



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #425

Bureau of Assisted Living -- Staff and Online Reporting (Health Services -- Departmentwide and Quality Assurance)

[LFB 2019-21 Budget Summary: Page 226, #6 and #7]

CURRENT LAW

The Department of Health Services (DHS) Bureau of Assisted Living (BAL) in the Division of Quality Assurance conducts activities relating to the initial certification, licensing, and registration of assisted living facilities, conducts ongoing surveys, and investigates complaints against these facilities. Currently, BAL is authorized 56.0 full time equivalent (FTE) positions, including 38.0 surveyors, 9.0 support staff, 4.0 quality assurance specialists and research analysts, and 5.0 supervisors.

Assisted living facilities include adult family homes (AFHs), adult day cares (ADCs), residential care apartment complexes (RCACs), and community-based residential facilities (CBRFs). Generally, assisted living facilities provide services for individuals who need some level of care monitoring services, but do not need 24-hour access to nursing services as offered in nursing homes.

AFHs are residential facilities where adults who are not related to the operator reside and receive care, treatment, or services, including up to seven hours per week of nursing care per resident. DHS regulates three and four-bed AFHs, whereas one and two-bed AFHs are regulated by county human services departments.

ADCs are day programs that provide services to the elderly or individuals with disabilities when their caregivers are at work or need relief. ADCs are not licensed in Wisconsin and they are not required to be certified. However, if the ADC serves one or more individuals who are enrolled in a Medicaid funded long-term care program, then the ADC must be certified by DHS. If an ADC is certified, DHS conducts surveys to determine compliance with certification standards.

RCACs are independent apartment complexes where five or more adults reside. Each apartment must have a lockable entrance and exit, a kitchen, and individual bathroom, sleeping and living areas. RCACs provide residents up to 28 hours per week of supportive services, personal assistance, nursing services, and emergency assistance, which must be available 24 hours a day. RCACs are either certified or registered. Certified RCACs house both private pay tenants and tenants enrolled in Medicaid, and are inspected every two years. Registered RCACs house only private pay tenants and are not inspected, although BAL staff investigate consumer complaints relating to their operations.

CBRFs are facilities where five or more unrelated people live together in a community setting. Currently, licensed CBRFs range in size from five to 257 beds. CBRF services include room and board, supervision, support services, and may include up to three hours of nursing care per week. In Wisconsin, all CBRFs are licensed and regulated by DHS.

Assisted living is a Medicaid covered service only for individuals who are enrolled in the state's long-term care programs (Family Care, IRIS, PACE, or the Family Care Partnership Program). However, IRIS participants cannot reside in a CBRF.

GOVERNOR

Provide \$886,100 (\$327,800 FED and \$558,300 PR) in 2019-20 and \$1,181,400 (\$437,100 FED and \$744,300 PR) in 2020-21, to fund an additional 12.0 project positions (4.44 FED positions and 7.56 PR positions), beginning in 2019-20 and ending June 30, 2021, to provide 9.0 additional surveyor positions and 3.0 non-surveyor professional positions within BAL to meet workload due to the growth in the number of assisted living facilities in the state.

Provide \$500,000 PR in 2019-20 on a one-time basis to fund IT infrastructure improvements as part of an automated licensing project and to enable assisted living providers to enter reports online.

Require ADCs and RCACs to submit a report to DHS, every 24 months on a schedule determined by DHS, using an online system prescribed by DHS. Specify that the report must: (a) be in a format determined by DHS; and (b) contain the information required by DHS, including payment of any fee due. Require DHS to issue a warning to any operator of an ADC or RCAC who does not file a complete report in a timely manner. Authorize DHS to revoke an ADC's or RCAC's certification, or an RCAC's registration, for failure to timely and completely report within 60 days after the report date established under the schedule determined by DHS.

Require licensed CBRFs and licensed AFHs to submit required reports every 24 months, through an online system prescribed by DHS. Current law requires these types of assisted living facilities to submit reports every 24 months containing information DHS requires, but does not require online submissions.

DISCUSSION POINTS

1. The number of assisted living facilities in Wisconsin has increased during the past two decades. In 2003, there were 2,370 assisted living facilities in Wisconsin and 28 surveyors in the Bureau, or one surveyor per 85 facilities. By 2017, there were 4,052 assisted living facilities in Wisconsin, and 38 surveyors, one surveyor per 106 facilities. While this growth in the number of facilities could be caused by a number of factors, DHS notes a trend towards people preferring to remain in the community and, when necessary, moving to smaller, more homelike settings than nursing homes. Additionally, DHS points to Wisconsin's aging population as another contributing factor. Table 1 shows the recent growth in the number of assisted living facilities, by facility type, between calendar years 2014 and 2017.

TABLE 1

**Number of Licensed Assisted Living Facilities
By Calendar Year**

<u>Facility Type</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>
ADC	135	131	127	129
RCAC	313	320	342	331
CBRF	1,522	1,526	1,620	1,597
AFH	<u>1,759</u>	<u>1,835</u>	<u>2,061</u>	<u>1,995</u>
Total	3,729	3,812	4,150	4,052

2. BAL staff conducts initial surveys of all new assisted living facilities for certification or licensure, depending on the facility type. During a survey, surveyors determine a provider's compliance with Wisconsin state licensure laws and federal Medicare and Medicaid regulations. Additionally, surveyor visits are conducted for standard recertification and licensure surveys, follow-up verification visits, and complaint and incident or abuse investigations.

3. The National Association for Regulatory Administration conducts national calls with assisted living regulators across the country. Wisconsin's Bureau of Assisted Living Director has polled the group and found that the national trend is to survey assisted living facilities on a 24-month basis. Some states attempted to survey facilities every three to four years and found the results to be poor in that more citations were issued and there were greater negative outcomes.

4. In Wisconsin, most surveys occur unannounced, and are conducted onsite at the facility. Factors such as complaints filed against the provider and the provider's past survey compliance may also determine the frequency of surveys conducted. Table 2 shows the current re-survey schedule for assisted living facilities by facility type.

TABLE 2

State Inspection of Assisted Living Facilities

<u>Type</u>	<u>Frequency</u>	<u>Activity</u>
CBRF	Every two years	Inspection
AFH	Every two years	Inspection
ADC	Every two years	Survey of compliance
Certified RCAC	Every year*	Inspection

*DHS intends to move certified RCACs to a biennial inspection schedule.

5. As a result of their survey, an assisted living facility may receive no citations, one or several statements of deficiency, or one or several enforcement actions.

6. A deficiency is a violation of a specific state or federal regulation. For statements of deficiencies that do not require an enforcement, the provider is required to submit an attestation of correction to attest that all deficiencies have been corrected as of an effective date. Following the attestation, DHS expects assisted living facilities to continue to evaluate systems to ensure continued compliance.

7. DHS may take several types of enforcement actions on providers found to have deficiencies. The type of action DHS takes depends on the seriousness of deficiencies and the length of time it takes the provider to correct deficiencies. Generally, violations that result in an enforcement are violations that: (a) result in serious harm or have the potential for serious harm; (b) create a condition or occurrence that presents a substantial probability that death or serious mental or physical harm to a resident will or has occurred; or (c) create a condition or occurrence that presents a direct threat to the health, safety, or welfare of a resident.

8. The Division of Quality Assurance issues enforcement actions for providers that are state licensed. The federal Centers for Medicare and Medicaid Services (CMS) usually imposes final enforcement actions for providers that participate in the Medicare or Medicaid programs. Examples of remedies include placement of a state monitor, directed inservice training, denial of payment for new admissions, or civil money penalties. Failure of a provider to correct deficiencies could lead to termination of the provider from the Medicare and Medicaid programs or closure of the facility.

9. Table 3 shows the percentage of assisted living facilities that, as a result of their survey, received no citations, a statement of deficiency only, or an enforcement.

TABLE 3

Survey Results for Assisted Living Facilities

<u>Year</u>	<u>No Citations</u>	<u>Statement of Deficiency Only</u>	<u>Surveys with Enforcement Actions</u>
2015	60%	10%	27%
2016	63	11	26
2017	53	15	32

10. Additionally, surveyors review and investigate complaints, and conduct verification visits to ensure that facilities are complying with the law. Serious complaints are prioritized and must be addressed within 14 days of receipt, while less serious complaints must be addressed within 45 days. Table 4 shows the number of complaints received by calendar year.

TABLE 4

Number of Assisted Living Facility Complaints

<u>Calendar Year</u>	<u>No. of Complaints Received</u>
2014	981
2015	1,117
2016	1,207
2017	1,290

11. The increase in the number of assisted living facilities and the complexity of the care needs of those accessing assisted living services has increased the workload for the Bureau of Assisted Living. Additionally, changes in the federal regulations for home and community based services have also increased the Bureau's workload. Specifically, DHS has established ongoing monitoring and quality assurance processes to ensure that assisted living facilities remain compliant with the federal rules.

12. In March, 2016, DHS was authorized 6.0 additional surveyor positions for the Bureau of Assisted Living, including 3.78 PR positions approved by the Joint Committee on Finance under a s. 16.505 request and 2.22 FED positions created administratively by the Department of Administration. These positions were provided to enable the Bureau to meet growing workload due to increases in the number of licensed facilities, as well as to address a backlog of open complaints, facilities pending an initial survey, and facilities that had not been resurveyed in over two years. At the time these positions were approved, DHS estimated that the backlog would be eliminated by the end of 2018-19.

13. Despite the surveyor staff increase authorized in 2016, the Bureau has not been able to

keep up with the increased workload due to the growing number of assisted living facilities. Specifically, DHS notes that the backlog of facilities that have not been surveyed in two years has remained constant between May, 2014, and May, 2018 (1,428 facilities not surveyed in two years in May, 2014, compared to 1,418 in May, 2018).

14. As a result, DHS indicates that the Bureau has prioritized workload by addressing complaints, verification visits with enforcement, provider self-reports, facilities that have not been surveyed in five years, and initial provider applications first. In addition, surveyors provide less onsite technical assistance and instead attempt to educate providers through methods that reach a wider audience.

15. The bill would provide an additional \$886,100 (\$327,800 FED and \$558,300 PR) in 2019-20 and \$1,181,400 (\$437,100 FED and \$744,300 PR) in 2020-21, to fund an additional 12.0 project positions (4.44 FED positions and 7.56 PR positions), beginning in in 2019-20 and ending June 30, 2021, to provide 9.0 additional surveyor positions and 3.0 non-surveyor professional positions within the Bureau.

16. The bill would provide two-year project positions, rather than permanent positions, since the cost of supporting additional staff would be funded from carry over revenue balances, which may not be available in the future, based on the current credential fees paid by these facilities. Additionally, providing project staff would allow the Bureau to address projected workload in the coming biennium and then reassess facility growth trends and workload needs for the next budget.

17. DHS has also made technological changes in an effort to make licensing and reporting requirements less time consuming both for DHS staff and for the facilities. In February, 2017, DHS implemented an optional online license and certification renewal system for assisted living facilities, including online payment of facility fees.

18. The bill, would make facilities use of the online license and certification renewal system mandatory, rather than optional, as is current practice. In addition, the bill would make the reporting requirements consistent for all four types of assisted living facilities by requiring submission of the online reports every 24 months [Alternative B1]. However, certified RCACs would continue to pay their fees on an annual basis, as specified in administrative code.

19. Additionally, DHS requires assisted living facilities to self-report certain events such as death, fire, and changes in ownership or location. Currently, self-reports are submitted to DHS via email from where the data is then entered into the appropriate database. The bill would provide \$500,000 PR on a one-time basis in 2019-20 to fund IT infrastructure improvements as part of the automated licensing project and to enable assisted living providers to enter reports directly online.

20. Allowing assisted living facilities to enter self-reports directly online, would not only save DHS staff time but could also improve data entry accuracy, since this would eliminate the need for a second person to enter the data from the email submitted by the provider. Data accuracy may also be improved in requiring all providers to use the online automated licensing system by, for example, setting up the system to not accept non-existent dates or ensuring that individual numbers sum to reported totals.

21. DHS has a PR appropriation that funds staff and operations for regulation of assisted living facilities. DHS indicates that revenue required to support staff included in the Governor's recommendation could be funded by using the existing fee revenue. Table 5 shows the fees collected for each type of assisted living facility, and the frequency with which the fees are collected. For example, a CBRF would pay an annual facility fee of \$389, plus \$50.25 for each resident.

TABLE 5

Summary of Fees for Assisted Living Facilities

<u>Facility Type</u>	<u>Facility Fee</u>	<u>Unit Fee</u>	<u>Frequency</u>
CBRFs with 5 or more beds	\$389	\$50.25 per resident	Biennial
AFHs with 3 or 4 beds	171	None	Biennial
ADCs	127	None	Biennial
Certified RCACs*	445	\$7.60 per apartment	Annual

*RCACs serving only private pay tenants register with DHS but are assessed no fees for their registration.

22. Since DHS indicates that it currently has the fee revenue necessary to support the IT changes and staffing in the Governor's recommendation, the Committee could approve the Governor's recommendation, as doing so would allow for more timely surveys of assisted living facilities [Alternative A1]. If the Committee chooses this alternative, an additional \$30,000 (\$11,200 FED and \$18,800 PR) should be provided in 2019-20 to account for one-time set up costs of the new positions. This funding was inadvertently omitted from the administration's recommendation.

23. DHS notes that under the Governor's recommendation, DHS would dedicate three of the 12 positions to focus on the backlog, in 2019-20, with the remaining staff working on the normal workload as a result of the growth in assisted living facilities. In 2020-21, all project staff would work on the current workload instead of the backlog.

24. DHS conducted a workload study for the Bureau of Assisted Living, in which they estimated growth in staff workload to be proportional to anticipated growth in the number of assisted living facilities in the state. This study showed that the Bureau would need an additional 9.0 FTE in 2019-20 and an additional 13.0 FTE in 2020-21 compared to current staffing levels.

25. As such, the Committee may wish to modify the Governor's recommendation and provide the Bureau with the positions indicated in the Department's study. Under this alternative the Bureau would receive 9.0 positions (7.0 surveyor positions and 2.0 non-surveyor professional positions) beginning in in 2019-20 and 13.0 positions (10.0 surveyor positions and 3.0 non-surveyor professional positions) in 2020-21. Funding in the bill would be reduced by \$202,800 (-\$75,000 FED and -\$127,800 PR) in 2019-20 and increased by \$103,400 (\$38,300 FED and \$65,100 PR) in 2020-21 [Alternative A2].

26. However, while allowing the Bureau to keep up with anticipated growth in assisted

living facilities, this alternative may limit the Bureau's ability to address the backlog of overdue surveys.

27. Finally, the Committee could authorize 6.0 permanent positions (4.0 surveyor positions and 2.0 non-surveyor professional positions). With the aging population and the continued preference for home and community-based care, the Committee may feel that project positions are inappropriate as it is unlikely that there will be fewer assisted living facilities in the near future. If the Committee provides 6.0 permanent positions, funding in the bill should be reduced by \$420,400 (-\$155,500 FED and -\$264,900 PR) in 2019-20 and 6.0 positions, and reduced by \$580,600 (-\$214,800 FED and -\$365,800 PR) in 2020-21 [Alternative A3].

ALTERNATIVES

A. Bureau of Assisted Living Staff and Information Technology

1. Approve the Governor's recommendation, as reestimated, to provide: (a) \$916,100 (\$339,000 FED and \$577,100 PR) in 2019-20 and \$1,181,400 (\$437,100 FED and \$744,300 PR) in 2020-21, to fund an additional 12.0 project positions (4.44 FED positions and 7.56 PR positions), beginning in in 2019-20 and ending June 30, 2021, and (b) \$500,000 PR in 2019-20 on a one-time basis to fund IT infrastructure improvements.

ALT A1	Change to Base		Change to Bill	
	Funding	Positions	Funding	Positions
FED	\$776,100	4.44	\$11,200	0.00
PR	<u>1,821,400</u>	<u>7.56</u>	<u>18,800</u>	<u>0.00</u>
Total	\$2,597,500	12.00	\$30,000	0.00

2. Modify the Governor's recommendation and provide: (a) \$683,300 (\$252,800 FED and \$430,500 PR) in 2019-20 and \$1,284,800 (\$475,400 FED and \$809,400 PR) in 2020-21, to fund 7.0 FTE surveyor positions and 2.0 non-surveyor professional positions beginning in in 2019-20 and 10.0 FTE surveyor positions and 3.0 non-surveyor professional positions in 2020-21, with all positions being project positions ending on June 30, 2021, and (b) \$500,000 PR in 2019-20 on a one-time basis to fund IT infrastructure improvements.

ALT A2	Change to Base		Change to Bill	
	Funding	Positions	Funding	Positions
FED	\$728,200	4.81	- \$36,700	0.37
PR	<u>1,739,900</u>	<u>8.19</u>	<u>- 62,700</u>	<u>0.63</u>
Total	\$2,468,100	13.00	- \$99,400	1.00

3. Modify the Governor's recommendation and provide: (a) \$465,700 (\$172,300 FED and \$293,400 PR) in 2019-20 and \$600,800 (\$222,300 FED and \$378,500 PR) in 2020-21, to fund an additional 6.0 permanent positions (2.22 FED positions and 3.78 PR positions), beginning in in 2019-

20, and (b) \$500,000 PR in 2019-20 on a one-time basis to fund IT infrastructure improvements.

ALT A3	Change to Base		Change to Bill	
	Funding	Positions	Funding	Positions
FED	\$394,600	2.22	- \$370,300	- 2.22
PR	<u>1,171,900</u>	<u>3.78</u>	<u>- 630,700</u>	<u>- 3.78</u>
Total	\$1,566,500	6.00	- \$1,001,000	- 6.00

4. Take no action.

ALT A4	Change to Base		Change to Bill	
	Funding	Positions	Funding	Positions
FED	\$0	0.00	- \$1,802,600	- 4.44
PR	<u>0</u>	<u>0.00</u>	<u>- 764,900</u>	<u>- 7.56</u>
Total	\$0	0.00	- \$2,567,500	- 12.00

B. Assisted Living Facility Reporting

1. Approve the Governor's recommendation to require all assisted living facilities to complete biennial facility reports using an online system but clarify the administration's intent that certified RCACs continue to pay their fees on the schedule established by DHS in administrative code.

2. Take no action on the requirements that all assisted living facilities complete biennial facility reports using an online system.

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