



2007 DRAFTING REQUEST

Bill

Received: **09/22/2006**

Received By: **dkennedy**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget 6-8593**

By/Representing: **Milioto**

This file may be shown to any legislator: **NO**

Drafter: **dkennedy**

May Contact:

Addl. Drafters:

Subject: **Health - long-term care**

Extra Copies:

Submit via email: **YES**

Requester's email:

Carbon copy (CC:) to: **robin.ryan@legis.wisconsin.gov**

Pre Topic:

DOA:.....Milioto, BB0047 -

Topic:

Long-Term Care Ombudsman Program expansion

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	dkennedy 09/28/2006	kfollett 10/18/2006		_____			S&L
/1	dkennedy 11/10/2006 dkennedy 11/13/2006		rschluet 10/18/2006	_____	mbarman 10/18/2006		S&L
/2	dkennedy 12/27/2006	jdyer 12/28/2006	nnatzke 12/28/2006	_____	cduerst 12/28/2006		S&L

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/3	dkennedy 01/22/2007	jdyer 01/22/2007	pgreensl 01/22/2007	_____	sbasford 01/22/2007		

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<END>

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/2	dkennedy 12/27/2006	jdyer 12/28/2006	nmatzke 12/28/2006	<u>✓</u> _____	cdurst 12/28/2006		

13/22 jud
1/22 ps
ps/NN

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

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/1	dkennedy	12/12/06 jcd	rschlue 10/18/2006		mbarman 10/18/2006		
			nwn 12/28	nwn/sh 12/28			

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forsaac@dhfs.state.wi.us

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1/2	dkennedy	1/1 k-f 10/18					

FE Sent For:

<END>

2007-09 Budget Bill Statutory Language Drafting Request

- Topic: Expansion of Long-Term Care Ombudsmen Program
- Tracking Code: **BB 0047**
- SBO team: Health
- SBO analyst: Steve Milioto
 - Phone: 266-8593
 - Email: Steve.Milioto@Wisconsin.gov
- Agency acronym: Board on Aging and Long-Term Care
- Agency number: 432

Priority - Medium to Low

Note to Drafter: The intent of this draft request is to allow the Board to expand its long-term care ombudsmen program to include (a) Family Care, and (b) Residential Care Apartment Complexes. The director of the Board on Aging indicates that existing law would not be sufficient to allow him to engage in these activities.

9/27/06

Q to Steve Milioto:

① Should residents' rights for NH's + CBRF's be expanded to include RCAC's? 9/28 Yes

② Puzzled about Fam. Care "authority" assertion

See D-Note. ✓

APPENDIX B

Extension of Long-Term Care Ombudsman Program Services to Family Care Clients

Decision Item 4003

The Board on Aging and Long Term Care (BOALTC) seeks authority and funding to hire one (2) additional full-time professional Ombudsmen to permit the Long Term Care Ombudsman Program to begin providing information and advocacy services to recipients (over the age of 60) of the state's Family Care benefit. The Legislature originally provided for an external advocacy system to be an integral part of the Family Care program. After this system was discarded, beneficiaries began encountering difficulty in making their concerns and problems understood by program officials leading to a certain amount of dissatisfaction with Family Care. The cost of this proposal for the 2007-2009 budget period is \$ 184,600.

BACKGROUND

The Long-Term Care Ombudsman Program of BOALTC is unique among state programs. It is a provider of direct advocacy and public information services to individual citizens of Wisconsin. BOALTC is the only state agency directly addressing issues relating to long-term care services provided to residents of nursing homes, community-based residential facilities, adult family homes, and to participants in the Community Options Program (COP).

At the time when Family Care was first introduced as a pilot project, it was the intent of the Legislature to include an external advocacy program, operated by a non-governmental organization under a contract administered by the Board on Aging and Long Term Care. The legislators realized that community-based provision of long term care, where feasible, would become the norm and that clients of this new design for long term care finance would need advocacy services similar to those provided by the Board's Long Term Care Ombudsman Program no less than do the current residents of more institutional settings.

Family Care has proven a valuable method of providing long term care and is to be expanded statewide. The intake staff of the Long Term Care Ombudsman Program report receiving inquiries from current Family Care beneficiaries seeking information and advocacy. Numerous complaints have come to our agency regarding poor quality of care and quality of life by providers under contract to Family Care. Due to the lack of authority to provide service to Family Care recipients either directly or through a contract with a private entity unless the recipient resides in a facility served by our program, we are often unable to serve these concerned individuals or to address their needs. With the current staff levels of Ombudsmen, it would be impossible to respond to all of these inquiries with anything more than sympathy and a general referral to some other possible source of assistance even if BOALTC did have the authority to do so.

PROGRAM ACTIVITY IN WISCONSIN

The Long Term Care Ombudsman Program has continued to be a substantial resource for residents of nursing homes, CBRFs, and clients who benefit from services paid for by the Community Options Program. These residents and their families rely on the expertise and commitment of the professional Ombudsmen to inform, educate, empower and advocate for their interests. The Long Term Care Ombudsman Program has become recognized across the state as an example of a state government agency that works for the individual citizen. Even providers regularly inquire of the Ombudsman Program for information and training assistance.

Family Care is a complex and broadly defined benefit that will, potentially, affect an enormous segment of Wisconsin's population. Of the 9,725 persons currently enrolled in the program's Care Management Organizations, 7,448 are elderly, the target population of the Board on Aging and Long Term Care. The likelihood that there will be difficulties and disagreements between citizens seeking to access this program and the bureaucrats and administrators who are charged with providing that access would be a reasonable assumption. As evidenced by the calls being directed to the Ombudsman Intake line, there is a clear and present need for an advocacy resource apart from the internal grievance process currently built into the Family Care rules. The Board on Aging and Long Term Care's Long Term Care Ombudsman Program is an existing program, experienced in resolving problems of the sort that can be anticipated to arise in the context of Family Care. Relying on the Long Term Care Ombudsman Program, with appropriately increased resources, to meet this need would be an imminently logical approach.

REQUEST

Implementation of Family Care statewide is underway. Citizens of Wisconsin who are or will be seeking to avail themselves of the Family Care benefit are becoming increasingly aware of their individual rights and are more frequently seeking help to secure and protect those rights.

The Board on Aging and Long Term Care recognizes that the Governor has directed that this budget be constructed with an emphasis on restricted growth of program expenditures. We believe that it is of critical importance to protect the rights of Family Care beneficiaries. Difficulties associated with anticipated increased utilization of Family Care would be eased were there to be an external advocacy component to the program. While the Long Term Care Ombudsman Program is well-suited to adapt to the challenge of advocating for Family Care clients, this new responsibility would strain currently available professional Ombudsman resources well past the breaking point. The Board on Aging and Long Term Care believes that an effective, reasonable means of achieving the goals and mandate of the Family Care Program to assure resolution of client problems is to authorize the extension of Long Term Care Ombudsman Program services into the Family Care arena. With this in mind, the Board on Aging and Long Term Care requests funds to hire two additional full-time Long Term Care Ombudsmen during FY 2008. Future increases in the number of Family Care beneficiaries would warrant additional increases in the Ombudsman staff at the rate of 1 Ombudsman for every 3,500 new Family Care clients. The addition of the requested positions will allow the Board to expand the Long Term Care Ombudsman Program to allow the agency to serve residents of this new and growing long term care alternative and to fully meet the Board's statutory mandate to provide advocacy and information for the older citizens of Wisconsin with a minimum of drain on the state's budget.

APPENDIX C

Extension of Long-Term Care Ombudsman Program Services to Residential Care Apartment Complexes

Decision Item 4004

The Board on Aging and Long Term Care (BOALTC) seeks authority and funding to hire one (1) additional full-time professional Ombudsman to permit extension of the Long Term Care Ombudsman Program into Residential Care Apartment Complexes (RCAC) statewide. The Legislature has consistently indicated conceptual support for this proposal only to encounter funding constraints. The cost of this proposal for the 2007-2009 budget period is \$ 92,200 .

BACKGROUND

The Long-Term Care Ombudsman Program of BOALTC is unique among state programs. It is a provider of direct advocacy and public information services to individual citizens of Wisconsin. BOALTC is the only state agency directly addressing issues relating to long-term care services provided to residents of nursing homes, community-based residential facilities, adult family homes, and to participants in the Community Options Program (COP).

At the time when RCACs were first authorized as a licensed form of assisted living facility, it was the intent of the authors of the legislation to include RCACs within the definition of "long-term care facility" for purposes of being served by the Long Term Care Ombudsman Program. The legislators realized that community-based provision of long term care, where feasible, would become the norm and that residents of the new forms of assisted living would need the advocacy services provided by the Ombudsman no less than do the residents of the more institutional settings.

RCACs have grown in number and in size since the first facilities appeared in 1997. The intake staff of the Long Term Care Ombudsman Program report numerous inquiries from residents and families of residents in these complexes seeking information and advocacy. Numerous complaints have come to our agency regarding poor quality of care and quality of life at these facilities. Due to the lack of authority to provide service in RCACs, we are unable to serve these concerned residents or to address their needs. Currently the Bureau of Quality Assurance investigates these complaints. As an agency, we believe that not having this authority is an injustice to the residents who reside in these facilities. As currently authorized in statute and with the current staff levels of Ombudsmen, the agency is unable to respond to these inquiries with anything more than sympathy and a general referral to some other possible source of assistance.

PROGRAM ACTIVITY IN WISCONSIN

The Long Term Care Ombudsman Program has continued to be a substantial resource for residents of nursing homes, CBRFs, and clients who benefit from services paid for by the Community Options Program. These residents and their families rely on the expertise and commitment of the professional Ombudsmen to inform, educate, empower and advocate for their interests. The Long Term Care Ombudsman Program has become recognized across the state as an example of a state government agency that works for the individual citizen.

Federal changes to the nursing home regulatory process and economic influences affecting the nursing home industry have caused notable expansion of the Ombudsman role. Most notably, the new rules allow for Ombudsman participation in the standard surveys conducted by the DHFS regulators, intensive monitoring of care and treatment during periods after a determination of facility noncompliance or substandard performance, and involvement in situations arising from relocation of residents caused by the closing or downsizing of facilities. The stresses of increased workload caused by these circumstances have forced BOALTC's professional Ombudsmen

to redirect their activity toward more immediately critical concerns and we have found it difficult at times to adequately pursue the mandated advocacy and "watchdog" roles of the program.

The number of RCACs operating in Wisconsin has increased steadily since the late 1990's. From complement of 99 total facilities in 2000, the industry grew by a factor of almost 100% to 191 as of the most recent report by BQA. Currently, there are a total of 8,027 residents of RCACs in Wisconsin. Assuming continued growth as a result of the shifting patterns of long term care practice, the RCAC industry can be expected to accommodate even more residents in the coming years. The residents of these facilities will be no less vulnerable and will need advocacy and information services to the same degree as do today's residents.

It is apparent that, were authorization for Ombudsman activities to be extended to RCACs without a concurrent increase in program staffing, this agency would be unable to meet the increased demand for services.

REQUEST

Implementation of changes in long term care delivery, coupled with shifts in institutional and community-based long-term care utilization patterns will continue to have a major impact on the demand for services provided by the Long Term Care Ombudsman Program. Elder individuals and their families, including those currently residing in RCACs where Ombudsman services are unavailable, are becoming increasingly aware of their individual rights and are more frequently seeking help from ombudsmen to secure and protect those rights.

The Board on Aging and Long Term Care recognizes that the Governor has directed that this budget be constructed with an emphasis on restricted growth of program expenditures. We believe that it is of critical importance to protect the rights of older citizens in Residential Care Apartment Complexes. Anticipated increased utilization of RCACs as a primary source of assisted living resulting from industry growth and relocation of residents from more institutional settings will strain currently available professional Ombudsman resources. The Board on Aging and Long Term Care finds that an effective, reasonable means of achieving the goals and mandate of the Ombudsman Program is to authorize the extension of Long Term Care Ombudsman Program services into the RCAC arena. With this in mind, the Board on Aging and Long Term Care requests funds to hire one additional full-time Long Term Care Ombudsman during FY 2008. The Board on Aging and Long Term Care proposes that funding for this proposal derive from an annual assessment on each occupied apartment in a RCAC of \$12.00. Using the current occupancy data, this would initially generate \$96,324.00. The addition of the requested position will allow the Board to expand the Long Term Care Ombudsman Program to allow the agency to serve residents of this new and growing assisted living alternative and to fully meet the Board's statutory mandate to provide advocacy and information for the older citizens of Wisconsin with a minimum of drain on the state's budget.

Date (time)
needed _____

LRB- 0358 / 1

DOA BUDGET DRAFT

D-NOTE

DAK : kjf:

Use the appropriate components and routines developed for bills.

>>FOR BUDGET — NOT READY FOR INTRODUCTION<<

Do Not Gen

AN ACT . . . [DO NOT generate catalog]; relating to: the budget.

.....
.....

Analysis by the Legislative Reference Bureau

If titles are needed in the analysis, in the component bar:

For the main heading, execute: create → anal: → title: → head

For the subheading, execute: create → anal: → title: → sub

For the sub-subheading, execute: create → anal: → title: → sub-sub

For the analysis text, in the component bar:

For the text paragraph, execute: create → anal: → text

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

SECTION #.

PWF

2005 BILL

of the Family Care Program
or to a client

1 AN ACT ~~to renumber and amend 50.09 (1); to amend 50.09 (title), 50.09 (2),~~
 2 ~~(4) and (5) and 50.09 (6) (a), (b) and (d); and to create 16.009 (1) (em) 7., 20.432~~
 3 ~~(1) (gt), 50.034 (3) (e), 50.034 (9) and 50.09 (1g) of the statutes;~~ relating to:
 4 authorizing access by the long-term care ombudsman or his or her
 5 representative to a client or resident in a residential care apartment complex,
 6 imposing an annual assessment on occupied apartments of residential care
 7 apartment complexes, expanding rights of residents of facilities to include
 8 residents of residential care apartment complexes, requiring posting of a
 9 notice, requiring the exercise of rule-making authority, and making an
 10 appropriation.

Analysis by the Legislative Reference Bureau

Under current law, under the Long-Term Care Ombudsman Program, the long-term care ombudsman or his or her designated representative may enter a long-term care facility at any time, without notice, and have access to clients and residents of the facility. "Long-term care facility" is defined as a nursing home, a community-based residential facility, a place in which care is provided under a

HEALTH AND HUMAN SERVICES
HEALTH

BILL

continuing care contract, a swing bed in an acute care or extended care facility, or an adult family home. The ombudsman or representative may communicate in private with a client or resident, review records with consent of the client or resident or his or her legal counsel, and have access to records of the long-term care facility or of the ~~the Department of Health and Family Services (DHFS)~~ concerning regulation of the long-term care facility.

Also under current law, residential care apartment complexes are certified or registered and otherwise regulated by DHFS. A "residential care apartment complex" is defined as a place where five or more adults reside that consists of independent apartments, each of which has an individual lockable entrance and exit, a kitchen with a stove, and individual bathroom, sleeping, and living areas, and that provides to a resident not more than 28 hours per week of supportive, personal, and nursing services.

~~Lastly,~~ current law specifies rights of residents of nursing homes and community-based residential facilities, including the rights to have private and unrestricted communication with others, to present grievances without justifiable fear of reprisal, and to be fully informed of all services, charges for services, and changes in service.

INSERT
A 2A

This bill expands the definition of a long-term care facility, for purposes of activities by the long-term care ombudsman or his or her designated representative, to include residential care apartment complexes.

The bill imposes an assessment on each residential care apartment complex of \$12 per year per occupied apartment, which, beginning on July 1, ~~2006~~²⁰⁰⁸, the complex must pay annually to DHFS. The assessment is based on occupied apartments for the complex for the preceding June. DHFS must enforce and collect the assessment, which must be credited to an appropriation of program revenues for expenditure by ~~the Board on Aging and Long-Term Care~~ for activities under the Long-Term Care Ombudsman Program in residential care apartment complexes.

The bill also includes residents of residential care apartment complexes as persons entitled to the rights that are specified under current law for residents of nursing homes and community-based residential facilities.

~~Finally,~~ the bill requires a residential care apartment complex to post in a conspicuous location a notice of the name, address, and telephone number of the Long-Term Care Ombudsman Program.

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

INSERT
A 2B

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

BOALTC
11/13/05

- 1 SECTION 1. 16.009 (1) (em) [✓]7. of the statutes is created to read:
- 2 16.009 (1) (em) 7. A residential care apartment complex, as defined in s. 50.01
- 3 (1d).

BILL

1 **SECTION 2.** 20.005 (3) (schedule) of the statutes: at the appropriate place, insert
2 the following amounts for the purposes indicated:

				2005-06	2006-07
3					
4	20.432	Board on aging and long-term care			
5	(1)	IDENTIFICATION OF THE NEEDS OF THE AGED AND			
6		DISABLED			
7	(gt)	Activities in residential care			
8		apartment complexes	PR	A	-0- 48,900

9 → **INSRT 3-8** **SECTION 3.** 20.432 (1) (gt) of the statutes is created to read:

10 20.432 (1) (gt) *Activities in residential care apartment complexes.* The amounts
11 in the schedule for Long-Term Care Ombudsman Program activities in residential
12 care apartment complexes. All moneys received under s. 50.034 (9) shall be credited
13 to this appropriation account.

INSERT 3-13

14 **SECTION 4.** 50.034 (3) (e) of the statutes is created to read:

15 50.034 (3) (e) Post in a conspicuous location in the residential care apartment
16 complex a notice, provided by the board on aging and long-term care, of the name,
17 address, and telephone number of the Long-Term Care Ombudsman Program under
18 s. 16.009 (2) (b).

19 **SECTION 5.** 50.034 (9) of the statutes is created to read:

20 50.034 (9) **ASSESSMENT ON OCCUPIED APARTMENTS.** (a) In this subsection,
21 "complex" means a certified or registered residential care apartment complex.

22 (b) For the privilege of doing business in this state, there is imposed on all
23 occupied apartments of a complex an annual assessment that shall be credited to the
24 appropriation account under s. 20.432 (1) (gt) and that is \$12 per apartment.

BILL**SECTION 5**

1 (c) By July 1 annually, a complex shall submit to the department the amount
2 due under par. (b) for each occupied apartment of the complex for the preceding June.
3 The department shall verify the number of apartments of a complex and, if necessary,
4 make adjustments to the payment, notify the complex of changes in the payment
5 owing, and send the complex an invoice for the additional amount due or send the
6 complex a refund.

7 (d) Sections 77.59 (1) to (5), (6) (intro.), (a), and (c), and (7) to (10), 77.60 (1) to
8 (7), (9), and (10), 77.61 (9) and (12) to (14), and 77.62, as they apply to the taxes under
9 subch. III of ch. 77, apply to the assessment under this subsection.

10 (e) 1. The department shall enforce and collect the assessment under this
11 subsection and shall develop and distribute forms necessary for levying and
12 collection.

13 2. The department shall promulgate rules that establish procedures and
14 requirements for levying the assessment under this subsection.

15 (f) 1. An affected complex may contest an action by the department under this
16 subsection by submitting a written request for a hearing to the department within
17 30 days after the date of the department's action.

18 2. An order or determination made by the department under a hearing as
19 specified in subd. 1. is subject to judicial review as prescribed under ch. 227.

20 **SECTION 6.** 50.09 (title) of the statutes is amended to read:

21 **50.09 (title) Rights of residents in certain facilities and complexes.**

22 **SECTION 7.** 50.09 (1) of the statutes is renumbered 50.09 (1m), and 50.09 (1m)
23 (intro.), (b), (c), (e), (f) 1. and 3., (g), (j) (intro.) and 2. (intro.) and a. and (L), as
24 renumbered, are amended to read:

BILL

1 50.09 (1m) ~~RESIDENTS' RIGHTS.~~ (intro.) Every resident in a ~~nursing home or~~
2 ~~community-based residential facility or a complex~~ shall, except as provided in sub.
3 (5), have the right to:

4 (b) Present grievances on the resident's own behalf or others to the facility's
5 staff or administrator of the facility or complex, to public officials or to any other
6 person without justifiable fear of reprisal, and to join with other residents or
7 individuals within or outside of the facility or complex to work for improvements in
8 resident care.

9 (c) Manage the resident's own financial affairs, including any personal
10 allowances under federal or state programs, unless the resident delegates, in
11 writing, ~~such~~ this responsibility to the facility or complex and the facility or complex
12 accepts the responsibility, or unless the resident delegates to someone else of the
13 resident's choosing and that person accepts the responsibility. The resident shall
14 receive, upon written request by the resident or guardian, a written monthly account
15 of any financial transactions made by the facility or complex under such a delegation
16 of responsibility.

17 (e) Be treated with courtesy, respect and full recognition of the resident's
18 dignity and individuality, by all employees of the facility or complex and licensed,
19 certified, or registered providers of health care and pharmacists with whom the
20 resident comes in contact.

21 (f) 1. Privacy for visits by spouse. If both spouses are residents of the same
22 facility or complex, they shall be permitted to share a room or apartment unless
23 medically contraindicated as documented by the resident's physician in the
24 resident's medical record.

INSERT 5-24

BILL**SECTION 7**

'Records confidentiality.'

1 3. Confidentiality of health and personal records, and the right to approve or
2 refuse their release to any individual outside the facility or complex, except in the
3 case of the resident's transfer to another facility or complex or as required by law or
4 3rd-party payment contracts and except as provided in s. 146.82 (2) and (3).

5 (g) Not to be required to perform services for the facility or complex that are not
6 included for therapeutic purposes in the resident's plan of care.

7 (j) (intro.) Be transferred or discharged, and be given reasonable advance notice
8 of any planned transfer or discharge, and an explanation of the need for and
9 alternatives to the transfer or discharge. The facility or complex to which the
10 resident is to be transferred must have accepted the resident for transfer, except in
11 a medical emergency or if the transfer or discharge is for nonpayment of charges
12 following a reasonable opportunity to pay a deficiency. No person may be
13 involuntarily discharged for nonpayment under this paragraph if the person meets
14 all of the following conditions:

15 2. (intro.) The funding of his or her care in the ~~nursing home or~~
16 ~~community-based residential~~ facility under s. 49.45 (6m) is reduced or terminated
17 because of one of the following:

18 a. He or she requires a level or type of care ~~which~~ that is not provided by the
19 ~~nursing home or community-based residential~~ facility.

20 (L) Receive adequate and appropriate care within the capacity of the facility
21 or complex.

22 **SECTION 8.** 50.09 (1g) of the statutes is created to read:

23 50.09 (1g) In this section, "complex" means a residential care apartment
24 complex.

25 **SECTION 9.** 50.09 (2), (4) and (5) of the statutes are amended to read:

BILL

1 50.09 (2) The department, in establishing standards for ~~nursing homes and~~
2 ~~community-based residential facilities~~ and complexes may establish, by rule, rights
3 in addition to those specified in sub. ~~(1)~~ [✓] (1m) for residents in ~~such~~ the facilities or
4 complexes.

5 (4) Each facility or complex shall make available a copy of the rights and
6 responsibilities established under this section and the ~~facility's~~ rules of the facility
7 or complex to each resident and each resident's legal representative, if any, at or prior
8 to the time of admission to the facility or complex, to each person who is a resident
9 of the facility or complex, and to each member of the ~~facility's~~ staff of the facility or
10 complex. The rights, responsibilities, and rules shall be posted in a prominent place
11 in each facility or complex. Each facility or complex shall prepare a written plan and
12 provide appropriate staff training to implement each resident's rights established
13 under this section.

14 (5) Rights established under this section shall not, except as determined by the
15 department of corrections, be applicable to residents in ~~such~~ facilities or complexes,
16 if the resident is in the legal custody of the department of corrections and is a
17 correctional client in ~~such~~ a facility or complex.

18 **SECTION 10.** 50.09 (6) (a), (b) and (d) of the statutes are amended to read:

19 50.09 (6) (a) Each facility or complex shall establish a system of reviewing
20 complaints and allegations of violations of residents' rights established under this
21 section. The facility or complex shall designate a specific individual who, for the
22 purposes of effectuating this section, shall report to the administrator.

23 (b) Allegations of violations of such rights by persons licensed, certified, or
24 registered under chs. 441, 446 to 450, 455, and 456 shall be promptly reported by the
25 facility or complex to the appropriate licensing, examining, or affiliated

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1 credentialing board and to the person against whom the allegation has been made.
 2 Any employee of the facility or complex and any person licensed, certified, or
 3 registered under chs. 441, 446 to 450, 455, and 456 may also report such allegations
 4 to the board. ~~Such~~ The board may make further investigation and take such
 5 disciplinary action, within the board's statutory authority, as the case requires.

6 (d) The facility or complex shall attach a statement, which summarizes
 7 complaints or allegations of violations of rights established under this section, to the
 8 report required under s. 50.03 (4) (c) 1. or 2. The statement shall contain the date
 9 of the complaint or allegation, the name of the persons involved, the disposition of
 10 the matter, and the date of disposition. The department shall consider the statement
 11 in reviewing the report.

12 **SECTION 11. Nonstatutory provisions; board on aging and long-term**
 13 **care.**

14 (1) ~~RESIDENTIAL CARE APARTMENT COMPLEX ACTIVITIES.~~ The authorized FTE
 15 positions for the board on aging and long-term care are increased by 1.0 PR position
 16 on July 1, 2006, to be funded from the appropriation account under section 20.432
 17 (1) (gt) of the statutes, as created by this act, for the purpose of performing long-term
 18 care ombudsman activities in residential care apartment complexes.

19 ~~SECTION 12. Nonstatutory provisions; health and family services.~~

20 (1) ASSESSMENTS ON RESIDENTIAL CARE APARTMENT COMPLEXES; RULES.

21 (a) The department of health and family services shall submit in proposed form
 22 the rules required under section 50.034 (9) (e) 2. of the statutes, as created by this
 23 act, to the legislative council staff under section 227.15 (1) of the statutes no later
 24 than the first day of the 4th month beginning after the effective date of this
 25 paragraph.

INSERT 8-19

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1 (b) Using the procedure under section 227.24[✓] of the statutes, the department
 2 of health and family services may promulgate rules required under section 50.034[✓]
 3 (9) (e) 2. of the statutes, as created by this act, for the period before the effective date
 4 of the rules submitted under paragraph (a), but not to exceed the period authorized
 5 under section 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24
 6 (1) (a), (2) (b), and (3) of the statutes, the department is not required to provide
 7 evidence that promulgating a rule under this paragraph as an emergency rule is
 8 necessary for the preservation of the public peace, health, safety, or welfare and is
 9 not required to provide a finding of emergency for a rule promulgated under this
 10 paragraph.

~~SECTION 13. Initial applicability.~~

INSERT 9-11

12 (1) ASSESSMENTS ON RESIDENTIAL CARE APARTMENT COMPLEXES. The treatment of
 13 section 50.034 (9) of the statutes first applies to an assessment due from a residential
 14 care apartment complex for June 2006²⁰⁰⁸

~~SECTION 14. Effective date.~~

INSERT 9-15

16 (1) RESIDENTIAL CARE APARTMENT COMPLEXES. The treatment of sections 16.009[✓]
 17 (1) (em) 7., 20.432 (1) (gt), 50.034 (3) (e) and (9), 50.09 (title), 50.09 (1), (1g), (2), (4),
 18 (5), and (6) (a), (b), and (d) of the statutes takes effect on June 1, 2006²⁰⁰⁸.

(END)

D-NOTE

INSERT A2A

X
Q
Lastly, current law authorizes the Board on Aging and Long-Term Care (BOALTC) to contract to provide advocacy services to potential or actual recipients of the Family Care Program, or their families or guardians.

INSERT A2B

Finally, the bill authorizes BOALTC to employ staff within the classified service to provide advocacy services to Family Care Program recipients or potential recipients, their families, and guardians.

INSERT 3-8

1 **SECTION 1.** 16.009 (2) (p) (intro.) of the statutes is amended to read:

2 16.009 (2) (p) (intro.) ~~Contract~~ Employ staff within the classified service or
3 contract with one or more organizations to provide advocacy services to potential or
4 actual recipients of the family care benefit, as defined in s. 46.2805 (4), or their
5 families or guardians. The board and contract organizations under this paragraph
6 shall assist these persons in protecting their rights under all applicable federal
7 statutes and regulations and state statutes and rules. An organization with which
8 the board contracts for these services may not be a provider, nor an affiliate of a
9 provider, of long-term care services, a resource center under s. 46.283 or a care
10 management organization under s. 46.284. For potential or actual recipients of the
11 family care benefit, advocacy services required under this paragraph shall include
12 all of the following:

History: 1981 c. 20; 1983 a. 524; 1985 a. 29; 1987 a. 27; 1989 a. 31, 294; 1991 a. 39, 232; 1993 a. 16, 205; 1995 a. 27 s. 9126 (19); 1997 a. 131; 1999 a. 9, 82, 86, 186; 2003 a. 33.

INSERT 3-13

****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

INSERT 5-24

13 (f) 1. 'Privacy for visits by spouse.' If both spouses are residents of the same
14 facility or complex, they shall be permitted to share a room or apartment unless

1 medically contraindicated as documented by the resident's physician or advanced
2 practice nurse prescriber in the resident's medical record.

History: 1975 c. 119, 199; 1977 c. 170 s. 33; Stats. 1977 s. 50.09; 1979 c. 175, 221; 1987 a. 27; 1989 a. 31; 1991 a. 39; 1997 a. 27, 114, 175; 2005 a. 187, 387.

✓ **INSERT 8-19** ✓

3 **SECTION 9121. Nonstatutory provisions; Health and Family Services.**

✓ **INSERT 9-11** ✓

4 **SECTION 9321. Initial applicability; Health and Family Services.**

✓ **INSERT 9-15**

5 **SECTION 9421. Effective dates; Health and Family Services.**

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0358/?dn

OAK:tgf

Date

To Steve Milioto:

I am puzzled by the assertion, in the material accompanying this request, that the Long-Term Care Ombudsman Program lacks "authority to provide service to Family Care recipients either directly or through a contract with a private entity unless the recipient resides in a facility served by our program." I see no language under s. 16.009 (2) (p), stats., which concerns provision of advocacy services to potential or actual recipients of the Family Care Program, that would limit provision of those advocacy services to Family Care recipients who reside in a facility served by the ombudsman program. (Section 16.009 (2) (p), stats., was created under 1999 Wisconsin Act 9, effective October 29, 1999, at the same time the Family Care Program was created.) In addition, s. 16.009 (2) (p), stats., sets forth specific duties under s. 16.009 (2) (p), but, by use of the word "include" does not limit those duties. Therefore, it seems to me that other duties under the program as specified in s. 16.009 (2) (b) 1. and 2., stats., could be inferred to apply as well. (I recognize that these duties may not be able to be carried out if the ombudsman program lacks the funds to have people employed to provide them; this Drafter's Note is, rather, concerned with existing statutory authority or duty.) I have, in this draft, amended s. 16.009 (p) (intro.) to permit provision of services directly by Board staff, rather than solely by contract.

Please check the initial applicability and effective date provisions; are they what you want?

Debora A. Kennedy
Managing Attorney
Phone: (608) 266-0137
E-mail: debora.kennedy@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0358/1dn
DAK:kjf:rs

October 18, 2006

To Steve Milioto:

I am puzzled by the assertion, in the material accompanying this request, that the Long-Term Care Ombudsman Program lacks "authority to provide service to Family Care recipients either directly or through a contract with a private entity unless the recipient resides in a facility served by our program." I see no language under s. 16.009 (2) (p), stats., which concerns provision of advocacy services to potential or actual recipients of the Family Care Program, that would limit provision of those advocacy services to Family Care recipients who reside in a facility served by the ombudsman program. (Section 16.009 (2) (p), stats., was created under 1999 Wisconsin Act 9, effective October 29, 1999, at the same time the Family Care Program was created.) In addition, s. 16.009 (2) (p), stats., sets forth specific duties under s. 16.009 (2) (p), but, by use of the word "include" does not limit those duties. Therefore, it seems to me that other duties under the program as specified in s. 16.009 (2) (b) 1. and 2., stats., could be inferred to apply as well. (I recognize that these duties may not be able to be carried out if the ombudsman program lacks the funds to have people employed to provide them; this Drafter's Note is, rather, concerned with existing statutory authority or duty.) I have, in this draft, amended s. 16.009 (p) (intro.) to permit provision of services directly by Board staff, rather than solely by contract.

Please check the initial applicability and effective date provisions; are they what you want?

Debora A. Kennedy
Managing Attorney
Phone: (608) 266-0137
E-mail: debora.kennedy@legis.wisconsin.gov

Kennedy, Debora

From: Milioto, Steve - DOA
Sent: Tuesday, December 26, 2006 9:33 AM
To: Kennedy, Debora
Subject: FW: Draft 358/1

Hi Debora --

One more thing: This draft should not be shared with George Potaracke at this point. Best, Steve

From: Milioto, Steve - DOA
Sent: Tuesday, December 26, 2006 9:20 AM
To: Kennedy, Debora - LEGIS
Subject: Draft 358/1

Hi Debora --

I would like to make changes to draft 358/1.

We will not be giving the Board on Aging an additional position to advocate for residents of residential care apartment complexes (RCACs) so all the language pertaining to the fee should be stricken. We still want the board to have the ability to advocate for RCAC residents so that language should stay in the draft.

Also, am I correct in my reading of the first sentence contained in Section 2 that this language would give the board the ability to advocate for all Family Care recipients - elderly and disabled?

Thanks! Steve

Kennedy, Debora

To: Milioto, Steve - DOA

Subject: RE: Draft 358/1

Yes, I believe your reading is correct; this was the subject of my Drafter's Note. The language about "advocacy services to potential or actual recipients of the family care benefit" does not seem to be limited by any other language. As I noted in my Drafter's Note, I have been puzzled by the BOALTC assertion to the contrary.

From: Milioto, Steve - DOA

Sent: Tuesday, December 26, 2006 9:20 AM

To: Kennedy, Debora

Subject: Draft 358/1

Hi Debora --

I would like to make changes to draft 358/1.

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Also, am I correct in my reading of the first sentence contained in Section 2 that this language would give the board the ability to advocate for all Family Care recipients - elderly and disabled?

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