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# HOWARD MARKLEIN

January 27, 2016

STATE SENATOR • 17<sup>TH</sup> SENATE DISTRICT

## TESTIMONY ON ASSEMBLY BILL 749

Thank you to Chairwoman Rodriguez and the rest of the Assembly Committee on Children & Families for the opportunity to testify on Assembly Bill 749 relating to surplus retention limitations for providers of rate-based services purchased by the Department of Children and Families, the Department of Corrections, the Department of Health Services, or a county department of human services, social services, community programs, or developmental disabilities services.

Foster care and mental health treatment are some of the most important services provided to children and families by private for-profit and nonprofit agencies. Government relies on these private agencies to serve families in need of care. Foster care and other children and families' resources are always stretched in this state. There has been an increase in the number of kids getting sent out-of-state because Wisconsin does not have the capacity. This is not good for the kids and it costs the state more in valuable resources. In order to grow service capacity, providers need financial stability.

Under current law, many of the regulations place an unnecessary reporting and tracking burden on nonprofit children's agencies while restricting their ability to retain a "rainy day fund" for their earnings. In a for-profit agency, they are not restricted in their ability to retain such a fund. They get to keep 7.5-10% of earnings. When they earn money, they keep it and decide how they spend it.

This bill would make a number of technical changes to the regulation of contracts between the government and these nonprofit agencies. These provisions would permit a 5% retained earnings, eliminate an arbitrary 4-year tracking requirement and 10% cumulative cap for rate-based services, clarify the ownership of earnings, and expand the options to spend these earnings. This would level the playing field between for-profit and nonprofit agencies.

It is important to note that permitting 5% retained earnings does not guarantee various agencies 5% in retained earnings. If they make 2%, they keep 2%. This simply allows them to retain a "rainy day fund" like many businesses and for-profit children's agencies. Anything in excess of 5% results in all purchasers being notified about their equal claim to the excess. All of the funds that counties spend on rate-based services provided by these agencies are reinvested in Wisconsin's child and family services system.

The provisions of this bill were part of the 2015-17 budget and were vetoed out of the budget. Since then, we have worked diligently with the state agencies impacted to clarify these provisions.

I would like to thank Representative Kooyenga for his leadership on this bill. The Wisconsin Association of Family and Children's Agencies (WAFCA) is present to answer any technical questions regarding the operations of their member agencies. I am happy to take questions from committee members at this time.



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Governor Scott Walker  
Secretary Eloise Anderson  
Secretary's Office

Date: January 27, 2016

To: Members of the Assembly Committee on Children and Families

From: Fredi-Ellen Bove, Administrator for the Division of Safety and Permanence

Re: DCF Testimony 2016 AB 749

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Representative Rodriguez and members of the Assembly Committee on Children and Families,

My name is Fredi-Ellen Bove and I am the Administrator for the Division of Safety and Permanence in the Wisconsin Department of Children and Families (DCF). With me is Randy Keys, DCF Chief Legal Counsel and Bob Nikolay, DCF Administrator for the Division of Management Services. DCF is testifying for informational purposes on AB 749.

AB 749 represents a modified version of a provision vetoed in the 2015-17 biennial budget bill. In his veto message, Governor Walker recognized concerns raised by non-profit agencies and directed the Departments of Children and Families, Health Services, and Corrections to work with providers to address their concerns. The three state agencies have met with the Wisconsin Association of Family and Children's Agencies (WAFCA) and its member agencies since that time. Progress toward an agreement on how to best address the concerns being raised by the non-profit agencies and ensuring adequate protections of taxpayer dollars was being made. Unfortunately, WAFCA has moved forward with AB 749, which does not represent that progress and therefore, DCF cannot testify in support of the bill.

As state agencies we are responsible for exercising our stewardship of public funds responsibly and ensuring that public funding is used efficiently. The three state agencies contract with external agencies, both non-profit and for profit, for a wide range of services and recognize the important role contracted agencies play in providing needed services to our clients. We need to ensure that our contracting procedures and provisions support the principle of being prudent purchasers and responsible stewards of taxpayer funding.

During the most recent discussions between the state agencies and WAFCA, we agreed that non-profit agencies should be treated similarly to for-profit agencies with respect to excess reserves. Our position is that statutes should not specify a percentage amount of excess reserve that a non-profit may retain. Rather, the amount of excess reserves to be retained by a non-profit contractor should be a point of contract negotiation between the purchaser and provider, similar to contract negotiations with for profit agencies. AB 749 does not reflect this approach. AB 749 eliminates the current maximum amount of taxpayer dollars a non-profit may retain by changing the current

“not more than 5%” ceiling to an amount that is “not less than 5%”. The bill will impose increased and unnecessary costs on state and local public agencies. Public agencies will be required to fund contracts at a higher level, to enable non-profit agencies to retain a higher level of excess reserves than would have been the case had the contract been negotiated without this requirement.

Many of the contracts executed by DCF and the two other state agencies are funded with federal funding, such as federal Title IV-E child welfare funding. The federal government requires states to conduct all procurement transactions in a manner providing full and open competition when using federal funding. By creating a minimum level of excess reserves that a non-profit agency would retain, AB 749 appears to be inconsistent with federal requirements by inhibiting competitive pricing.

A provision in Section 8 of the bill creates a strict six month limit on the amount of time a purchaser has to request its proportional share of any amount over the excess reserve, once notified by a provider of an existing excess reserve. This time frame is not adequate for the DCF audit/fiscal review cycle to adequately review providers’ records and determine the appropriate amount of reserve that should be returned.

We encourage the Committee to support the continuation of discussions among WAFCA and the three state agencies and to defer acting on this issue until those discussions are successfully concluded. Thank you for the opportunity to testify on AB 749. We are pleased to answer any questions you may have.



TO: The Honorable Members of the Assembly Committee on Children and Families  
FROM: Kathy Markeland, Associate Director  
DATE: January 27, 2016  
RE: Support for Assembly Bill 749 – Surplus Retention for Nonprofit Human Services

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On behalf of the Wisconsin Association of Family & Children's Agencies (WAFCA) I would like to share our support for Assembly Bill 749 and thank Representative Kooyenga and Senator Marklein for their leadership in our efforts to better secure the financial stability of the private human services sector in Wisconsin.

WAFCA is a member association working to improve the lives of children and families. Our member agencies provide a wide array of prevention and supportive services including adoption, foster care, in-home support, counseling and mental health treatment. Our agencies are the neighborhood organizations that partner with United Way to strengthen families. We respond to schools when they ask for help with students' mental health and behavioral issues. We respond when counties identify families in crisis and in need of care. We provide respite and support when children cannot live safely at home. We promote and invest in recovery, resilience and transformative change for children, families and communities.

At this time when policymakers are increasing their focus on vulnerable children and families and are seeking to improve the systems of protection and care for them, it is critical to preserve and sustain a strong network of service providers who are essential partners in our human services delivery system.

The state and counties contract for a variety of services from private human services agencies. Foster care, residential care and mental health treatment are some of the many vital child and family services provided for the state and counties by private for-profit and nonprofit agencies under these contracts. Many human services contracts are "rate-based" contracts, which are structured according to state regulations, including requirements that a provider charge the same rate for a unit of service to all purchasers of that service.

In fact, since 2010 the Department of Children and Families has been regulating the rates for all providers of rate-based, out-of-home care services (foster care, residential care, group home), which means there is no opportunity for a provider to negotiate the rate with purchasers in the annual contracting process.

For government, a rate-based payment contract is beneficial because only the units actually used must be paid for. The provider bears the financial risk if the number of units purchased falls short of projections. In recent years, counties have shifted more programs into rate-based contracts.

To mitigate some of the financial risk, current law allows nonprofit providers of rate-based services to keep up to 5% of surplus revenue, when a surplus is earned in a contract. The law also requires providers through annual independent audits to track losses and surpluses from rate-based services over multiple years.

While these laws were intended, in part, to address provider concerns about risk, in recent years, state administrators have authorized contracting variances, which have eroded the intended protections. In some instances, county contracts have limited the surplus cap to as low as 1% or incorporated contract restrictions that prohibit a provider from spending the surplus without county permission. Multi-year tracking of surplus and losses has also proven problematic due to ambiguity in the current law that effectively forces nonprofit providers to consider any surplus reserves as a potential future financial liability.

The changes proposed under AB 749 clarify state law regarding rate-based contracting, so that purchasers can no longer offer contracts for less than 5% surplus retention. In addition, the bill eliminates the problematic multi-year tracking of surplus/loss and establishes that surplus retained by a provider is under the sole control of the provider. As is true under current law, all surplus earnings retained by a provider must be reinvested in services to support children and families.

AB 749 is a simplified version of language that was approved by the Legislature in the 2015-17 Biennial Budget, but subsequently vetoed by the Governor due to concerns about possible unintended consequences. Over the past several months, our members have consulted with DCF, DHS, DOC and representatives of counties to consider areas of agreement and possible policy alternatives to address our concerns regarding the current rate-based contracting environment. We believe that AB 749 responds to issues raised in those conversations.

Private human services agencies are critical partners in the delivery of human services in Wisconsin. Our members are able to specialize and create some economies of scale so that individual counties do not need to build and staff these services as part of their internal government operations. A healthy human services system depends upon the fiscal health of our member agencies.

Thank you in advance for supporting AB 749 and for supporting those that serve a vital role in caring for Wisconsin's vulnerable children and families.

**TO: Assembly Committee on Children & Families**

**FROM: Debra Lemke, Director of Business Operations, Children's Hospital of Wisconsin**

**DATE: Wednesday, January 27<sup>th</sup>, 2016**

**RE: AB 749 – Support of Surplus Retention Limitations**

Good afternoon Chairwoman Rodriguez and committee members. Thank you for allowing me the opportunity to share testimony today. My name is Debra Lemke and I am the Director of Business Operations for Children's Hospital of Wisconsin. I have been with Children's for almost 20 years and have worked in not-for-profit financial leadership roles for 25 years. I have extensive experience in managing federal, state, and county contract requirements.

Children's Service Society of Wisconsin, a not-for-profit subsidiary of Children's Hospital of Wisconsin, serves children and families throughout the State of Wisconsin. Children's Hospital of Wisconsin's vision is for Wisconsin children to be the healthiest kids in the country, and Children's Service Society of Wisconsin works toward this vision through the provision of a variety of services including child and family counseling, child advocacy centers, foster care and adoption services, case management, intensive in-home services, home visiting, parent education and support, and family resource centers.

I am here today in support of AB 749. I thank Representative Kooyenga for this legislation and for raising this important conversation. AB 749 would make certain changes with respect to the retention and disposition of surpluses generated by providers of rate-based client services purchased by the Department of Children and Families, the Department of Corrections, the Department of Health Services, or a county department of human services, social services, community programs, or developmental disabilities services. We appreciate the ongoing dialogue with the departments and hope to continue in partnership with them to find resolution to this very real business issue so that we can sustain these critical services.

Currently, not-for-profit providers of rate-based services have no ability to retain a surplus, but have all the risk for incurring losses. While the purchaser of a rate-based service benefits by only having to pay for actual units utilized, providers struggle to maintain core services and staff when referrals fluctuate. Current statutes permit purchasers to allow not-for-profit providers a reserve of up to 5%, but increasingly, many purchasers are electing to reduce or eliminate this reserve. Furthermore, any reserve that is permitted represents a liability on the not-for-profit's books because it can only be used in one of three ways: 1) To offset future losses from the same rate-based service, 2) To reduce the rate charged in future years, or 3) To be paid back to the purchaser if the contract ends. Whether the reserve is permitted or not, the bottom line is that not-for-profits cannot retain any type of surplus from the provision of rate-based services.

The changes outlined in AB 749 bill are critical to ensuring that the children and families in the State of Wisconsin receive the best services and support we can provide. One area that will be impacted is the social services workforce. Due to the fact that rate-based contract revenue can fluctuate a great deal, many not-for-profits must hire part-time, casual employees to perform the work. This results in great uncertainty for staff and the potential for children and families to experience turnover in their assigned worker.

Allowing not-for-profits the possibility of retaining a small surplus supports these organizations through fluctuations in referrals and is critical to efforts to attract and retain a stable workforce.

Secondly, because the bill only allows, but does not guarantee, a surplus up to 5%, it encourages efficiency and prudent financial operations by not-for-profits. Finally, because the success of any business depends on continually using experience, research and best practices to design and implement customer-focused, effective services, we believe that allowing not-for-profits to retain a surplus will improve the well-being of children and families. These funds would allow us to bring innovative, but currently unfunded, services to the State and support the ongoing development and maintenance of staff, facilities and infrastructure.

Chairwoman Rodriguez and committee members, thank you for allowing me to submit testimony in support of AB 749. If you have any more questions you can contact me via email at [DLemke@chw.org](mailto:DLemke@chw.org) or via telephone at 414-231-4911.

## MEMORANDUM

**TO:** Honorable Members of the Assembly Committee on Children and Families

**FROM:** Sarah Diedrick-Kasdorf, Deputy Director of Government Affairs,  
Wisconsin Counties Association  
Lisa Hassenstab, Executive Director, Wisconsin County Human Services Association

**DATE:** January 27, 2016

**SUBJECT:** Opposition to Assembly Bill 749

The Wisconsin Counties Association (WCA) and Wisconsin County Human Services Association (WCHSA) had the opportunity to review Assembly Bill 749. Based on that review, counties identified a number of concerns with the proposal.

County human and social services departments have great respect for the Wisconsin Association of Family and Children's Agencies (WAFCA) and its membership. During the 2015-17 state biennial budget, a conference call was held between counties, WAFCA, and a number of its member agencies to discuss the concerns raised by counties. Although consensus was not reached in the short conversation, counties believe that we can come to an agreement with additional discussion and offered to work with WAFCA following adoption of the state budget. We remain committed to participating in discussions on surplus retention limitations for providers of rate-based services.

Therefore, WCA and WCHSA request that Assembly Bill 749 not move forward at this time to allow the bill authors, counties, WAFCA members, and the Departments of Children and Families, Health Services, and Corrections to meet and discuss the proposal in greater detail. Counties believe that a bill can be drafted to meet the needs of the private human services agencies, while at the same time protecting state and county tax dollars.

If you have any questions, please do not hesitate to contact WCA at 608.663.7188 or WCHSA at 608.469.5903.

Thank you for considering our comments.

1-26-2016

To: Honorable Jessie Rodriguez Wisconsin State Assembly

Re: Support for AB 749

Dear Representative Rodriguez

I write in support of AB 749 a critical and necessary bill that will allow Nonprofit Agencies providing mental health services to our most vulnerable children to create a small margin of retained earnings.

I am cofounder of and serve on the Board of Directors of Northwest Passage a nonprofit mental treatment center severing children and families. We've been providing services to children and families since 1978. You should know that neither the State of Wisconsin nor any county provided capital or any grant dollars for the startup of Northwest Passage. For 38 years Northwest Passage has born all the risk of operation. Presently, Northwest Passage is permitted a surplus that is effectively equivalent **to one monthly payroll**. After 38 years of operation that's all we can retain under the existing restrictions.

Because of the present rate setting process, we are left unprotected in any current business year from expense fluctuations or unanticipated expense increases. It is important to stress neither the State nor the counties in any way guarantee losses for Wisconsin nonprofits. Therefore every nonprofit in the State under the present structure is at risk. We are simply advocating for support of a prudent business practice. The State DCF has robust audit and accounting oversight to assure reasonableness for the use of retained earnings and a reserve within the parameters prescribed by the bill regarding the allowable purpose for that reserve.

Finally, the cost benefit of determining whether a county receives a reimbursement under the present contract structure is an inefficient use of taxpayers dollars. There are occasionally counties in our annual audit that literally receive \$2 or \$3 dollars back for all the expense and accounting time that is applied to calculate this one factor. There are far better uses for these accounting costs: like continuously improving the quality of service that directly affect the mental health outcomes of children.

By allowing for a uniform 5% annual retention and a cumulative reserve, nonprofit agencies can stabilize current fluctuations in expenses, create stable business oriented balance sheets, and invest in quality services.

Sincerely,

Denison Tucker Vice President  
Board of Directors Northwest Passage