

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

January 22, 2008

To: Senator Lena Taylor, Chair
Members, Senate Judiciary, Corrections and Housing Committee

From: John Sauer, Executive Director

Subject: 2007 Senate Bill 403

The Wisconsin Association of Homes and Services for the Aging (WAHSA) is a statewide membership organization of not-for-profit corporations principally serving the elderly and persons with a disability. Membership in WAHSA is comprised of 187 religious, fraternal, private and governmental organizations which own, operate and/or sponsor 196 nursing homes, 144 of which are operated by private, not-for-profit organizations, 45 of which are county-operated facilities, and 7 of which are municipally-operated; 20 facilities for the developmentally disabled (FDD); 81 community-based residential facilities (CBRF); 59 residential care apartment complexes (RCAC); 14 HUD Section 202 Supportive Housing for the Elderly apartment complexes; 113 apartment complexes for independent seniors; and over 300 community service programs ranging from Alzheimer's support, child and adult day care, home care and hospice to Meals on Wheels. WAHSA members employ over 38,000 individuals who provide compassionate care and service to over 48,000 elderly and persons with a disability.

My name is John Sauer. I am the executive director of WAHSA and also served on the Legislative Council Special Committee on Tax Exemptions for Residential Property, which was created to respond to the concerns raised by the 2003 *Columbus Park* Supreme Court decision (*Columbus Park Housing Corporation v. City of Kenosha*). As a member of the special committee, I voted in support of the continued exemption from property taxes for low-income housing providers and my members and I continue to adhere to that position today.

But I also voted in support of exempting from property taxes the other residential housing providers who were impacted by the *Columbus Park* decision: not-for-profit nursing homes, community-based residential facilities, adult family homes, residential care apartment complexes, domestic abuse shelters, shelters for the homeless, transitional housing facilities, residential facilities for the treatment and housing of AODA clients, residential housing for persons with permanent disabilities, and senior housing apartments affiliated with a nursing home, a CBRF and/or a RCAC. In the words of Chairperson Taylor, which I strongly support, they, too, are "doing God's work."



WAHSA members do not oppose SB 403; however, they would prefer the comprehensive approach to the residential housing property tax exemption issue taken in 2005 Senate Bill 570 and in similar legislation Representative Leah Vukmir is about to introduce. Because one thing is quite clear: **The passage of SB 403 will not solve the *Columbus Park* problem.**

We believe SB 403 is before us today because low-income housing providers are experiencing the same dilemma as some of our long-term care providers: A strategy being adopted by some local assessors to avoid the Legislature by assessing property taxes against certain residential housing providers and letting the courts decide the legality of those decisions. They failed in recent attempts to convince the Legislature to revise the property tax exemption statutes so they've decided to assess property taxes based on their own interpretations of "benevolence" or the statutory "rent use" requirement (which permits the owners of tax-exempt property to use the leasehold income generated by that property only for maintenance and/or construction debt retirement) and watch to see if those property owners are willing to pay the property tax as a condition of seeking a court ruling on the validity of assessing those taxes. And they've had some success in bypassing the Legislature and going to court: a recent ruling in Dane County Circuit Court supported the City of Madison's assessment of property taxes on a Madison not-for-profit senior housing complex. In Wauwatosa, the city assessor recently assessed property taxes on the senior housing components of three WAHSA long-term care campuses in that city. However, rather than forcing the three organizations to adhere to the statutory dictate that the taxes must be paid before a court challenge can be pursued, the city and the three organizations tentatively have agreed to seek a declaratory judgment on the legality of assessing property taxes in these three instances.

The problem with this approach is two-fold: the prospect of having as many interpretations of what warrants a property tax exemption for residential housing as there are circuit courts willing to address the issue and the uncertainty which hangs over the heads of the residential housing providers and those they serve as to whether they will remain tax-exempt. SB 403 will solve that dilemma for low-income housing providers but for the 85-year old widow living at Luther Manor, Cedar Community, Morrow Memorial Home, Clement Manor, St. Camillus or any other senior housing complex whose tax-exempt status may be challenged, that uncertainty equates to the fear of being forced out of their "home." That fear factor was palpable in Wauwatosa, despite assurances that evictions for inability to pay are prohibited under IRS Revenue Ruling 72-124 for s. 501(c)(3) senior housing facilities.

The "take us to court" strategy also could impact funding of the Medicaid program and nursing home access. Many long-term care organizations use some of the leasehold income they generate from their senior housing and/or assisted living residents to subsidize part of the Medicaid losses their campus nursing home is experiencing. In 2006, the average nursing home in Wisconsin was losing \$29.06 per day for each Medicaid resident they served, or approximately \$232 million in the aggregate statewide. That figure assuredly will increase in 2007 since the 2007-09 state budget provided nursing homes with no Medicaid rate increase in 2007-08. Some local assessors are beginning to scrutinize this use of leasehold income; if this cross-subsidization is determined to be in violation of the "rent use" provision of the statutes, either additional Medicaid funding will be needed to offset those lost nursing home subsidies or some nursing homes may be forced to close.

WAHSA members understand and share the concerns of the low-income providers who seek the passage of SB 403. Once again, however, the passage of this bill will not address the concerns and the uncertainty of the residential housing providers who are not benefited by the provisions of SB 403. ***We respectfully ask the Legislature to enact legislation that more comprehensively addresses the Columbus Park issues and ensures the continued property tax exemption for not-for-profit housing providers.***

Thank you for the opportunity to testify on SB 403.