

December, 2007



Department of Health and Family Services
Pat Benesh, Quality Assurance Program Spec-Senior
Division of Quality Assurance
1 West Wilson St.
Room 1150
Madison, WI 53701

Revised Dec 7, 2007

Dear Pat:

WALA, the Wisconsin Assisted Living Association, wishes to commend the now Division of Quality Assurance (DQA) and the now Bureau of Assisted Living (BAL) for actively engaging all stakeholders in the almost five year process of the rewrite of regulations for Community Based Residential Facilities (CBRFs). BAL went to extraordinary lengths to insure that all interested parties had their concerns and suggestions heard equally. With the revision of HFS 83 comes literally hundreds and hundreds of hours of effort by dedicated advocates, providers, state regulators and reviewers as well as many associations such as ours. These efforts have led to the Initial Proposed Rulemaking Order.

WALA supports the intent and scope of the proposed regulations. Quality care is the driving force of DQA and BAL, as well as WALA, our members and our leadership. WALA, now in our 13th year, leads the industry in assisted living specific education, advocacy and creative ways to meet the needs of the operators, managers and residents in our assisted living facilities. Representing 636 statewide members with over 11,800 beds/apartments, we are the largest assisted living association in Wisconsin and have been a major voice in all AL specific stakeholder initiatives. We represent CBRFs, RCACs, AFHs and those who provide service to the industry.

WALA and others now reviewing the proposed regulations have the "luxury" of distance over time. Because the last version that was reviewed was sent to OLC over 11 months ago, many of us who have labored over every semi-colon and implication of every word now find ourselves seeing the proposed regs with new eyes. To that end, we now see wording that we recommend should be changed and implications that were not seen in the reviewed version over the years. That is a positive situation, I suggest, as it allows potential problems and needed clarification to be addressed before the rule is promulgated rather than after.

The major changes WALA suggests are the qualifications for Administrators in 83.15. The current proposal of a minimum of 60 hours post secondary education will eliminate the largest pool of future Administrators for many facilities statewide. Our suggested changes will provide well trained and quality administrators for future generations while acknowledging the reality of recruitment across the state. These options are clearer as well as meeting the administrative needs of the 49% of CBRFs that are under 8 beds, the 88% that are under 20 as well the 12% of the larger providers. The addition of a department approved **assisted living specific training course** will help to meet the challenge of providing methods to give prospective administrators another tool they need to succeed.

On behalf of all we serve, thank you.

We are happy to answer any questions and be part of any future workgroup or discussion group.

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WALA Policy and comments on HFS 83 Rewrite

Based on Initial Proposed Rulemaking order, 11/07

Code Reference - Nov 07	WALA position Specific language change highlighted	Rationale
83.03 (20) Dietary supplement definition Page 22 of proposed order	Change: (20) “Dietary supplement” means a product which is used to treat a medical condition and is taken by mouth...	“Dietary supplement” definition needs clarification.
83.03 (25) Definition of Intermediate level nursing care Page 23	Remove: the entire definition of “intermediate level nursing care.”	Referenced only once. Code already defines the limits of a CBRF through nursing hours. Draft includes “relatively stable condition” which is too subjective to monitor effectively.
83.12 (5) (a) – (d) Notification of Changes Page 32	Replace proposed language with: 5) NOTIFICATION OF CHANGES AFFECTING A RESIDENT. (a) the CBRF shall promptly notify resident’s legal representative and resident’s physician when there is an injury to the resident or a significant change in the resident’s physical or mental condition. (b) the CBRF shall promptly notify resident’s legal representative and resident’s physician when there is an allegation of physical, sexual or mental abuse, or neglect of a resident. The CBRF shall give notice to resident’s legal representative within 72 hours when there is an allegation of misappropriation of a resident’s property. (c) the CBRF shall give the resident or the resident’s legal representative a 30-day written notice of any change in services available or charges for services that will be in effect for more than 30 days.	This simplifies the language and removes the requirement that the notice be in writing. These are often done over the phone or in person. We suggest deleting the contract agency and third party payor requirements. These entities can impose their own notification requirements by contract – DHFS does not need to get in the middle of it.
83.14 (1) (h) Posting statement of deficiency Page 34	Change to 90 days “... A statement of deficiency shall remain posted for 90 days following receipt...”	90 days is three times longer than the current regulations. The SOD remains on the DHFS website for two years.

Code Reference - Nov 07	WALA position Specific language change highlighted	Rationale
83.15 (1) (a) and (b) Administrator qualifications Page 35	<p>WALA Comment: Replace 83.15 (1) a and b with the suggested replacement language below. WALA feels that the proposed Administrator Qualifications have serious flaws which are addressed in attached analysis.</p> <p>Additional commentary on background, research and rationale for the suggested replacement language is addressed at the end of this document in the attached analysis.</p>	
83.15 (1) (a) Administrator qualifications (continued) Page 35	<p>Replace language: (a) The administrator of a CBRF shall be at least 21 years of age and shall have an associate degree or higher from an accredited college in a health care related field, or (note, WALA's emphasis)</p>	<p>Removed business because business undergraduates should also have experience in AL field. Healthcare professionals with at least an associate degree have the needed education.</p>
83.15 (1) (b) Administrator qualifications (continued) Page 35	<p>Replace language: (b) The administrator of a CBRF shall be at least 21 years of age and shall have at least a four-year degree from an accredited college in any other field and shall have either at least one-year experience working in a health care related field having direct contact with one or more of the client groups identified in 83.03 (15) (see note below) or has successfully completed an Assisted Living Administrators Training course according to the department's course content which shall be provided by trainers approved by a department approved entity, or</p>	<p>Restate age to make the three categories more clear. Added degree in "any other field." This insures that those with a non-healthcare degree also have at least one-year experience or have completed the AL training course</p>
83.15 (1) (b) Replace cite to client group in current language Page 35	<p>Replace citation: (b above and c below) ...with one or more of the client groups identified in 83.03 (15).</p>	<p>Existing code reference does not exist. Should be 83.03 (15) not (83.0<u>5</u>) (15) in each instance.</p>

Code Reference - Nov 07	WALA position Specific language change highlighted	Rationale
83.15 (1) (c) Administrator qualifications (continued) Page 35	Add language: (c) The administrator of a CBRF shall be at least 21 years of age and have at least two years experience working in a health care related field having direct contact with one or more of the client groups identified in 83.05 (15) and have successfully completed an Assisted Living Administrators Training course according to the department's course content which shall be provided by trainers approved by a department approved entity.	The licensee bears the responsibility to insure that a qualified and competent administrator runs the facility. This option allows the licensee to look at the leadership qualities of the candidate rather than the length of their formal education. This provides current staff without degrees an opportunity to move into an Administrators role by having at least two years experience AND a comprehensive, extended, AL specific training that provides in-depth extensive training to replace college education. <u>Detail at the end of this document.</u>
83.15 Note Page 35	Replace current language with: Persons who held the responsibilities of Administrator of a CBRF within three (3) years on or before (revisor to insert date) shall be exempt ...	Clarification of grandfathering language.
83.17 (2) Communicable disease documentation Page 35	Support: CBRF required to obtain documentation of communicable disease screening.	Shifts burden of testing from employee to facility.
83.20 Department approved training Page 36	Support with comments: WALA supports the concept of the proposed contract with the 3 rd party entity.	However, there are still many questions about the RFP, role of third-party entity, process and cost of training.
83.22 (2) ISP Development Page 38	Change: Change "...development of goals..." to " desired outcomes "	Per intro to the Initial rule, desired outcomes are the intent of the rule
83.24 (1) Exemptions for completed training Page 38	Add: "Employees who have completed department-approved training before [revisor to insert effective date of rule] plus one year shall be exempt..."	Allow one-year exemption after effective date for training time until new system is in place and old system no longer applicable.

Code Reference - Nov 07	WALA position Specific language change highlighted	Rationale
83.24 (3, 5, 6) Exempt CMA's Page 38-39	Exempt: CMA's from 3, 5, 6 (standard precautions, first aid and choking training, and medication administration and management training)	Exempt Certified Medical Assistant as CMA's are already trained in these areas.
83.25 Continuing education Page 40	Change: ...Continuing education shall be relevant to their job responsibilities and shall include, but not be limited to, each of the following:	Helps define expectations of the 15 hours of continuing education to train, at a minimum, in each of these areas each year.
83.27 (6) Intermediate level nursing care Page 41	Delete the following: 6. Requires care above the intermediate level nursing care.	See comment re: 83.03(25). Other stated reasons are sufficient to determine non-admission.
83.29 (2) Admission agreement presented orally Page 43	Change: The admission agreement must be in writing and explained orally in the language of the prospective resident or legal representative. Admission is contingent...	Intent is to provide the information orally in their own language and this better provides that direction. Understanding is difficult to measure.
83.35 (1) (a) Assessment scope Page 53	Change scope: The CBRF shall assess each resident's needs, abilities, and physical and mental condition before admission, when there is a significant change in resident's condition, and at least annually....	Proposed language "Before admission" at start of sentence is confusing and bad grammar. "When there is a change" is confusing, ambiguous, and unnecessary—83.03 (52) page 25 defines "significant change".
83.35 (3) 1. Comprehensive ISP Page 54	Change: 1. Identify the resident's needs and desired outcomes.	Focuses on outcome based care which reflects AL care as well expansion of managed care philosophy.
83.35 (3) 3. Comprehensive ISP (continued) Page 54	Remove: 3. Establish measurable goals with specific time limits for attainment.	See 83.35 (3) 1 above.
83.37 (h) 2. Scheduled psychotropic medications Page 57	Replace: 1. Ensure all medication administration staff understands the potential benefits and side effects of the medication.	No need to educate the whole staff about psychotropic meds if they don't administer them. Replace "all resident care staff" with "all medication administration staff."

Code Reference - Nov 07	WALA position Specific language change highlighted	Rationale
83.37 (i) 2 As needed psychotropic medications Page 58	Change 2. ...shall monitor and document at least quarterly for the inappropriate....	Don't change a time frame system that currently works. Quarterly rather than monthly is sufficient.
83.37 (1) (j) Proof- of-use record. Page 58	Remove: A registered nurse or designee shall audit, sign and date the proof-of-use records on a daily basis, except that in facilities in which a registered nurse is not present Change: The administrator or designee shall audit, sign and date the proof-of-use records on a daily basis.	Administrator should retain responsibility for the audit. Due to the increase of psychotropic usage, we believe the administrator should not delegate their daily responsibility.
83.37 (2) (b) 1. Administrating medication ... delegation to an LPN Page 59	Remove sentence: Supervision of medication administration may be delegated by the registered nurse or practitioner to a licensed practical nurse.	Our nursing advisors say that an RN may not delegate supervision.
83.37 (c) ..Meds administration without a RN, etc” Page 59	Add to end of paragraph: A CBRF using unit dose medication systems is not required to hold the registered nurse accountable for medication supervision.	As long as unit dose medication systems are used, CBRFs with or without an RN should be held to the same standards. A CBRF may employ RNs for treatments and other nurse tasks without including them in the medication process.
83.38 (1) (g) 2. Health monitoring Page 61	Change terminology: from “A resident’s food and fluid intake and acceptance of diet...” to “A resident’s intake and acceptance of diet...”	Removed the word “food and fluid” – revised text is more realistic and most facilities are already monitoring and documenting general intake. The terminology monitoring fluid intake is not consistent with AL standards.
83.47 (3) Annual fire inspections Page 70	Support: Annual fire inspections for all CBRFs.	Simplifies the current system and treats all facilities alike. Discussion on page 11 of Initial Rule.

<i>Code Reference - Nov 07</i>	<i>WALA position Specific language change highlighted</i>	<i>Rationale</i>
83.48 (8), 83.49 All class C facilities to have sprinkler systems Page 72 & 73	Support: All class C facilities required to have sprinkler systems; existing facilities have five years to install sprinklers.	DHFS should lead on this issue. This provides standardization, rather than each community setting their own standards and requirements. Five years is a reasonable time period for facilities to comply. Discussion on page 9 and other options on page 10 of Initial Rule.
83.55 (3) Hand Drying Page 78	Support and add language: Paper or cloth towel dispensers or electric hand dryers required in common bathrooms. Add: "All sinks in common areas... " Change: This requirement does not apply to sink areas located in private toilet rooms accessed directly from a resident bedroom.	Promotes health among residents and staff and is inexpensive. Add word "common". This is intent per discussion on page 10 of Initial Rule but is not as clear in proposed language.
83.59 (2) (b) Fire door to basement Page 81.	Support: Require solid core wood or other fire resistant door between basement and first floor and for laundry or furnace rooms on floor with bedrooms.	Promotes resident safety. Discussion on page 12 of Initial Rule.
83.59 (7) Emergency lighting with stand-by power Page 83	Support: Exit hallways and stairs required to have emergency lighting with a stand-by power source.	Promotes resident safety and is inexpensive. Discussion on page 12 of Initial Rule.
83.63 (4) Plan review fees Page 85	Support: Increase in fees for plan review.	Current fees do not cover department's costs. Discussion on page 11 of Initial Rule.

Thank you for this opportunity to comment on the proposed changes in the Initial Proposed Rulemaking Order for HFS-83.



WALA ANALYSIS
and
SUGGESTED HFS 83 LANGUAGE FOR
83.15 ADMINISTRATOR QUALIFICATIONS
and
Assisted Living Specific Training Course
Based on Initial Proposed Rulemaking order, 11/07

WALA recommends replacement of 83.15 (1) a and b with the suggested replacement language below. WALA feels that the proposed Administrator Qualifications have serious problems which are addressed in this proposal. **WALA encourages comment and dialogue with all stakeholders on this proposal.**

These three Administrator qualifications options will provide multiple education options to meet the prospective Administrator's as well as the facility's specific needs. This includes an option for those with no college credits who have two years of client group specific experience and successfully complete an extensive, comprehensive AL specific training course. In addition, the AL specific training mentioned below could be offered on a voluntary basis to improve skills of grandfathered administrators, as an option to help facilities comply with 83.15 (2) (c), page 35, and as a way to better train qualified resident care staff who are in charge when the administrator is absent.

ADMINISTRATOR TRAINING IN OTHER STATES
and
RATIONALE FOR THE ALTERNATE PROPOSAL

RECOMMENDED TESTIMONY

WALA encourages you to provide verbal and/or written testimony in support of the language below during the December, 2007 hearings. Information on how to do that easily is at www.ewala.org on the WALA website.

RECOMMENDED LANGUAGE CHANGE FOR 83.15 ADMINISTRATOR QUALIFICATIONS *(page 35 in Initial Rule)*

(a) The administrator of a CBRF shall be at least 21 years of age and shall have an associate degree or higher from an accredited college in a health care related field, or *(note, WALA's emphasis)*

(b) The administrator of a CBRF shall be at least 21 years of age and shall have at least a four-year degree from an accredited college in any other field **and shall have either** at least one-year experience working in a health care related field having direct contact with one or more of the client groups identified in 83.03 (15) **or** has successfully completed an Assisted Living Administrators Training course according to the department's course content which shall be provided by trainers approved by a department approved entity, or

(c) The administrator of a CBRF shall be at least 21 years of age and have at least two years experience working in a health care related field having direct contact with one or more of the client groups identified in 83.05 (15) and have successfully completed an Assisted Living Administrators Training course according to the department's course content which shall be provided by trainers approved by a department approved entity.

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BACKGROUND

WALA has done extensive research on assisted living administrator qualifications in other states. Each state meets their own requirements based on their state regulations so it is difficult to compare state regulations, administrator qualifications and AL specific training requirements.

RESEARCH

A. WALA RESEARCH - WALA's intern spent the summer of 2007 surveying other state regulations. (*Research available – contact WALA*). We found that as of mid-2007, of the 16 states who responded and were surveyed in depth:

- There were 13 states with extensive administrator qualifications.
- In addition, we found that AL specific administrator training was required in 11 of the 16 states.
- Hours for this training range from 120 hours in North Carolina, 80 in Maryland, 40 in Oregon, and 30 hours in Colorado.
- Most of these 11 require a state approved curriculum and most require it for **ALL** administrators regardless of other education.
- Our analysis also concludes that many other states provide opportunities for people to become qualified administrators often without any college credits.

B. NCAL RESEARCH - In addition, WALA researched data from the National Center for Assisted Living (NCAL) Assisted Living State Regulatory Review 2006 (*NCAL research available - contact WALA*). From the survey of the 50 states and the District of Columbia:

- A total of **41** of the 51 (80%) states have **no** post secondary education requirement for assisted living administrators.
- **32** of those 41 (63% of the 51 and 78% of the 41) have mandated at least High School/GED education with a **supplement of experience and/or training specific to assisted living**.
- There are a few states that do not require post secondary schooling for smaller bed facilities. There are four states that do not have any qualifications specified.

C. NORTH CAROLINA - Jerry Cooper, the Executive Director of the North Carolina Assisted Living Association, when asked about the results of their state mandated training course for all administrators, commented: "Since the implementation of the Administrator Certification requirement new administrators have a better understanding of the State licensure structure and regulations impacting operations. Quality of care has improved since administrators are given tools and taught systems necessary to assess and document resident care. Appropriate utilization of med aide training, nursing oversight, and significant change in condition reinforce requirements which ultimately impact resident care."

CONCLUSION

WALA recommends development of alternate educational standards to allow an entry point for future Administrators who do not have a college degree or any post secondary course work by the development of a thorough, exhaustive and comprehensive assisted living specific state approved training program.

PROCESS

Given the research and conclusion above, we propose the following:

- 83.15 be amended per language above. If this becomes part of 83.15 **now**, the BAL workgroup has time to develop and recommend the details.
- The Bureau of Assisted Living should develop a workgroup of interested stakeholders, modeled on the successful TAG groups that develop the proposed required curriculums in 83.20.
- The workgroup meet to explore the advisability of such an AL specific administrator curriculum.
- The workgroup advises BAL on the curriculum to be developed, recommend what it should contain, how it should be structured, what modules should be in the curriculum, what the qualifications of the instructors should be, etc, similar to the successful process with the current TAG groups.
- The administration of this AL specific administrator training is done by the third party entity as part of the scope of the RFP similar to the administration of the four required department approved trainings in 83.20.

Thank you for your consideration and WALA looks forward to additional dialogue.