Wisconsin Personal Services Association, Inc.

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Recommendations to the Governor's Task Force on Caregiving

On behalf of the Wisconsin Personal Services Association, Inc. (WPSA) we would like to thank you for the opportunity to provide input to the Governor's Task Force on Caregiving. In addition, we would like to express our gratitude to the Governor's office, Task Force members and DHS staff for working closely with personal care agencies to find a comprehensive set of solutions to the state's direct care workforce crisis.

WPSA is the leading statewide association of personal care and home care providers. We have educated, advocated, and united agencies and individuals in all Wisconsin counties for 30 years to provide quality personal/supportive home care services to over 10,000 consumers and as many, if not more, direct care workers.

Over the past decade, we have become increasingly concerned about the stability and sustainability of our community-based direct care provider network. We now believe that Wisconsin's Medicaid Personal Care program is on the brink of collapse. More than 80 Personal Care Agencies have closed or stopped providing Medicaid Personal Care in the past 6 years, and 24 Wisconsin counties have 5 or fewer personal care providers.

An April 2019 survey of WPSA members, found that:

- 60% of agencies are considering no longer providing Medicaid personal care services; and
- 100% of WPSA agencies have had to turn away clients during the past year.

At the WPSA winter conference held in the Wisconsin Dells on December 5, 2019, we held a conversation café with our members to discuss possible solutions to the crisis. A summary of their recommendations are outlined below in addition to other WPSA legislative priorities.

Statewide Training System

1. **Create a Community-Based Caregiver Training Program Using the Direct Care Competencies.** Invest $2 million to create a community-based direct caregiver training program using the Direct Care Competencies curriculum. Comprehensive and consistent training programs are needed to support quality care across the industry, but funding is needed to ensure that quality initiatives don't become an unfunded mandate. During 2017, the state invested $2.3 million in the Wisconsin Caregiver Career Program dedicated to training and attracting more nursing home caregivers. Personal care agencies are not reimbursed for any training or background check costs while nursing homes who hire workers through the Caregiver Career Program can have their training or background check costs covered by the state. Creating a community-based direct caregiver training program would recognize consumer preference for community-based home care. WPSA requests that the Direct Care Worker Competency Assessment and

Training Program (DCC) and the WPSA Alzheimer's, Dementia and Memory Care training receive endorsement and promotion from both the Department of Health Services and the Department of Workforce Development as the state-recognized standard for community-based caregiver training. This would promote consistent training and quality standards across Wisconsin's community-based direct care industry.

Background on DCC

- DCC is a community-based direct care training program that was developed by Direct Care workers, Registered Nurses and agency staff. It currently contains three modules (DCC I, DCC II and DCC III) and is available statewide
- The DCC is an existing Wisconsin model that has trained 700 Certified Trainers and 17,500 certified Direct Care Workers since 2005.
- DCC certification is portable (follows workers across jobs).
- Everyone trained by the program receives an in-depth, best-practice manual that is reviewed and approved by nurses at Gateway Technical College.
- DCC is comparable to the personal care worker training requirements outlined in DHS 105.
- Training offers a modular approach that is performance and result-based.
- The overall participant satisfaction rating across the three DCC modules is an average of **97%.**

DCC I—11 Core Competencies

- Participants leave as a certified trainer and will be able to train their direct care workers immediately and efficiently.
- Direct Care Workers will receive a transferable certificate.
- Provides quality and retention for workers.
- The 11 Core Competencies include:
    - Bathing and showering
    - Toileting and incontinent care
    - Assistance with Eating
    - Grooming
    - Dressing/undressing
    - Mobility and ambulation
    - Skincare
    - Meal preparation
    - Housekeeping
    - Getting in and out of bed
    - Eyeglasses and hearing aids
- Quotes from DCC I participants:
    - *"I like the in-person presentation, engaging and hands on samples."*
    - *"Love this training I would like to take training by these presenters."*

DCC II—Delegated Tasks for Nurses

- Participants leave as a certified trainer and will be able to train their direct care workers immediately and efficiently.
- Participants receive training on delegation compliance for unlicensed personnel.
- Direct Care Workers will receive a transferable certificate.

- Provides quality and RN consistency for agencies.
- Nurses receive a detailed best-practice manual that includes step-by-step delegations for 12 core competencies, including:
    - Blood glucose monitoring
    - Catheter care
    - G-Tube feeding
    - Hoyer Lift Transfer
    - Medication administration/reminders
    - Topical/trans-dermal medications
    - Bowel program
    - Ostomy care
    - Safety during a seizure
    - Simple wound care
    - Elastic bandage wrap applications
    - Reporting emergency and non-emergency changes in condition
- Quotes from DCC II Participants:
    - *"With the binder I have more than enough information to conduct this training and now I'm very confident"*
    - *"I feel comfortable reaching out with further questions"*

DCC III-- Alzheimer's, Dementia and Memory Care

- This training was developed in collaboration with the Alzheimer's Association, Southeastern Wisconsin Chapter and the Department of Workforce Development.
- Participants leave as a certified trainer and will be able to train their direct care workers immediately and efficiently.
- Participants leave with the ability to:
    - Understand the difference between Alzheimer's disease and dementia
    - Use different communication techniques
    - Understand how to handle challenges behaviors
    - Use activities to enhance one's day
- Quotes from DCC III Participants:
    - *"Your presentation of real-life scenarios and real cases were extremely helpful in the Alzheimer dementia training"*
    - *"This training is very informative and interactive"*

With further funding and regulatory support, DCC could be expanded to cover additional modules. One potential funding source for this program would be re-investing funds that have been appropriately recouped by DHS OIG from personal care agencies. This would be consistent with the funding mechanism used by DHS to create the Wisconsin Caregiver Career program, which re-invests civil money penalties paid by nursing homes for rules violations into the nursing home training program.

2. **Encourage Additional Certifications for PCWs**. Educate personal care workers on how furthering their skills can help their clients and create incentives for workers who obtain additional certifications or take optional "continuing education" courses. This includes pursuing additional certifications like CNA or taking trainings on trauma-informed care, soft skills, end-of-life care, Alzheimer's and dementia or other topics that are relevant to the personal care field. This would not only promote career advancement

for personal care workers, it would also give them the skills necessary to manage many of the stressors they encounter every day, which could reduce worker turnover.

3. **Create and Promote Career Ladders**: Create and promote a model health care career ladder that includes personal care as a first step. This will allow personal care workers to advance to higher levels in the health care profession.

4. **Recognize Community-based Caregiving Work for C.N.A Certification.** Currently, CNA work in personal care is not recognized for the purposes of CNA certification and re-certification. Personal care agencies are losing CNAs due to this issue and it has exacerbated recruitment and retention efforts. Regulations should be updated to ensure that community-based CNA work counts toward certification to ensure consistency between community-based and facility-based settings.

5. **Database (Registry) of Workers—<u>Comments for Information Only</u>.** It is WPSA's understanding that the Task Force is considering the creation of an online, public database or registry. WPSA feels strongly that if any registry is created, that the safety of potential clients should be the main consideration. Workers on any potential registry should be required to meet the same background check and training requirements as workers employed by agencies. Any database or registry should be optional and operated by the state and not a private, third-party entity. Furthermore, WPSA has specific concerns related to data privacy. If workers are entered into an online portal, steps need to be taken to protect their personal information. In addition, WPSA recommends continued support for and promotion of Aging and Disability Resource Centers (ADRCs), which currently act as the referral point for many people in need of personal care or other types of direct care. ADRCs should be adequately funded and promoted as the one-stop information shop for individuals in need of long-term care services.

<u>Standardized rate increases throughout the MA system</u>

1. **Ensure Consistent and Sustainable Rate Increases**. Personal care rates, which support community-based personal care workers, have been underfunded for decades. The result is a workforce shortage so severe that it is jeopardizing the health, safety and welfare of older adults and people with disabilities. State taxpayer dollars are being shifted to more expensive settings like nursing homes, institutions and unnecessary hospitalizations because of the shortages in the community. Consistent rate increases are needed in order to support an adequate provider network and a quality workforce—both of which are in jeopardy because of chronic underfunding. In addition, it is critical that reimbursement rates reflect the true costs of providing care, including training, administration, health insurance requirements, implementation of Electronic Visit Verification (EVV) and other mandates.

2. **Reimburse Agencies for the Actual Cost of Personal Care Assessments.** Currently, registered nurses hired by personal care agencies are required to conduct personal care assessments without reimbursement. The state previously paid Liberty Health Care for this work. Conducting assessments is a significant cost to agencies outside of the current Medicaid personal care reimbursement rate. The average cost to personal care agencies for the RN to complete the mandatory Personal Care Screening Tool is $179.88 for urban areas and $270.75 for rural areas—these costs increase every year. Personal care agencies should be reimbursed for this unfunded mandate.

3. **Require HMOs to Honor MAPC Rate.** Personal care agencies across the state report billing challenges with SSI Managed Care HMOs. When the last Medicaid Personal Care Rate increase went into effect, many HMOs took over a month to honor the new rate. In addition, reports from Wisconsin personal care agencies reveal that several SSI Managed Care HMOs are billing below the Medicaid Personal Care Rate. Some HMOs are paying agencies as much as 15% less than the MAPC rate. To ensure consistency across the system, HMOs should be required to use the MAPC rate as a floor for negotiating with providers. WPSA requests that DHS issue guidance to SSI Managed Care plans or implement administrative rule changes to ensure that HMOs are not paying below the MAPC rate.

4. **Reimburse Workers When their Client is in the Hospital.** Direct care workers in IRIS and Family Care can get paid for authorized services even when their client is in the hospital while workers employed by agencies reimbursed by MAPC are not permitted to be paid. Caregivers who rely on consistent wages are forced to seek reassignment with other clients, which compromises continuity of care and can result in delaying individuals from being discharged from the hospital. For individuals in need of personal care, temporary absences from home--usually due to an acute episode of illness-- results in their care needs being interrupted. Once the client returns home they may not have access to the necessary support while waiting for an entirely new care team to be assembled. This not only compromises the health and wellbeing of care recipients but creates additional cost and strains resources for personal care agencies. WPSA requests that in order to promote consistency across programs and continuity of care that a retainer stipend is offered to workers when their client is hospitalized as a way to ensure that they will continue to work with them once they are discharged.

5. **Ensure that all Programs Provide Travel Time Reimbursement.** There are currently inconsistent travel time reimbursement policies across public programs. Travel time reimbursement should be a standard policy across fee-for-serve, IRIS, Family Care, SSI Managed Care, etc.

Untapped Workers

1. **Promote PCW Work and the Health Care Career Ladder to High Schoolers.** Educate high schoolers about the benefits of gaining hands-on experience by volunteering or working for a personal care agency. Consideration should be given to creating a credit program or work-study program at high schools and universities related to direct care work. This will help grow the personal care workforce and highlight personal care as a gateway to jobs in the nursing field.

2. **Loan Forgiveness and Tuition Assistance Program.** The state could create a loan forgiveness or tuition assistance program for students or recent graduates from health care or related fields who choose to work as a personal care worker for at least two years. This could be modeled after AmeriCorps or similar programs.

3. **Launch a General Public Awareness Campaign about Caregiving as a Career.** The state needs to get creative in order to raise public awareness of career opportunities related to caregiving. An awareness campaign that makes the case for caregiving as a

career will not only help elevate the status of the profession but also attract new workers to the field, such as men, retirees, youth, immigrants, etc.

4. **Immigration.** The state should encourage legal immigration pathways to help grow our workforce.

Benefits

1. **Address the Fiscal Cliff.** Agencies across the state report that their workers who rely on public benefits for health care, food or child care often turn down extra hours in order to comply with the strict income eligibility thresholds. Modifications should be made to programs like BadgerCare, FoodShare, Wisconsin Shares and others to allow workers to slowly phase their way off of public benefits. As a worker's income increases, they could be charged a small premium that would allow them to obtain their coverage.

2. **Standardize Wages Across Programs.** The state should take steps to standardize wages across the board and address regulatory discrepancies. For example, IRIS is currently allowed to pay much more for the same services being done by MCOs and Personal Care Agencies. This pulls workers away from some programs in favor of others. In addition, it means that the clients enrolled in programs that aren't allowed to pay as much are not getting the care they need.

3. **Create an Insurance/Benefit Pool.** Create a state insurance/benefit pool modeled after the worker's compensation system that personal care agencies could contribute to that would allow them to provide benefits to their workers. Many smaller agencies struggle to offer benefits on their own due to the high costs and low Medicaid reimbursement rates. An insurance pool would allow agencies to combine their resources in order to offer benefits.

4. **Medicaid-sponsored Insurance for Caregivers**. Expand Medicaid eligibility for direct care workers. Many personal care workers were previously covered by BadgerCare and lost coverage when the state reduced eligibility from 200% of the Federal Poverty Level to 100% of the Federal Poverty Level.

5. **Caregiver Tax Credit**. Currently, live-in caregivers receive tax benefits in the form of income tax deductions while personal care workers who are not live-in caregivers receive no tax benefits. The state should create a tax credit for personal care workers.

6. **Tax Credits for Offering Retirement Benefits.** The state could create a tax credit for employers who make contributions to retirement savings accounts for their employees.

Regulatory Relief

1. **Limit DHS OIG Recoupment and Recovery Efforts to Situations Where Care was Not Provided or the Claim was Inappropriate.** Wisconsin is overregulating personal care agencies. New policies are continually added to the online personal care handbook, many of which are contrary to state statutes and administrative rules, and agencies are asked to pay back significant sums of money to the state due to minor clerical errors. In

addition, being regulated by two separate entities—DQA and DHS OIG-- with differing interpretations of Medicaid regulations has created significant confusion for personal care agencies. Multiple Wisconsin courts have ruled that DHS OIG's recoupment practices exceed its statutory authority. Recovery efforts should be limited to instances where care was not provided or when a provider submits an inappropriate claim.

Examples of differing DQA and DHS OIG interpretations include:

- Numerous personal care agencies have had DQA perform a survey and review timesheets, supervisory visit forms, and/or training documentation--then were audited by OIG shortly thereafter. The OIG auditor issued findings about these documents and sought to recoup--generally finding that they were not detailed enough.

- Despite DQA's recognition that there is no express training requirement for PCWs, OIG has argued that there must be specific written documentation that the agency has observed the PCW demonstrating each and every assigned task. OIG seeks to recoup for 100% of services where the auditor has found the documentation not to be detailed enough (despite a prior survey by DQA of the same documents). This would include taking back money for non-medical tasks, like washing dishes, meal prep, housework.

- OIG has sought recoupment alleging the supervisory visit forms do not have enough detail--despite DQA having previously reviewed the forms.

- OIG used the skilled administrative code for home health care agencies and nursing homes to scrutinize a personal care agency for recoupment. The agency pointed out that they are non-skilled and that they would appeal the recoupment and OIG threatened to shut them down if they appealed the case.

- DQA surveyed one personal care agency and found no deficiency on the care plan, the 60 day visit or documentation. OIG audited the agency two months after this DQA survey and penalized the agency because the client signature on the timesheet was a day after the last day that the PCW cared for the client.

- In another instance, Medicaid approved a prior authorization for personal care services and the agency moved forward with providing services. DQA did a survey and found no issues, but OIG found issues with the prior authorization that was submitted to Medicaid and asked for a recoupment from the agency even though Medicaid had approved the prior authorization.

- OIG recouped 6 months' worth of claims from a personal care agency because the PCW wrote his initial on the task but used cursive to initial the bottom of the timesheet when he signed his name. OIG claimed that those were two different people. The agency sent OIG an affidavit by the PCW about the initials, but OIG still sought recoupment.

Examples of Administrative Rules Going Beyond State Statute:

- DHS 106.02(4) states that "a provider shall be reimbursed only if the provider complies with applicable state and federal procedural requirements relating to the delivery of the service." It is unclear what statute supports this provision.

DHS interpretations of this provision have been used to recoup payments made to providers for covered services, even when care was indisputably provided, based merely on a requirement noted in a provider update or a topic in the ever-changing online provider handbook. It would be beneficial to clarify what is meant by this regulation, and to ensure that the rule is in conformity with Wis. Stat. § 49.45(3)(f).

- DHS 106.02 (9)(a) states that "a provider shall prepare and maintain truthful, accurate, complete, legible and concise documentation and medical and financial records specified under this subsection, s. DHS 105.02 (6), the relevant provisions of s. DHS 105.02 (7), other relevant sections in chs. DHS 105 and 106 and the relevant sections of ch. DHS 107 that relate to documentation and medical and financial recordkeeping for specific services rendered to a recipient by a certified provider." By statute, providers must create and maintain records, and make them available to the Department to verify the provision of services. The wording of this rule creates a stricter standard than the statute by adding criteria like "legible"—or at least the Department's interpretation and application of this rule goes beyond what is set forth in the statute. DHS OIG has interpreted this provision to justify recoupment when a post-payment audit finds any perceived inaccuracy or imperfection in the documentation. This has led to cases where an agency has been asked to pay back funds because a worker had bad penmanship or accidentally wrote the wrong day.

- DHS 106.04(5) outlines criteria for recouping overpayments. "Return of overpayments. (a) Except as provided in par. (b), if a provider receives a payment under the Medicaid program to which the provider is not entitled or in an amount greater than that to which the provider is entitled, the provider shall return to the department the amount of the overpayment, including but not limited to erroneous, excess, duplicative and improper payments, regardless of cause, within 30 days after the date of the overpayment in the case of a duplicative payment from MA, Medicare or other health care payer and within 30 days after the date of discovery in the case of all other overpayments." This phrase, which provides an unlimited definition of overpayment, is inconsistent with Wis. Stat. § 49.45(3)(f) and a common-sense definition of "overpayment." It also allows the state to recoup overpayments, using this broad definition, "regardless of cause." State statute is clear that DHS can recover payments in cases where the "actual provision of the service cannot be verified." However, multiple Wisconsin courts have found that DHS has overreached and required providers to pay back hundreds of thousands of dollars due to clerical or administrative errors even in cases where care was indisputably provided. Changes should be made to bring this rule in line with the statute.

- DHS 107.02(2) states that "the department may reject payment for a service which ordinarily would be covered if the service fails to meet program requirements." The Department has interpreted this provision in a manner inconsistent with Wis. Stat. § 49.45(3)(f) by applying it not just to the denial of claims for reimbursement, but also to post-payment audit findings and recoupment efforts. The term "fails to meet program requirements" has been read very broadly to include any documentation shortcoming or imperfection.

- DHS 107.112(3)(c) outlines the following requirement for supervisory visits for personal care recipients. “Review of the plan of care, evaluation of the recipient's condition and supervisory review of the personal care worker shall be made by a registered nurse at least every 60 days. The review shall include a visit to the recipient's home, review of the personal care worker's daily written record and discussion with the physician of any necessary changes in the plan of care.”

  However, Wis. Stat. § 49.45(2)(a)24m. provides:

  “Promulgate rules that require that the written plan of care for persons receiving personal care services under medical assistance be reviewed by a registered nurse at least every 60 days. The rules shall provide that the written plan of care shall designate intervals for visits to the recipient's home by a registered nurse as part of the review of the plan of care. The designated intervals for visits shall be based on the individual recipient's needs, and each recipient shall be visited in his or her home by a registered nurse at least once in every 12-month period. The rules shall also provide that a visit to the recipient is also required if, in the course of the nurse's review of the plan of care, there is evidence that a change in the recipient's condition has occurred that may warrant a change in the plan of care.”

  The statutory language states that the nurse is to visit the home at least once every 12 months and also when the recipient’s condition has change warranting a change in the plan of care. The regulation is inconsistent with the statute, requiring a supervisory nurse visit every 60 days, even for recipients in stable conditions. The Department has sought recoupment from personal care agencies where the supervisory visit occurs even one day later than the 60th day.

2. **Eliminate the Settings Restriction for Personal Care.** The Department of Health Services’ (DHS) recently eliminated the settings restriction on home health services from the state Medicaid plan. WPSA requests that Wisconsin also eliminate the settings restriction for personal care—as permitted under federal law-- to create consistency among programs and to maximize access to jobs and the community for people with disabilities and older adults.

3. **Leverage EVV to eliminate the Paper Time Sheet Requirement.** Guidance released via Forward Health stated that “effective January 1, 2001, the recipient’s signature and date of signature is required on all records of care completed by PCWs.” DHS should leverage EVV implementation to update this guidance to explicitly authorize the use of electronic signatures. Provider agencies are concerned that since the current regulatory language does not specifically say that electronic signatures or documentation is allowed that there could be potential audit issues if OIG interprets this differently.

4. **Ensure Consistent Processes Between MCOs, HMOs.** Steps need to be taken to improve communication and coordination in our long-term care system. Personal Care agencies contract with many different MCOs and programs, most of which have their own unique policies and procedures in place. It would reduce administrative burdens on personal care agencies and other providers if all MCOs and HMOs used consistent processes, such as:
   - Consistent billing codes across MCOs

- Consistent service authorization processes across MCOs
- Consistent discharge/change of service processes and timeframes across MCOs when a client is either discharged or has a change in authorized hours. This would help prevent disruption in services.

5. **Eliminate the Requirement in DHS 105.17 that PCWs Must be Trained on Every Individual Client.** Current personal care agency regulation in DHS 105.17(1n)(a)b. states that "training shall be provided for each skill the personal care worker is assigned and shall include a successful demonstration of each skill by the personal care worker to the qualified trainer, under the supervision of the RN supervisor, prior to providing the service to a client independently." This rule has been interpreted to mean that each personal care worker has to be skills checked for each consumer they work for even if they are providing similar services for another client. This would be like saying that a CNA in a hospital could not see patients until they were trained on each person on the floor. This can lead to duplicative training. It can also leave a client standard without backup care if there are no workers available that have been trained on that specific client.

6. **Fully Fund EVV Implementation Requirements and Re-invest Savings**. States are required by federal law to implement electronic visit verification (EVV) for personal care by January 1, 2021 or risk reduced federal funding. Moving to an EVV system will increase administrative costs for personal care agencies. Agencies will need to hire staff to provide training to workers, bring on new clerical staff to help maintain the EVV database and potentially provide cell phones/coverage plans to their caregivers to be able to use EVV. CMS guidance clearly states that the costs associated with the purchase of the EVV devices and/or equipment can be built into provider rates. WPSA requests that DHS administratively raise the personal care reimbursement rate to reflect costs from EVV implementation. Any potential state savings that result from the implementation of EVV should be re-invested into the personal care program to help ensure sustainable rates and support workforce development initiatives.

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