

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

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Subject: Comments on Clearinghouse Rule 07-095, the Proposed Revisions of
HFS 83, the CBRF Rule

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. WAHSA membership is comprised of 188 not-for-profit corporate members which own, operate, and/or sponsor 195 nursing homes, 14 intermediate care facilities for the mentally retarded (ICF-MR), 60 residential care apartment complexes (RCAC), two adult family homes, 16 HUD Section 202 Supportive Housing for the Elderly apartment complexes, 114 apartment complexes for independent seniors, and over 300 community-based programs ranging from Alzheimer's support, child and adult day care, home care and hospice to Meals on Wheels. Of more relevance to this discussion, WAHSA members operate 78 community-based residential facilities (CBRF).

At the outset, WAHSA members, specifically those operating CBRFs, would like to offer their sincere thanks and appreciation to Kevin Coughlin, Laurie Arkens and the rest of the Bureau of Assisted Living (BAL) team which painstakingly developed the proposed CBRF rule modifications we see before us today. In the over 20 years we've had the honor to represent the not-for-profit long-term care providers who make up the WAHSA family, we have never witnessed a rulemaking process where the agency in question permitted virtually every stakeholder with the opportunity to time and time again provide their input. Rest assured that absolutely no one can make the claim they did not have a chance to share their thoughts and concerns on the proposed modifications to HFS 83. The development of this rule revision should be a template for the rulemaking process not only for the rest of the Department of Health and Family Services (DHFS) but throughout the entire state bureaucracy. Thank you for such an open process.

WAHSA members support the general scope and direction of Clearinghouse Rule 07-095. The proposed revisions to the rule generally meet the Department's goal of simplifying and adding clarity to HFS 83. However, there are a number of areas in the HFS 83 re-write where WAHSA members believe changes to this draft can further improve this proposal. Those suggested changes include the following:



- **HFS 83.03(1) The definition of “abuse.”** For the sake of consistency, WAHSA members suggest utilizing the definition of “abuse” found under HFS 13.03(1), the Caregiver Misconduct Code. We also would suggest spelling out the entire definition under HFS 83.03(1) rather than simply referencing HFS 13.03(1). We offer virtually the same request and argument in support of **redefining “neglect” under HFS 83.03(30)** to mirror the definition of “neglect” under HFS 13.03(14). It should be noted the definition of “misappropriation of property” under the proposed HFS 83.03(29) is the HFS 13 definition.
- **The definition of “significant change in a resident’s condition” under HFS 83.03(52)(a) and (b).** The significance of this definition is it determines what instances trigger the notification and reporting requirements under HFS 83.12. WAHSA members believe the focus needs to be on the word “significant” and HFS 83.03(52)(a) and (b) need to be modified to ensure that only **significant** changes trigger the rule’s notification and reporting requirements. We suggest that HFS 83.03(52)(a) be amended to read “decline in a resident’s medical condition **not related to their diagnosis**” which results in further impairment of a long term nature.” The natural and fully expected progression of a diagnosed disease should not warrant a change in condition notification. Under HFS 83.03(52)(b), we suggest HFS 83 return to current language, where a change of condition notification is triggered by a decline in **2 or more activities of daily living**. A decline in the ability to comb one’s hair or brush one’s teeth, taken separately, are part of the natural aging process and not, we subscribe, a “significant” change in condition.
- **HFS 83.10 Change of ownership.** HFS 83.10(1)(e) should be amended to be consistent with s. 50.03(13)(d), Wis. Stats., which states that “**the transferor** shall remain liable for all forfeitures assessed against the facility which are imposed for violations occurring prior to transfer of ownership.”
- **HFS 83.12(2)(b) Reporting abuse, neglect or misappropriation.** Members had a number of questions concerning the reporting of abuse, neglect or misappropriation by a non-caregiver under HFS 83.12(2)(b). Is this required under HFS 13 or anywhere else in statute or code? Shouldn’t the investigation of such an allegation be conducted by the county elder abuse agency? If this investigation is not required under the caregiver misconduct code, WAHSA members quite frankly would prefer to limit their involvement to notifying the county elder abuse agency when such an allegation arises and letting the agency conduct the investigation. Providers never want to needlessly get involved in fights with the family members of their residents and this requirement certainly could precipitate such encounters.
- **HFS 83.12(4)(c) Reporting serious injuries.** HFS 83.12(4)(c) requires a written report to the DHFS within three working days of any “serious” injury which requires hospital admission or **emergency room treatment** of a resident. The need for a couple of stitches or an X-ray to rule out a fracture do not rise to the level of “serious” and could lead to a slew of reports the provider doesn’t want to compile and we assume the DHFS really doesn’t want to receive. WAHSA members suggest “or emergency room treatment” be stricken from the rule and that the current law language that requires a report following **inpatient hospitalization** be retained.
- **HFS 83.12(5)(a) Notification of changes affecting a resident.** WAHSA members suggest that the requirement that contract agencies or third party payors be notified in writing of changes affecting a resident be deleted; such notification requirements are standard contract provisions which should be negotiated by the CBRF and the contract agencies and/or the third party payors.
- **HFS 83.13(2)(d) Posting of enforcement actions.** HFS 83.13(2)(d) requires any statement of deficiency, notice of revocation or any other enforcement action to be posted

but it does not state for how long. HFS 83.14(2)(h) states a statement of deficiency shall remain posted for one year following receipt. WAHSA members suggest current code remain in effect: Under current HFS 83.07(14)(a), citations of deficiency shall remain posted for 30 days following receipt or until compliance is achieved, whichever is longer. Notices of revocation and any other enforcement actions shall remain posted until a final determination is made. It simply is unfair to require a facility to post a statement of deficiency when that deficiency no longer exists.

- **HFS 83.13(2)(f) Posting of emergency phone numbers.** The correct reference is HFS 83.47(2)(h), not (2)(i).
- **HFS 83.15(1) Administrator Qualifications.** WAHSA members suggest HFS 83.15(1)(a) and (b) be deleted and replaced with the administrator qualifications proposed by the Wisconsin Assisted Living Association, with the following caveats: The language should be clear that current CBRF administrators and any individual who has been a CBRF administrator, or held job responsibilities that meet the definition of “administrator” under HFS 83.03(4), within the last 3 years of the effective date of the rule be “grandfathered” in and not be required to meet these new qualifications; the “grandfather” provision should be portable within the state and reciprocal outside of the state. The administrator qualifications requirement should ensure that quality individuals are not prohibited from becoming administrators simply because they fail to meet arbitrary educational and/or experience standards.
- **HFS 83.17(2) Employee health – communicable disease control.** Several of our nurse clinicians raised questions with this section of the proposed rule: How is “clinically apparent” defined? How do you determine “likelihood of exposure?” Who is qualified to conduct the required re-screenings? What communicable diseases warrant a re-screening? Taken to its logical (some might say illogical) conclusion, wouldn’t anyone with a cough have to be re-screened under this language? Please clarify the language and the intent.
- **HFS 83.20 Department approved training.** WAHSA members conceptually support the new training requirements under HFS 83.20. That support, however, will remain conceptual until the specifics of the program are spelled out (i.e., who will the 3rd party entity overseeing the program be, what costs will they impose, etc.). What does need to be clarified further is what the **NOTE** under HFS 83.20(1)(a) means: Does it mean all the training requirements under HFS 83.20, 83.21, 83.22, 83.23, and 83.24 go into effect one year after the effective date of this rule? People are uncertain which, if any, of the new training requirements go into effect immediately upon promulgation of the rule or a year later and during that interim year, which, if any, of the current training requirements remain in effect. An expanded NOTE responding to these uncertainties would be very helpful.
- **HFS 83.24(7) and (8). Exemptions from client group training, resident rights training, challenging behavior training, assessment and individual service plan training.** Nursing assistants certified under HFS 129 should be exempted from the training requirements noted above as they are under current code. Duplicative training is costly and unnecessary. HFS 83.24(7) and (8) should be expanded to include nursing assistants certified under HFS 129.
- **HFS 83.27(1)(b) Limitations on admissions and retentions.** HFS 83.27(1)(b) does not comply with s. 50.035(10)(b) and should be amended to comply with the statute. S. 50.035(10)(b) states a CBRF may not have a total of more than 4 residents, or 10% of the facility’s licensed capacity, whichever is greater, with nursing care needs in excess of 3 hours per week **unless the facility has obtained a waiver from the department of this limitation or has requested such a waiver and the department’s decision is pending.** The bold language should be added to HFS 83.27(1)(b).

- **HFS 83.28(5) Home and community-based waiver funding.** This provision was stricken from the statute by 2007 Act 20 (the 2007-09 budget bill) and should be deleted from HFS 83.28(5). The same suggestion and argument apply to HFS 83.30(1).
- **HFS 83.32(2)(q) Resident rights.** HFS 83.32(2)(q) gives a CBRF resident the right to choose their pharmacy services provider. While we are not necessarily suggesting this right be eliminated, we are suggesting it might be given further consideration. With the number of medications being taken by CBRF residents rising significantly, the combination of more medications and multiple pharmacies raises concerns about increased medication errors. Consistency of packaging and delivery systems could alleviate those concerns. This is the classic battle between resident rights and resident safety.
- **HFS 83.35(1)(c) Areas of assessment.** HFS 83.35(1)(c)1-10 were the components of the individual service plan (ISP) under current code; now they are part of the assessment. WAHSA members don't disagree with that change: they simply want to know what will happen to the current ISP form with these changes and will the old ISP form serve as the template for a new assessment form.
- **HFS 83.37(1)(a) Practitioner's order for dietary supplements.** A WAHSA member who happens to be a registered dietitian argues dietary supplements are benign and CBRFs should be able to use them without the need for a physician's order similar to what many nursing homes do.
- **HFS 83.37(1)(h) Scheduled psychotropic medications.** WAHSA members offer several suggested changes to this section: 1) Eliminate the distinction between scheduled and PRN psychotropic medication by deleting "Scheduled" under HFS 83.37(1)(h) and deleting HFS 83.37(1)(i); 2) HFS 83.37(1)(i)2 should be added to HFS 83.37(1)(h)1 so it reads: "The results of the assessments shall be documented in the resident's record as required in s. HFS 83.42(1)(n). The administrator or qualified designee shall monitor at least **quarterly** for the inappropriate use of PRN psychotropic medication, including but not limited to, use contrary to the ISP, presence of significant adverse side effects, use for discipline or staff convenience, or contrary to the intended use."; 3) HFS 83.37(1)(i)1 becomes HFS 83.37(1)(h)3; and 4) HFS 83.37(1)(i)3 becomes HFS 83.37(1)(h)4. WAHSA members see no need in making a distinction between the use and the monitoring of the use of scheduled and unscheduled psychotropic medications. They also argue that a quarterly review for the inappropriate use of psychotropic medications is more effective than a monthly review in analyzing on-going usage.
- **HFS 83.41(1)(c) Dishwashing requirements.** HFS 83.41(1)(c) requires CBRFs with kitchens serving 21 or more residents to have a commercial type dishwasher. There are several WAHSA members who would like to see this provision amended to permit the use of residential dishwashers in large CBRFs if the kitchen is routinely used by no more than 20 residents. Residential dishwashers are safer and more home-like in appearance. Our members appreciated the BAL response that a waiver could be sought in this instance but they'd prefer to avoid the stigma that often is attached to the granting of a waiver.
- **HFS 83.40(1)(c) Three compartment sinks.** WAHSA members suggest the proposed rule be amended to grandfather current facilities which have two compartment sinks to minimize the cost implications of this new requirement.
- **HFS 83.44(1)(a) Laundry area.** These requirements seem to ignore the fact that some CBRFs have independent apartments with laundry appliances in those apartments.
- **HFS 83.44(1)(c) Clothes dryers.** This provision requires the use of dryer vent tubing. Stated differently, it precludes the use of ventless dryers, which are more convenient, take up less space, are more residential in nature and are common in Europe. We would

suggest that the rule permit this flexibility rather than forcing progressive providers to seek a waiver.

- **HFS 83.45(5) Garbage and refuse.** There should be some mention in the code that CBRFs should adhere to local recycling ordinances.
- **HFS 83.46(2)(a) Ventilation.** Shouldn't "well ventilated" either be defined or reference a standard?
- **HFS 83.57(1) Multiple occupancies.** WAHSA members would argue that this continued reliance on physical separation provisions is an anachronism and precludes "aging in place." We have long argued in support of multiple licensures in single settings.

Thank you for this opportunity to comment on Clearinghouse Rule 07-095, the proposed revisions to HFS 83, the CBRF rule.