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Details: July 8, 2008 Informational Hearing

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING COMMITTEE RECORDS

2007-08

(session year)

Senate

(Assembly, Senate or Joint)

Committee on Public Health, Senior Issues, Long Term Care and Privacy

(SC-PHSILTCP)

(FORM UPDATED: 07/02/2010)

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**
- Record of Comm. Proceedings ... **RCP**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL ...

- Appointments ... **Appt**
- Clearinghouse Rules ... **CRule**
- Hearing Records ... bills and resolutions
  (**ab** = Assembly Bill)
  (**ar** = Assm. Resolution) (**ajr** = Assm. Joint Resolution)
  (**sb** = Senate Bill)
  (**sr** = Sen. Resolution) (**sjr** = Sen. Joint Resolution)
- Miscellaneous ... **Misc**

Misc.

Senate

INFORMATIONAL HEARING

Committee on Public Health, Senior Issues, Long Term Care and Privacy

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The committee will hold an informational hearing on the following items at the time specified below:

Tuesday, July 8, 2008
1:15 PM
330 Southwest
State Capitol

Pt. 01

The first topic of the Informational Hearing will be an update from the Department of Health & Family Services on the operation of the Manor Care nursing homes since the change in ownership to a private equity group, The Carlyle Group.

Pt. 02

The second topic will include testimony from Commissioner Sean Dilweg of the Office of the Commissioner of Insurance regarding long term care insurance and related senior issues.

Testimony will include invited speakers

Senator Tim Carpenter
Chair


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State of Wisconsin
Department of Health Services

Jim Doyle, Governor
Karen E. Timberlake, Secretary

July 8, 2008

TO: Senate Committee on Public Health, Senior Issues, Long Term Care and Privacy
FROM: Otis Woods, Administrator, Division of Quality Assurance, Department of Health Services
RE: Status of Manor Care nursing homes in Wisconsin

Senator Carpenter and committee members, thank you for inviting me to speak at today's hearing. I am Otis Woods, Administrator for the Division of Quality Assurance (DQA) within the Department of Health Services. DQA regulates more than 4,200 nursing homes, assisted living facilities, home health agencies, hospice, hospitals and clinics in Wisconsin.

The Committee specifically asked the Department to update this committee on the compliance of Manor Care nursing homes in Wisconsin since the transition of these facilities to individual entities within The Carlyle Group structure.

On December 20, 2007, DQA issued separate probationary licenses to eight Manor Care nursing homes. These facilities are located in Appleton, Fond du Lac, Green Bay, Kenosha, Pewaukee, Platteville and Shawano.

All eight of these facilities had already been in operation prior to the change in December 2007. When each facility became an LLC, it changed ownership and triggered our regulatory process to require new licenses.

DQA issues every new facility or facility undergoing a change of ownership that passes a current fit and qualified review a probationary license for the first 12 months of operation. During this one-year process, our surveyors conduct at least two surveys to review on-going compliance with regulatory standards. DQA staff will do the first of these two surveys in the near future.

If no serious or egregious issues are identified during the probationary license cycle, DQA staff completes a review to determine one of four outcomes. These are: 1. Issue a regular license; 2. Issue a license with certain conditions; 3. Extend a probationary license or 4. Revoke the license if warranted. The outcome is dependent on the results of the increased DQA oversight and visits.

I would like to summarize and highlight some facts to put the compliance information for the eight Manor Care facilities in context. Afterward, I would be happy to go into whatever level of detail you would like about each Manor Care nursing home.

Overall, the number of complaints filed against the eight facilities has not changed since the transfer of ownership. To draw comparisons, we evaluated each facility's compliance during the last few years and since December 20, 2007.

There have been a total of 28 complaints across all eight facilities since DQA issued the probationary licenses. One facility had zero complaints. The most at one facility was seven complaints. DQA staff conducted on-site complaint surveys for these issues. Of the 28 complaints, DQA substantiated 16 complaints, which came from a variety of sources: friends, family, patients, staff and facility self reports. They also ranged in severity.

Complaint surveys are over and above the increased review that a provider with a probationary license has. Any substantiated deficiency in the system requires the nursing home to develop and implement a plan of correction for those deficiencies and DQA staff validates that the corrections are appropriate and functional.

One Manor Care facility had an increase in complaints and one Manor Care facility had a decrease in complaints. However, it is important to judge each facility's compliance since the change in ownership compared to its compliance history over a period of years. This helps to determine whether the facility is making progress. For example, the facility that saw an increase compared to its previous compliance history had three complaints since December 20, 2007. And, the facility that saw a decrease compared to its previous compliance history had four complaints. In 2007, DQA received 1,333 complaints regarding 401 nursing homes in operation.

The Manor Care facilities that have traditionally had more complaints than their counterparts continue to follow that trend. I do not say this to in any way to suggest that DQA does not take every complaint seriously. Our division has and will continue to take action against facilities that have problems to ensure correction. DQA will continue to monitor and communicate our concerns to Manor Care to make sure its facilities are in compliance and that the organization strives to provide high quality care to its residents.

When I last appeared before this committee, we talked about the Department's limitations as regulators to look further into Manor Care or The Carlyle Group's corporate structure as a private equity firm when determining licensure.

Since that time, our Department has put together an internal workgroup with the expectation that some statutory language changes to Chapter 50, the uniform licensing law, may be necessary to strengthen our review process.

Corporate structures are becoming more and more complex. Current state law was not written, nor could it have anticipated the complexity that exists in corporate America today.

Wisconsin is not alone in this endeavor. Changing financial arrangements in the nursing home industry and throughout the health care sector are prompting many states to explore their ability and authority to review the information they need when making regulatory decisions.

Our workgroup is looking at other states' statutes for what language is appropriate to better protect consumers. We have made progress in our research and analysis. However, additional review, planning and outreach are necessary before we finalize what changes to propose.

Our team is working to identify strategies to ensure corporate responsibility for quality patient care in nursing homes. More specifically, we are looking at three items:

1. Ways to make sure both the licensee and the holding company or the private equity firm are accountable for quality patient care;

2. Changes needed in federal statute and regulations to facilitate transparency in ownership and quality; and
3. Better ways to determine whether nursing homes are financially viable within complex corporate structures.

We are reviewing and analyzing current law and rules governing other regulated domains such as financial institutions and child care to determine the extent of corporate liability. We are looking at what other states are doing to ensure corporate accountability, including ways to quantify changes in quality amongst nursing homes owned by LLCs or private equity firms.

We are watching what is going on at the federal level to make sure we don't duplicate efforts. Just this spring, Senator Herb Kohl introduced legislation to address on a national level many of the issues we have identified for Wisconsin.

We also are talking about DQA's ability and expertise to analyze financial information as part of a license application and using Corporate Integrity Agreements at the national or state level.

Additionally, we are exploring a requirement for nursing homes to have surety bonds, or a minimum level of insurance, and the pros and cons of doing this. This is something Senator Kreitlow expressed interest to review in greater detail as well. We solicited fellow Association of Health Facility Survey Agencies members to ask whether their state laws required the posting of surety bonds as a condition of obtaining a license, what the required amounts are and what protection surety bonds provide. We heard from five states that require surety bonds and six states that do not, providing us with several examples about how to incorporate this requirement into regulations.

I expect our workgroup to take a couple of months longer to tackle the initial phase of analysis and compose our thoughts before bringing proposals to legislators and key stakeholders, such as industry members, the Board of Aging and Long-Term Care, SEIU and others. We want to work directly with all parties on the final product.

Thank you again for the opportunity to update you about the compliance of Manor Care facilities in Wisconsin. We also appreciate being able to share with you the work we are doing to determine better ways to address the evolving corporate dynamics in the nursing home industry with the overall goal of ensuring responsibility for quality care.


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Testimony of Heather Bruemmer
Executive Director of the Board on Aging and Long Term Care
Before the Senate Committee
On Public Health, Senior Issues, Long Term Care
and Privacy

8 July 2008

Senator Carpenter, members of the Committee, good afternoon. I am Heather Bruemmer, Executive Director of the Board on Aging and Long Term Care. With me today is Bill Donaldson, the Counsel to the Board. Together, we want to offer some information that we believe is relevant to the issue that you are considering today.

There are, as you know, eight nursing homes in Wisconsin that are owned and operated by the Carlyle Group under the auspices of its subsidiary, HCR-Manor Care. I apologize if my understanding of the exact corporate relationship between these two entities is somewhat imprecise, but that is a significant part of what we believe is a problem for the consumers that this agency advocates for.

Since the reorganization of the HCR-Manor Care operations, there has been a continuing record of calls to the Board's Long Term Care Ombudsman Program about issues of concern to both residents and their families. We are also occasionally contacted by anxious facility staff who are, themselves, deeply concerned about what they consider to be an inability to provide adequate services with limited resources. Here are some examples of these contacts:

* In January, a resident's daughter engaged in a dialog via email with one of the Board's Ombudsmen, Joan Schmitz about the care being provided to her Mother at Heartland HCC in Pewaukee. The concerns raised by this family member included short staffing, delays in responding to residents' requests for assistance, facility administration "making light" of staff moving residents' personal items without notice or consent, rude comments being directed toward the residents, and numerous other instances of inappropriate care. The daughter who contacted us says that there are significant periods of time, usually at the change of shift, when there is no one available on the floor to respond to resident needs, including falls. The daughter also relays her belief that a large number of competent CNA staff have left as a result of the newly appointed DON's management style. The impression given by the family member in this case was that the lapses in care were more evident since the reorganization.

* The Pewaukee facility self-reported a fall in which a resident sustained fractures. The resident was designated as requiring two persons to do a transfer and, in this case, only one staff member was assisting the person when the fall occurred.

* An Ombudsman's discussion with administrative staff at this facility found that the NHA and the DON had no understanding of the concerns that have been raised nationally and by this Committee of the Legislature about the reorganization following the purchase of HCR-Manor Care by the Carlyle Group. The management indicated that they had received unanticipated budget increases, but they were unsure as to the reason.

* Another family member of a resident in the Pewaukee facility complained bitterly of poor care related to staffing inadequacies. The resident, a stroke victim, had fallen out of bed (twice), experienced significant delays in receiving attention to call lights, had lost 20 pounds in one month, and been left to lay in her bed in soaked undergarments for over an hour. The Ombudsman worked with the facility staff to identify the causes of the falls and proposed targeted retraining to address the issue. Apparently, the facility didn't follow through with the retraining or with the safety measures that had originally been in the care plan and the resident fell again less than two days later, requiring a trip to the hospital, stitches and a pelvic radiograph.

* The Ombudsman reported in April that understaffing concerns have continued. At one point, a CNA apologized to the Ombudsman for being unable to adequately respond to two residents' needs because she (the CNA) was the only one there to care for 20 residents. There were reports that residents were being served meals in their rooms because there was insufficient staff to transport them to the dining room.

* In May, reports to the Ombudsman included instances of residents who required oxygen therapy being left in common areas with empty oxygen cylinders, continued staffing problems, and a report by one family member that her parents, both residents of the Pewaukee facility, each had bills submitted to Medicare claiming reimbursement for care related to a diagnosis of heart attack on the same day. Neither resident had a heart attack.

* At the Kenosha facility, the Ombudsman notes that the nature and frequency of concerns is much the same as was the case prior to the reorganization. Staffing issues are still at the core of the problems in the facility. Here, however, it is significant to note that there have been three new facility administrators within the last year. These changes of leadership personnel coupled with a new DON and a new Social Services director all since the changeover in January have not resulted in any obvious improvements in care provided to the residents in the view of the Ombudsman.

* Finally, it is important to note that the Green Bay West facility received an immediate jeopardy citation from DQA in January for inadequate care plan implementation in cases of two residents at risk for pressure ulcers and failure to react to a third resident's long-standing skin irritation.

Since the 15th of December of last year, the Long Term Care Ombudsman Program has made a total of 178 contacts relating to the eight HCR-Manor Care facilities in this state. These contacts have accounted for the expenditure of over 55 hours of ombudsman staff time.

While it is impossible for us to say with any degree of absolute certainty that the concerns we are seeing in the Manor Care facilities are the result of the change in corporate structure, it is clear to our Ombudsmen that this organizational change has not produced any obvious improvements that we can see in these facilities. Ombudsmen continue to receive contacts from disturbed family members and residents complaining about care and conditions. They report that staffing is always short and staff are often unfamiliar with the particular resident or even the unit that they have been assigned to.

Again, we applaud you, Senator Carpenter and the committee for your concern and efforts to monitor the progress of this transition. We are also very appreciative of the attention being paid by the Department of Health Services' DQA to the changing situation in the Manor Care family. We want to again assure all concerned that the Long Term Care Ombudsman Program will continue to pay particular attention to the Manor Care facilities and will not hesitate to inform the Committee and the Department of significant issues. We will, of course do this in compliance with our agency's requirement of strict confidentiality regarding identification of residents and complainants.

At this time, I will happily answer any questions that you may have.


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Senate Public Health, Senior Issues, Long Term Care and Privacy Committee

Testimony of Sean Dilweg

Commissioner of Insurance

July 8, 2008

Wisconsin Population 2030

- The Department of Administration report *Wisconsin Population 2030* indicates that:
  - Wisconsin's senior population will be twice the size it is now and will surpass one fifth of the state's population, rising to 1.6 million by that time.
  - The number of seniors over age 85 will grow 66% and over age 100 will grow by almost 400%.

Senior Insurance Issues

- Long-Term Care
  - Partnership Program
  - Long-Term Care Insurance Data Call
  - GAO Report
  - Wisconsin Specific Complaints
- Life Insurance
- Annuities
- Senior Designations
- Medicare Advantage

Long-Term Care Insurance

- There are three types of insurance policies currently on the market in Wisconsin to help cover long-term care expenses:
  - Long-term care insurance policies, nursing home only insurance policies, and home health care only insurance policies.
- According to a study released by Fidelity Investments, a 65-year-old couple will need $85,000 on average to cover insurance costs for long-term care.

Wisconsin Long-Term Care Market

Long-Term Care Insurance Market			
Year	Earned Premium (in millions)	Claims Paid (in millions)	Policies in Force
2004	$181.1	$207.1	139,749
2005	$202.0	$216.3	149,566
2006	$224.8	$252.3	143,717
2007	$211.7	$234.3	145,283

Wisconsin Specific Complaints

Long-Term Care Complaints	
2001	73
2002	102
2003	80
2004	81
2005	84
2006	65
2007	54
Total	**539**

- Claims Handling
  - 26.9% in 2007
  - 26.2% in 2008
- Policyholder Service
  - 15.4% in 2007
  - 7.1% in 2008
- Marketing and Sales
  - 19.2% in 2007
  - 4.8% in 2008
- Underwriting
  - 34.6% in 2007
  - 59.5% in 2008
- Other
  - 3.8% in 2007
  - 2.4% in 2008

Partnership Program

- 2007-09 biennial budget law, Wisconsin Act 20, required the Department of Health and Family Services (DHFS) to pursue an amendment to the Wisconsin Medicaid program (State Plan Amendment) that establishes a Long-Term Care (LTC) Partnership Program in Wisconsin.
- 19 states have approved Partnership Programs.
- OCI appointed a workgroup to assist in promulgating an administrative rule.
- An emergency rule has been issued. Two public hearings have been held on both the emergency rule and permanent rule.
- OCI anticipates sending the rule over this week or next. The agency is not told ahead of time where the rule will be referred so it is possible the rule will be sent to this committee. Senate Bill 114, legislation introduced last session to establish the LTC Partnership Program was referred to this committee.

Long-Term Care Insurance Data Call

- Due to a New York Times article and Congressional interest on the issues, the NAIC pursued a Long Term Care Insurance Data Call.
- National data from 23 long-term care insurance companies (80% of the market) was collected relating to:
  - Insurance Policy Counts
  - Lapse Statistics
  - Premiums
  - Complaints
  - Claims
  - Cost Containment Expenses

Long-Term Care Next Steps

- External Review — may need statutory changes.
- Changes to Partnership
- Managed Care Long-Term Care how Family Care will intract

GAO Report

- The GAO has done a study on state oversight of rate setting and claims settlement practices.
- OCI was interviewed for this report.
- The final report will be published soon.
- I may testify on the Long-Term Care issues before Congress in July, however plans for a hearing are not final.

Life Insurance

- There are two basic types of life insurance: term insurance and whole life (cash value) insurance.
- Term insurance generally has lower premiums, but does not build up cash value for future use.
- Whole life insurance is a policy that offers life insurance coverage and invests a portion of the premium, building cash value.
- Life insurance policies designed for seniors often are sold as coverage to fund funeral expenses
  - Preneed funeral expense policies
  - Funeral expense policies

Annuities

- An annuity is a contract wherein the insurance company promises to make a series of payments in return for premiums paid. Annuities may be either immediate or deferred.
- Immediate annuities provide income payments shortly after you pay the premium. Deferred annuities provide income payments at a later date.
- Annuities may be fixed, variable or a combination of both.

Senior Designations

- Agents boast designations and credentials to convince people they have special expertise to help seniors.
  - certified, accredited, retirement planner, senior advisor, senior consultant
- Requirements to earn designations vary greatly.
- NAIC Life and Annuities Committee pursuing the adoption of a model regulation.

Medicare Advantage

- Medicare Part C (Medicare Advantage) provides coverage for hospital stays and outpatient care, including doctors visits and is provided by private insurance plans.
- Since January 1, 2006 my department has received almost 700 formal complaints from consumers about marketing and sales involving Medicare Advantage (MA) plans.
- Since these cases involve Medicare Advantage plans, the hands of state regulators are often tied, as states are largely pre-empted from regulating MA plans. The marketing guidelines are established by CMS, and thus, a large regulatory gap exists in the regulation.

Medicare Advantage

- The Coalition of Wisconsin Aging Group (CWAG) polled Benefit Specialists about complaints or referrals to OCI about agent practices in Medicare Advantage (MA) and/or concerns about marketing of MA plans in the last six months.
- As of February 14, 2008, CWAG received 20 responses, with a total of 94 complaints or referrals to OCI.
- A State Health Insurance Assistance Program Client Contact Summary Report for January 1, 2007 through December 31, 2007 indicates the following relating to Medicare Health Plans (HMOs, PPOs, PFFS, Special Needs Plans):
  - 6,628 people contacted SHIP regarding enrollment, disenrollment, eligibility and comparisons.
  - 468 contacts were received relating to plan or benefit changes/non-renewals.
  - 566 contacts on claims/billing.
  - 359 people contacted SHIP regarding appeals and quality of care.

Questions and Comments