



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-0700/P4
TJD:amn

DOA:.....McElgunn, BB0085 - Conform enabling statute for Board on Aging and Long Term Care with federal law; advocacy services for IRIS participants

FOR 2017-2019 BUDGET -- NOT READY FOR INTRODUCTION

AN ACT ...; **relating to:** the budget.

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

OTHER HEALTH AND HUMAN SERVICES

This bill makes various changes to the Board on Aging and Long-Term Care and the ombudsman program. The bill specifies that the seven members of BOALTC must be members of the public and must not be persons who currently own, or owned or had a certain interest within the previous five years in, a long-term care provider or health care insurance company. The bill specifies that BOALTC appoints an executive director who serves as the state long-term care ombudsman and that the population served by the ombudsman program are those 60 years of age or older who receive long-term care in certified or licensed long-term care facilities or under programs administered by state or federal governmental agencies. The bill specifies that BOALTC's ability to monitor and make recommendations, as it currently does for the Community Options Program, extends to the Family Care Program, the Family Care Partnership Program, and the Program of All-Inclusive Care for the Elderly and specifies that the ability to provide advocacy services, as it does currently for potential or actual enrollees of the Family Care Program, extends to potential or actual enrollees of the Family Care Partnership Program and the Program of

All-Inclusive Care for the Elderly and to potential or actual recipients of the self-directed services option, known as IRIS. The bill clarifies that the long-term care ombudsman program must comply with certain federal statutes and regulations. The bill also, among other things, prohibits any person from willfully interfering with the actions of an ombudsman by acting or attempting to act to intentionally prevent, interfere with, or impede the ombudsman from performing functions or responsibilities under law.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 15.105 (10) of the statutes is amended to read:

15.105 (10) BOARD ON AGING AND LONG-TERM CARE. There is created a board on aging and long-term care, attached to the department of administration under s. 15.03. The board shall consist of 7 members who are members of the public and who are appointed for staggered 5-year terms. Members shall have demonstrated a continuing interest in the problems of providing delivering and financing long-term care for the aged or disabled. At least 4 members shall be public members with no interest in or affiliation with any nursing home persons who are 60 years of age or older or who are beneficiaries of the Medicare program. No person who currently owns or who, within the previous 5 years, owned or who had any operational or substantial financial or employment interest in or any other affiliation with any long-term care provider or health care insurance company may be appointed to or retained as a member of the board. No person who is or has been an employee or volunteer of the board may be appointed to or retained as a member.

SECTION 2. 16.009 (1) (a) of the statutes is repealed.

SECTION 3. 16.009 (1) (ac) of the statutes is created to read:

16.009 (1) (ac) “Access” means the ability to have contact with a person or to obtain, examine, or retrieve information or data pertinent to the activities of the board with respect to a person.

SECTION 4. 16.009 (1) (ar) of the statutes is amended to read:

16.009 (1) (ar) “Client” means an individual who requests or is receiving services of the office, ~~or a resident on whose behalf a request is made.~~

SECTION 5. 16.009 (1) (b) of the statutes is repealed.

SECTION 6. 16.009 (1) (br) of the statutes is created to read:

16.009 (1) (br) “Disclosure” means the release, the transfer, the provision of access to, or divulging in any manner of information outside the entity holding the information.

SECTION 7. 16.009 (1) (c) of the statutes is repealed.

SECTION 8. 16.009 (1) (cg) of the statutes is created to read:

16.009 (1) (cg) “Enrollee” means an enrollee, as defined in s. 46.2805 (3), an individual receiving services under the Family Care Partnership Program or the program of all-inclusive care for the elderly, or an individual receiving long-term care benefits as a veteran.

SECTION 9. 16.009 (1) (cm) of the statutes is created to read:

16.009 (1) (cm) “Family Care Partnership Program” means an integrated health and long-term care program operated under an amendment to the state Medical Assistance plan under [42 USC 1396u-2](#) and a waiver under [42 USC 1396n](#) (c).

SECTION 10. 16.009 (1) (cr) of the statutes is created to read:

16.009 (1) (cr) “Family care program” means the program under ss. 46.2805 to 46.2895 that provides the family care benefit, as defined in s. 46.2805 (4).

SECTION 11. 16.009 (1) (d) of the statutes is repealed.

SECTION 12. 16.009 (1) (e) of the statutes is repealed.

SECTION 13. 16.009 (1) (ef) of the statutes is created to read:

16.009 (1) (ef) “Immediate family member” means a member of a client’s household or a relative of a client with whom the client has a close personal or significant financial relationship.

SECTION 14. 16.009 (1) (gr) of the statutes is amended to read:

16.009 (1) (gr) “Ombudsman” means the state long-term care ombudsman, as specified in sub. (4) (a), or any employee or volunteer who is a representative of the office and who is designated by the state long-term care ombudsman to fulfill the duties under this section, [42 USC 3058g](#), and [45 CFR 1324](#).

SECTION 15. 16.009 (1) (gv) of the statutes is created to read:

16.009 (1) (gv) “Program of all-inclusive care for the elderly” means in integrated health and long-term care program operated under [42 USC 1395eee](#) or [1396u-4](#).

SECTION 16. 16.009 (1) (h) of the statutes is repealed.

SECTION 17. 16.009 (1) (k) of the statutes is created to read:

16.009 (1) (k) “Self-directed services option” has the meaning given in s. 46.2899 (1).

SECTION 18. 16.009 (2) (a) of the statutes is amended to read:

16.009 (2) (a) Appoint an executive director within the classified service who shall serve as the state long-term care ombudsman as specified under sub. (4) (a) and who shall employ staff within the classified service.

SECTION 19. 16.009 (2) (b) 1. of the statutes is amended to read:

16.009 (2) (b) 1. Investigate complaints from any person concerning improper conditions or treatment of ~~aged or disabled persons~~ who are 60 years of age or older and who receive long-term care in certified or licensed long-term care facilities or under programs administered by state or federal governmental agencies or concerning noncompliance with or improper administration of federal statutes or regulations or state statutes or rules related to long-term care for ~~the aged or disabled persons who are 60 years of age or older.~~

SECTION 20. 16.009 (2) (b) 2. of the statutes is amended to read:

16.009 (2) (b) 2. Serve as mediator or advocate to resolve any problem or dispute relating to long-term care for ~~the aged or disabled~~ persons who are 60 years of age or older.

SECTION 21. 16.009 (2) (b) 3. of the statutes is created to read:

16.009 (2) (b) 3. Comply with the requirements of [42 USC 3058f](#) to [3058h](#) and [45 CFR 1321](#) and [1324](#).

SECTION 22. 16.009 (2) (d) of the statutes is amended to read:

16.009 (2) (d) Promote public education, planning, and voluntary acts to resolve problems and improve conditions involving long-term care for ~~the aged or disabled persons who are 60 years of age or older.~~

SECTION 23. 16.009 (2) (e) of the statutes is amended to read:

16.009 (2) (e) Monitor, evaluate, and make recommendations concerning the development and implementation of federal, state, and local laws, regulations, rules, ordinances, and policies that relate to long-term care facilities and programs for ~~the aged or disabled persons who are 60 years of age or older.~~

SECTION 24. 16.009 (2) (em) of the statutes is amended to read:

16.009 (2) (em) Monitor, evaluate, and make recommendations concerning long-term community support services received by clients of the long-term support community options program under s. 46.27, the family care program, the Family Care Partnership Program, and the program of all-inclusive care for the elderly.

SECTION 25. 16.009 (2) (f) of the statutes is amended to read:

16.009 (2) (f) As a result of information received while investigating complaints and resolving problems or disputes, ~~publish material that assesses collect and publish materials that assess~~ existing inadequacies in federal and state laws, regulations, and rules concerning long-term care for ~~the aged or disabled persons who are 60 years of age or older.~~ The board shall initiate legislation as a means of ~~correcting collaborate with appropriate state agencies on efforts to resolve systemic concerns and shall recommend to the governor and the legislature legislation to~~ remedy these inadequacies.

SECTION 26. 16.009 (2) (h) of the statutes is amended to read:

16.009 (2) (h) Conduct statewide hearings on issues of concern to ~~aged or disabled persons who are 60 years of age or older and~~ who are receiving or who may receive long-term care.

SECTION 27. 16.009 (2) (i) of the statutes is amended to read:

16.009 (2) (i) Report annually to the governor and the chief clerk of each house of the legislature for distribution to the appropriate standing committees under s. 13.172 (3). The report shall set forth the scope of the programs for providing long-term care for ~~the aged or disabled persons who are 60 years of age or older~~ developed in the state, the findings regarding the state's activities in the field of long-term care for ~~the aged and disabled persons who are 60 years of age or older,~~

any recommendations for a more effective and efficient total program, and the actions taken by the agencies of the state to carry out the board's recommendations.

SECTION 28. 16.009 (2) (p) (intro.) of the statutes is amended to read:

16.009 (2) (p) (intro.) ~~Employ staff within the classified service or contract with one or more organizations to provide advocacy services to potential or actual recipients~~ enrollees of the family care benefit, as defined in s. 46.2805 (4), or their families or guardians program, the Family Care Partnership Program, or the program of all-inclusive care for the elderly or potential or actual recipients of the self-directed services option. The board ~~and contract organizations~~ under this paragraph shall assist these persons in protecting their rights under all applicable federal statutes and regulations and state statutes and rules. ~~An organization with which the board contracts for these services may not be a provider, nor an affiliate of a provider, of long-term care services, a resource center under s. 46.283 or a care management organization under s. 46.284.~~ For potential or actual recipients of the self-directed services option who are 60 years of age or older and for enrollees of the family care benefit program who are 60 years of age or older, advocacy services required under this paragraph shall include all of the following:

SECTION 29. 16.009 (2) (p) 5. of the statutes is amended to read:

16.009 (2) (p) 5. Providing individual case advocacy services in administrative hearings and legal representation for judicial proceedings regarding self-directed services option or family care services or benefits.

SECTION 30. 16.009 (3) (intro.) of the statutes is amended to read:

16.009 (3) (intro.) The board ~~may~~ shall:

SECTION 31. 16.009 (3) (a) of the statutes is amended to read:

16.009 (3) (a) ~~Contract with any state agency to carry~~ Carry out the board's long-term care ombudsman activities, as described in [42 USC 3058g \(a\) \(2\)](#) and [45 CFR 1321](#) and [1324](#), and the activities of the Medigap Helpline program as specified in sub. (2) (j).

SECTION 32. 16.009 (3) (bm) of the statutes is amended to read:

16.009 (3) (bm) Employ an attorney for provision of legal services in accordance with requirements of the long-term care ombudsman program under [42 USC 3027 \(a\) \(12\)](#) and [42 USC 3058g \(g\)](#), as specified in [45 CFR 1324.15 \(j\)](#).

SECTION 33. 16.009 (4) (a) of the statutes is amended to read:

16.009 (4) (a) The board shall operate the office in order to carry out the requirements of the long-term care ombudsman program, as defined in [42 USC 3058g \(a\) \(2\)](#), under [42 USC 3027 \(a\) \(12\) \(A\)](#) and [42 USC 3058f](#) to [3058h](#) and in compliance with [42 CFR 1321](#) and [1324](#). The executive director of ~~appointed by the~~ board shall serve as ~~the state long-term care~~ ombudsman under the office. The executive director of the board may delegate operation of the office to the staff employed under sub. (2) (a), as designated representatives of the ombudsman.

SECTION 34. 16.009 (4) (b) (intro.) of the statutes is amended to read:

16.009 (4) (b) (intro.) The ombudsman or his or her designated representative may have the following access to clients, residents, enrollees, and long-term care facilities:

SECTION 35. 16.009 (4) (d) of the statutes is amended to read:

16.009 (4) (d) An ombudsman acting as specified under [45 CFR 1324.11 \(e\) \(2\) \(vii\)](#) is not subject to the provisions of the federal privacy rule under [45 CFR 160.101](#) to [164.534](#). A long-term care facility or personnel of a long-term care facility that

~~disclose information~~ make a disclosure as authorized under this subsection are not liable for that disclosure.

SECTION 36. 16.009 (4) (e) (intro.) of the statutes is amended to read:

16.009 (4) (e) (intro.) ~~Information~~ A disclosure of information of the office relating to a client, complaints, or investigations under the program may be ~~disclosed~~ made only at the discretion of the ombudsman or his or her designated representative. ~~The identity of~~ A disclosure of information relating to a client or named witness or of a resident who is not a client may be ~~revealed~~ made under this paragraph only if one of the following conditions is met:

SECTION 37. 16.009 (5) (a) 3. of the statutes is created to read:

16.009 (5) (a) 3. Willfully interfere with the actions of an ombudsman by acting or attempting to act to intentionally prevent, interfere with, or impede the ombudsman from performing any of the functions or responsibilities under this section.

SECTION 38. 146.82 (2) (a) 16. of the statutes is amended to read:

146.82 (2) (a) 16. To a designated representative of the long-term care ombudsman under s. 16.009 (4), for the purpose of protecting and advocating the rights of an individual 60 years of age or older who resides in a long-term care facility, as specified in s. 16.009 (4) (b), or an individual 60 years of age or older who is an enrollee of the family care program, the Family Care Partnership Program, the program of all-inclusive care for the elderly, or the self-directed services option.

(END)