying and selling of nursing home beds without the sale of the nursing home license but would allow organizations/corporations to transfer beds between facilities regardless of location, and the "gifting" of beds between unrelated parties. Bed transfers would require DHS approval.

**Board on Aging and Long-Term Care (BOALTC):** Grant BOALTC ombudsmen unlimited access to RCAC tenants.

**Nursing Home Regulatory Appeals:** Increase from 10 to 60 days the time given to nursing homes to file an appeal of a DQA-issued deficiency or forfeiture.

**Pay-for-Performance (P4P):** Reject the DHS budget request to establish a state-funded P4P system. The department intends to pursue pilot authorization to test a federally funded (Medicare) Value-Based Purchasing P4P demonstration program for nursing homes.

**Domestic Partner Visitation Rights:** Provide CBRF and nursing home residents with the same Chapter 50 right to private visits with a domestic partner that they are afforded with a spouse. In addition, any adult family home, CBRF, RCAC or nursing home which has a policy on who may accompany or visit a resident/tenant must extend the same right of accompaniment or visitation to a domestic partner that is accorded to a spouse under the policy.

**Workplace Smoking Prohibition:** Prohibit smoking in all workplaces, including nursing homes and assisted living facilities (CBRFs, RCACs, and adult family homes). The budget bill would provide exceptions to this smoking prohibition for two assisted living situations: 1) A room used by only one person in an assisted living facility as his or her residence; and 2) A room in an assisted living facility in which 2 or more persons reside if every person who lives in that room smokes and each of those persons has made a written request to the person in charge of the assisted living facility to be placed in a room where smoking is allowed.