



State Senator  
**Rick Gudex**

District 18

October 16, 2013

To: Members of the Assembly Committee on Aging and Long-Term Care  
From: Sen. Rick Gudex  
Re: AB 292/SB251, relating to drug formularies in nursing homes and the performance of patient services by a pharmacist.

Mr. Chairman and members of the committee, thank you very much for giving this bill a public hearing today. Unfortunately, due to scheduling conflicts, I am unable to be with you today. The bill before you does two things, both of which, we believe, will help make health care delivery in Wisconsin easier and more efficient.

First, the bill allows nursing homes to create and maintain their own drug formularies. As you already know, a “drug formulary” is a list of guidelines which helps a hospital determine what medications they will use, and which suggests possible lower-price alternatives to more expensive drugs. Formularies create efficiencies that cut down on both medication expenses and staff time.

Under current law, hospitals and health plans are allowed to create drug formularies, but nursing homes are not. This bill will change that, and allow nursing homes in this state to establish and use drug formularies, if they establish a quality assessment and assurance committee to create and maintain it. The committee will have to include the director of nursing services, at least two other members of the nursing home staff, and both a physician and a pharmacist who are licensed to practice in Wisconsin.

As with hospitals and health plans, a formulary will always come in second to a doctor’s orders. If a physician has ordered that a drug cannot be substituted, those orders will trump the formulary. The patient’s safety and doctor-patient relationship come first.

Second, current practice allows physicians to delegate authority for patient care to a pharmacist, but the law is silent on whether a pharmacist is allowed to accept such delegation from a physician. This seems like a small thing, but it could cause a hitch in the physician-pharmacist relationship, and therefore affect patient care. The bill specifies that a pharmacist can accept delegation from a physician.

This bill has been drafted with a lot of input from nursing homes, pharmacists, and other health care providers. We appreciate all of their assistance, and hope we can count on your support to move this bill forward as well. The Senate version SB251 passed the State Senate last week on a voice vote.

I urge your support.



October 16, 2013

To: Representative Mike Endsley, Chair  
Members, Assembly Aging and Long-Term Care Committee

From: John Sauer, President/CEO  
Tom Ramsey, Vice President of Public Policy & Advocacy

Subject: **2013 Assembly Bill 292**

### **LeadingAge Wisconsin Position: SUPPORT**

Background: A drug formulary is loosely defined as a list of prescription medications or pharmaceutical products developed and approved by a healthcare organization or by a health plan to encourage greater efficiency in the dispensing of prescription drugs without sacrificing quality. The list could contain both generic and brand name drugs and is developed by a committee of doctors, pharmacists, and other healthcare professionals on the basis of a given drug's efficacy, safety, and cost effectiveness.

Hospitals are permitted to maintain their own drug formularies; LeadingAge Wisconsin, in concert with the Pharmacy Society of Wisconsin and Wisconsin Health Care Association, has worked with Representative Endsley to develop AB 292, which is patterned after the hospital formulary and would permit the Quality Assessment and Assurance (QA&A) Committee that all nursing homes are required to maintain to also be granted the authority to develop its own drug formulary as long as a pharmacist is a member of the QA&A Committee.

### **ARGUMENTS IN SUPPORT OF A NURSING HOME DRUG FORMULARY**

- Drug formularies, where utilized, generate savings which would accrue primarily to nursing home residents paying privately for their medications.
- Nursing home formularies would permit a more timely administration of needed medications because of less red tape.

- Nursing home formularies would reduce the number of drugs administered in a facility, which in turn should enhance resident safety.
- If, as expected, the use of drug formularies developed by nursing homes follows the path of hospitals, Medicaid, Medicare Part D plans and other commercial health plans which utilize their own drug formularies, the end result should be improved quality of care and better managed drug expenditures.

2013 Senate Bill 251, the Senate companion bill to AB 292, passed the Senate October 8<sup>th</sup> on a voice vote. Prior to final passage, the Senate adopted Senate Amendment 1 to SB 251 (also on a voice vote), which deletes the bill's requirement that an advanced practice nurse prescriber be authorized to approve or disapprove of a resident's use of a medication on the nursing home formulary only if the nurse prescriber has entered into a written agreement to collaborate with the personal attending physician of each resident whose medication usage is being reviewed. The amendment was introduced to address concerns raised by the Wisconsin Nurses Association and has the support of LeadingAge Wisconsin members.

**LeadingAge Wisconsin members respectfully request your support for adoption of 2013 Assembly Bill 292 as amended by AA1 to AB 292 and/or concurrence in SB 251 as amended by SA 1 to SB 251.**

Thank you.

*LeadingAge Wisconsin, formerly WAHSA, is a statewide membership association of not-for-profit organizations principally serving seniors and persons with a disability. Membership is comprised of 195 religious, fraternal, private and governmental organizations which own, operate and/or sponsor 172 nursing homes, 7 facilities for the intellectually and developmentally disabled (FDD), 182 assisted living facilities, 102 apartment complexes for seniors, and over 300 community service agencies which provide programs ranging from Alzheimer's support, adult and child day care, home health, home care, and hospice to Meals on Wheels. LeadingAge Wisconsin members employ over 38,000 individuals who provide compassionate care and service to over 48,000 residents/tenants/clients each day. For more information, please contact John Sauer (jsauer@LeadingAgeWI.org), LeadingAge Wisconsin President/CEO, Tom Ramsey (tramsey@LeadingAgeWI.org), LeadingAge Wisconsin Vice President of Public Policy & Advocacy or Brian Schoeneck (bschoeneck@LeadingAgeWI.org), LeadingAge Wisconsin Vice President of Financial and Regulatory Services, at (608)-255-7060.*

# WHCA / WiCAL

Wisconsin Health Care Association

Wisconsin Center for Assisted Living

TO: Representative Mike Endsley, Chair & Members of the Assembly Aging & Long Term Care Committee

FROM: Tom Moore, Executive Director  
Jim McGinn, Director of Government Relations

RE: Support for AB292 –Therapeutic Alternative – Nursing Home Formularies

DATE: October 16, 2013

A formulary is a continually updated list of medications that are deemed the most clinically and cost effective to address the health needs of a given population in a specific setting. Formularies are established through written protocols formally developed through a pharmacy and therapeutic committee which includes physicians, pharmacists, nurses and other health care professionals.

Medicare, Medicare Part D, Wisconsin's Medicaid Program, and commercial health insurers all utilize formularies to insure that their enrollees have access to the most clinically and cost effective prescription drugs. Indeed, the use of formularies is required in health care institutions seeking accreditation by the Joint Commission on Accreditation. The American Society of Health Systems Pharmacists considers the presence of a formulary in an institution as a minimum standard. They are perceived as an essential tool for health care organizations to assist in the use of quality medications.

Wisconsin law, written in the 1980s, affords only hospitals, under the leadership of a pharmacy therapeutic committee, the ability to develop a formulary for the organization. Assembly Bill 292 essentially updates current law to reflect the evolution of the state's health care delivery system and afford nursing homes, their residents, and professional staff the opportunity to realize the improved quality of care, resident safety and cost savings formularies can facilitate.

For the past year, WHCA/WiCAL has worked in consultation with the Pharmacy Society of Wisconsin, LeadingAge Wisconsin, the Wisconsin Medical Society and the Wisconsin Department of Health Services to develop Assembly Bill 292. The measure was expressly designed to enable nursing homes to utilize formularies if and only if, they are developed and maintained in accordance with and adherence to the same professional standards, protocols, and statutory expectations that currently apply to hospitals. It was also crafted with the express intent of preserving the right of any resident's personal attending physician to direct that any prescription for a nursing home resident be dispensed as written.

WHCA/WiCAL submits that permitting the adoption of formularies in Wisconsin's skilled nursing facilities as envisioned under AB 292, will promote and facilitate all of the following:

- *Improved resident care:* The use of formularies will reduce delays in securing medications for new orders. In addition, quality will be enhanced by promoting healthcare professionals use and familiarity with preferred medications within a medication class as opposed to expecting familiarity with all medications within a class.

- *Improved resident safety:* The use of formularies will facilitate more efficient medication management and reduce the potential for transcription and medication errors.
- *Resident and Facility Cost Savings:* There are typically significant cost differences between medication classes that are considered clinically interchangeable. Savings will be generated through developing formularies that reflect the most medically appropriate and cost effective medications.
- *More Efficient Use of Physician Resources:* Absent the presence of pre-approved formulary protocols that authorizes pharmacists to interchange medications, the patient's personal attending physician will be contacted by pharmacists regarding the need to change orders to preferred medications. However, the adoption and use of a formulary by a nursing facility does not in any way impact the right of a resident's attending physician to direct that any prescription for that a nursing home resident be dispensed as written.

For the reasons expressed above, WHCA/WiCAL requests the members of Assembly Aging & Long Term Care Committee approve Assembly Bill 292.



DATE: Wednesday, October 16, 2013

TO: Members of the Wisconsin Assembly Committee on Aging and Long-Term Care

FROM: Pharmacy Society of Wisconsin, Wisconsin Health Care Association, and LeadingAge Wisconsin

**RE: Please support Assembly Bill 292**

The Pharmacy Society of Wisconsin (PSW), along with the two organizations representing nursing home providers in Wisconsin, Wisconsin Health Care Association (WHCA) and LeadingAge Wisconsin, worked cooperatively with the Wisconsin Medical Society to develop Senate Bill 251. When enacted, this legislation will implement efficiencies in the use of prescription drugs in nursing homes and promote collaboration between pharmacists and physicians.

We are asking for your support of Assembly Bill 292.

There are two provisions of the legislation:

First, nursing homes in Wisconsin are asking that current law be revised to allow for the development and use of a prescription drug formulary. Under current law, hospitals are allowed to use formularies in order to perform similar therapeutic selections. Under both instances, the therapeutic selections would be done with the approval of a committee that consists of a Wisconsin physician and pharmacist designated by the facility. This change would allow for nursing homes to better control the costs attributed to prescription drugs dispensed to residents of these facilities, especially in those instances when a nursing home resident does not have a health insurance plan with a specific formulary requirement. By working together, the facility, physicians, and pharmacists can better manage the prescription care for nursing home residents by reducing costs and staff time.

Secondly, current law allows physicians to delegate authority for patient care to a pharmacist. However, the law doesn't specify that a pharmacist may accept the delegation from a physician. The bill simply clarifies current law to allow a pharmacist to accept a physician delegated act. By working together through defined collaborative agreements, physicians and pharmacists are able to improve how their patients use medications through better coordination of care.

Please support Assembly Bill 292 at the public hearing on Wednesday, October 16, 2013. Please contact any of our organizations for additional information.

## Background and Justification for Use of Formularies by Nursing Facilities

### Background

1. Formularies are a standard of practice utilization management approach for every payer of prescription drugs, including hospitals, Medicaid, Medicare Part D, and Commercial benefit plans.
2. Changes in reimbursement to hospitals have led to ever increasing acuity of residents of skilled nursing facilities. The increase in acuity of residents discharged to nursing homes has led to greater complexity of drug therapy administered by staff of nursing homes.
3. Nursing home admissions most commonly occur in early evening hours, increasing the challenges of contacting nursing home prescribers with issues in hospital discharge medications.
4. The class of trade of hospitals allow them to purchase drugs at much lower costs than the class of trade of retail pharmacies, which includes long term care pharmacies, the source of drugs for nursing facilities. As a result, drugs administered in a hospital that are then required for administration in a nursing home can be much more expensive to the nursing home than the hospital.
5. Many widely used brand name drugs have become available as generic products.

### Justification for Use of Formularies by Nursing Facilities

1. Pharmacy and Therapeutics Committees in nursing facilities are now commonplace.
2. With approval by a nursing facility Pharmacy and Therapeutic Committee, and under appropriate clinical protocols, nursing facilities can improve the safety of drug administration by reducing the number of drugs in a therapeutic class that need to be administered.
3. Nursing facility formularies allow timely administration of drugs to new admissions by reducing the need to communicate with prescribers regarding drug therapy issues.
4. Formularies allow nursing facilities to maintain the highest quality of drug use while managing the cost of the drug – just like hospitals, Medicaid, Medicare Part D plans and commercial prescription plans are allowed to do now.
5. Facility formularies in nursing homes act in coordination with a state's Medicaid formulary.
6. Other states allow the use of formularies by nursing facilities.



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TO: Representative Mike Endsley and Members of the Committee on Aging and Long-Term Care  
FROM: Gina Dennik-Champion, MSN, RN, MSHA  
Wisconsin Nurses Association Executive Director  
DATE: October 16, 2013  
RE: Support of AB 292 with Assembly Amendment 1 - therapeutic alternate drug selections in nursing homes, performance of patient services by a pharmacist, and the practice of pharmacy.

On behalf of the Wisconsin Nurses Association, I would like to thank Chairperson Endsley and the members of the Committee on Aging and Long-Term Care for holding a public hearing on AB 292, which addresses therapeutic alternate drug selections in nursing homes, performance of patient services by a pharmacist, and the practice of pharmacy.

My name is Gina Dennik-Champion. I am a registered nurse and serve as the Executive Director of the Wisconsin Nurses Association (WNA). WNA is the professional association for Wisconsin's 80,000 registered nurses. Prior to my current employment, I was a nursing home administrator and director of nursing for a 200 bed long-term care facility for approximately 15 years. I personally understand the nature of this issue. I am here today to share with you WNA's support of AB 292 with the inclusion of Assembly Amendment 1.

Our members support the concepts in AB 292 that allow for the use of therapeutic alternate drug selection in nursing homes. When a public hearing was held on the Senate version of this bill (SB 251), WNA registered in opposition to the bill. However, thanks to amendments from Senator Gudex and Representative Endsley (Amendment 1), we now would like to offer our support, providing those amendments are part of the final version of the bill. Representative Endsley's amendment addresses our concern regarding the proposed language on page 3, Section 3, lines 10-12 that allows an advanced practice nurse prescriber, or APNP, the use of therapeutic alternate drug selection. The language interferes with the routine procedure of a physician admitting patients/residents into a nursing home. Currently, the patient's attending physician is informed of the policies and corresponding regulations that support quality care and is asked to support these policies via authorization. The same process and authority should be addressed by the patients attending physician when it comes to authorizing the use of therapeutic alternate drug selection. If AB 292 passes with lines 10-12 on page 3, it would allow for other physicians and non-physicians to override the attending physician's authorization of the substitution of medications. Having multiple practitioners sign off on the use of substitute medications could disrupt the continuum of care and create unintended discrepancies. For example, one practitioner may authorize certain substitution of a medication, while another practitioner may not. WNA believes that as long as the Federal law requires that only physicians can admit patients to a nursing home and

that they are responsible for the overall medical plan of care, then he or she should be the only one authorizing the use of therapeutic alternate drug selection.

Another concern regarding AB 292's original language in Section 3, lines 10-12, is that it is inconsistent with Wisconsin State Statute 450.13(5)(b). This statute permits an APNP, in a hospital setting, to have a written agreement to collaborate with a physician when approving the use of therapeutic alternate drug selection. (Refer to the reference section below.) It creates a different condition for the APNP. It requires a written collaboration agreement with all attending physicians of the patients. This creates a very different situation for the APNP, the patient's attending physician, and their clinic. Documentation of these multiple APNP/attending physician agreements would need to be on file in the nursing home, pharmacy, clinic, and in the personal file of the physician and APNP.

WNA would like to thank you, Chairperson Endsley, for sponsoring this legislation. It will make a difference for nursing homes and their patients. We appreciate the time and energy put forth by key stakeholders to address this issue. WNA fully supports AB 292 if the language we are concerned about is addressed to our satisfaction.

Thank you again Chairperson Endsley for holding this public hearing on AB 292.

**Reference** related to the *use of therapeutic alternate drug selection*

**AB 292 (without amendment 1)** – Proposed requirement for nursing homes Page 3, Section 3, Lines 10-12 states; *"The patient's advanced practice nurse prescriber, if the advanced practice nurse prescriber has entered into a written agreement to collaborate with the patient's personal attending physician"*

**Current Statute:** requirements for hospitals 450.13(5)(b) states; *"The patient's advanced practice nurse prescriber, if the advanced practice nurse prescriber has entered into a written agreement to collaborate with a physician."*