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*Governor's Small Business Regulatory Review Board*

January 22, 2008

Secretary Kevin R. Hayden  
Department of Health and Family Services  
1 West Wilson Street  
Madison, WI 53703

Re: HFS-83 – Relating to Regulating the Living Environment of Community-Based Residential Facilities (CBRF'S)  
CR07-095

Dear Secretary Hayden:

Wisconsin 2004 Act 145 created the Small Business Regulatory Review Board (SBRRB) to serve as a voice for small businesses as defined in Wis. Stats. 227.114(1). The SBRRB's statutory authority for review of new rules is contained in 227.14(2g) and for emergency rules in 227.24(3m). The SBRRB respectfully submits this letter to the Wisconsin Department of Health and Family Services following the SBRRB's review of administrative rule HFS-83, relating to regulating the living environment of Community-Based Residential Facilities (CBRF's). The SBRRB's comments on this rule are based on the testimony heard by both representatives of the Department of Health and Family Services and owners of CBRF's at the board's January 8, 2008 meeting.

The function of the SBRRB is to assure each regulatory agency's compliance with the statutory administrative rulemaking requirements relating to small businesses economic impacts. The Department of Health and Family Services submitted their analysis of the rule's economic impact to the SBRRB because the agency had made the determination that the rule would have a significant economic impact on small businesses. After consideration of the testimony heard, the SBRRB recommends that the department consider the SBRRB requests as it relates to the following portions of the proposed rule.

Administrator Qualifications and Staff Training Requirements:

1. The SBRRB is concerned that the proposed training requirements may have a negative economic impact on the CBRF's with five to eight beds. The SBRRB requests that the department more thoroughly analyze how the increased staff training requirements will impact these CBRF small businesses. The SBRRB is specifically interested in how the department can address the concerns of small businesses owners who will experience financial hardships because of their inability to absorb the mandated training costs proposed in the rule. The SBRRB asks the department to consider the difficulty that owners of CBRF's will experience in acquiring qualified care givers in areas of the state with small populations.

The department's report to the SBRRB shall include any methods the department can take to minimize the training costs. Consistent with the Wis. Stats. 227.114(2), a more thorough analysis may discuss the following alternatives:

- a. The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small business;
  - b. The clarification, consolidation, or simplification of compliance under the rule for small business;
  - c. The use of performance rather than design standards; and
  - d. The exemption from coverage of the rule, or any part thereof, for such small businesses.
2. The SBRRB recognizes the need to maintain the integrity of CBRF's as it relates to the qualifications of the administrator. The SBRRB understands that the department's rule allows facilities to request a variance or waiver with respect to the administrator qualifications. The SBRRB encourages the department to clearly state in the final rule the variance and waiver criteria permitted by the department instead of allowing a case-by-case approval of requests for variances and waivers.

#### Capital Expenditures – Fire Sprinkler Systems

3. The SBRRB has concerns regarding the economic impact that the fire sprinkler compliance requirements will have on the small businesses that currently do not have fire sprinkler systems. The SBRRB notes that actual costs these small businesses will incur for updating fire sprinkler systems may exceed the department's estimates due to additional costs that are imposed by local municipalities. These local municipalities, in many cases, have established requirements that are much higher than those recommended by the department.

Because of the cost discrepancies, the SBRRB requests the department thoroughly analyze ways to reduce these economic impacts. In doing so, the SBRRB encourages the department to employ the services of a life safety code specialist to offer alternative fire sprinkler technology options that can be incorporated into the final rule. Small businesses should be provided with alternatives that will lower their costs to retro-fit five and eight bed facilities. Through consultation with staff within the Department of Commerce's Safety and Buildings Division's Fire Protection Program, the department may be able to include in the final rule options for small business to retrofit small dwelling homes. The SBRRB recommends that the department provides these alternatives to small business rather than directing them to adopt more apartment building style residential facilities and fire sprinkler systems.

The SBRRB requests that the public comments and the comments of the SBRRB be considered in the final rule submitted to the legislative review committees. The SBRRB requests that a response to the Board comments be submitted by February 25, 2008. A copy of your response should be included with the final rule package to the legislative review committee as required in Wis. Stats. 227.19 (3) 6 (h).

The SBRRB commends the Department of Health and Family Services on their efforts to analyze the small business economic impact of the rule. The department's small business economic impact analysis reflects the degree to which the department understands the value in preparing an analysis that measures the cost impacts of a proposed rule on small business.

As Chairman of the SBRRB, I appreciate the Department of Health and Family Services' efforts to study the effects of this rule on small business so that the Department of Health and Family Services, the SBRRB and the legislature have an accurate picture of how small businesses will be affected by this rule.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard E. Petershack". The signature is fluid and cursive, with a prominent initial "R" and "P".

Richard E. Petershack, Chairman  
Governor's Small Business Regulatory Review Board

cc: Ron Sklansky, Joint Legislative Council  
Rea Holmes, DHFS Executive Assistant  
Otis Wood, Administrator, Division of Quality Assurance  
Kevin Coughlin, Assisted Living Bureau Director  
Patricia Benesch, Rules Coordinator, Assisted Living Bureau  
Rosie Greer, DHFS Small Business Regulatory Review Coordinator