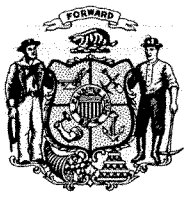


(B)



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-0358/1 2

DAK:kjf:rs

D-NOTE

L + jld

DOA:.....Milioto, BB0047 - Long-Term Care Ombudsman Program expansion

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

don't gen

1 AN ACT ...; relating to: authorizing access by the long-term care ombudsman or
 2 his or her representative to a client of the Family Care Program or to a client
 3 or resident in a residential care apartment complex, imposing an annual
 4 assessment on occupied apartments of residential care apartment complexes,
 5 expanding rights of residents of facilities to include residents of residential care
 6 apartment complexes, ^{and} requiring posting of a notice, ~~requiring the exercise of~~
 7 ~~rule-making authority and making an appropriation.~~

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

HEALTH

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

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 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.

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.

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.

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, 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 BOALTC 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.

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.

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.

For further information see the *state and local* 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:

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).

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

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

16 **SECTION 3.** 20.432 (1) (gt) of the statutes is created to read:

17 20.432 (1) (gt) *Activities in residential care apartment complexes.* The amounts
18 in the schedule for Long-Term Care Ombudsman Program activities in residential
19 care apartment complexes. All moneys received under s. 50.034 (9) shall be credited
20 to this appropriation account.

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

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

22 50.034 (3) (e) Post in a conspicuous location in the residential care apartment
23 complex a notice, provided by the board on aging and long-term care, of the name,

1 address, and telephone number of the Long-Term Care Ombudsman Program under
2 s. 16.009 (2) (b).

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

4 50.034 (9) ASSESSMENT ON OCCUPIED APARTMENTS. (a) In this subsection,
5 “complex” means a certified or registered residential care apartment complex.

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

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

15 (d) Sections 77.59 (1) to (5), (6) (intro.), (a), and (c), and (7) to (10), 77.60 (1) to
16 (7), (9), and (10), 77.61 (9) and (12) to (14), and 77.62, as they apply to the taxes under
17 subch. III of ch. 77, apply to the assessment under this subsection.

18 (e) 1. The department shall enforce and collect the assessment under this
19 subsection and shall develop and distribute forms necessary for levying and
20 collection.

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

23 (f) 1. An affected complex may contest an action by the department under this
24 subsection by submitting a written request for a hearing to the department within
25 30 days after the date of the department’s action.

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

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

4 **50.09** (title) **Rights of residents in certain facilities and complexes.**

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

8 **50.09 (1m) RESIDENTS' RIGHTS.** (intro.) Every resident in a nursing home or
9 community-based residential facility or a complex shall, except as provided in sub.
10 (5), have the right to:

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

16 (c) Manage the resident's own financial affairs, including any personal
17 allowances under federal or state programs, unless the resident delegates, in
18 writing, such this responsibility to the facility or complex and the facility or complex
19 accepts the responsibility, or unless the resident delegates to someone else of the
20 resident's choosing and that person accepts the responsibility. The resident shall
21 receive, upon written request by the resident or guardian, a written monthly account
22 of any financial transactions made by the facility or complex under such a delegation
23 of responsibility.

24 (e) Be treated with courtesy, respect and full recognition of the resident's
25 dignity and individuality, by all employees of the facility or complex and licensed,

1 certified, or registered providers of health care and pharmacists with whom the
2 resident comes in contact.

3 (f) 1. 'Privacy for visits by spouse.' If both spouses are residents of the same
4 facility or complex, they shall be permitted to share a room or apartment unless
5 medically contraindicated as documented by the resident's physician or advanced
6 practice nurse prescriber in the resident's medical record.

7 3. 'Records confidentiality.' Confidentiality of health and personal records, and
8 the right to approve or refuse their release to any individual outside the facility or
9 complex, except in the case of the resident's transfer to another facility or complex
10 or as required by law or 3rd-party payment contracts and except as provided in s.
11 146.82 (2) and (3).

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

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

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

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

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

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

6 50.09 (1g) In this section, "complex" means a residential care apartment
7 complex.

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

9 50.09 (2) The department, in establishing standards for ~~nursing homes and~~
10 ~~community-based residential facilities and complexes~~ may establish, by rule, rights
11 in addition to those specified in sub. (1) (1m) for residents in such the facilities or
12 complexes.

13 (4) Each facility or complex shall make available a copy of the rights and
14 responsibilities established under this section and the ~~facility's rules~~ of the facility
15 or complex to each resident and each resident's legal representative, if any, at or prior
16 to the time of admission to the facility or complex, to each person who is a resident
17 of the facility or complex, and to each member of the ~~facility's staff~~ of the facility or
18 complex. The rights, responsibilities, and rules shall be posted in a prominent place
19 in each facility or complex. Each facility or complex shall prepare a written plan and
20 provide appropriate staff training to implement each resident's rights established
21 under this section.

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

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

2 50.09 (6) (a) Each facility or complex shall establish a system of reviewing
3 complaints and allegations of violations of residents' rights established under this
4 section. The facility or complex shall designate a specific individual who, for the
5 purposes of effectuating this section, shall report to the administrator.

6 (b) Allegations of violations of such rights by persons licensed, certified, or
7 registered under chs. 441, 446 to 450, 455, and 456 shall be promptly reported by the
8 facility or complex to the appropriate licensing, examining, or affiliated
9 credentialing board and to the person against whom the allegation has been made.
10 Any employee of the facility or complex and any person licensed, certified, or
11 registered under chs. 441, 446 to 450, 455, and 456 may also report such allegations
12 to the board. ~~Such~~ The board may make further investigation and take such
13 disciplinary action, within the board's statutory authority, as the case requires.

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

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

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

22 (a) The department of health and family services shall submit in proposed form
23 the rules required under section 50.034 (9) (e) 2. of the statutes, as created by this
24 act, to the legislative council staff under section 227.15 (1) of the statutes no later

1 than the first day of the 4th month beginning after the effective date of this
2 paragraph.

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

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

14 (1) ASSESSMENTS ON RESIDENTIAL CARE APARTMENT COMPLEXES. The treatment of
15 section 50.034 (9) of the statutes first applies to an assessment due from a residential
16 care apartment complex for June 2008.

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

18 (1) RESIDENTIAL CARE APARTMENT COMPLEXES. The treatment of sections 16.009
19 (1) (em) 7., 20.432 (1) (gt), 50.034 (3) (e) and (9), and 50.09 (title), (1), (1g), (2), (4), (5),
20 and (6) (a), (b), and (d) of the statutes takes effect on June 1, 2008.

21

(END)

D-NOTE

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0358/2dn
DAK:kjf:rs

date

To Steve Milioto:

1. Because the provisions in this bill are no longer linked to imposition of an assessment on residential care apartment complexes (which required rule making), I have in this redraft deleted the delayed effective date; okay?
2. I have removed language that related to an assessment, which would have funded an additional position for BOALTC; however, I have retained the amendment to s. 16.009 (2) (p) (intro.), stats., which allows BOALTC to either employ staff or contract. This language appears to give BOALTC more flexibility, even though it will not have the additional money. Okay?

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-0358/2dn
DAK:kjf:nwn

December 28, 2006

To Steve Milioto:

1. Because the provisions in this bill are no longer linked to imposition of an assessment on residential care apartment complexes (which required rule making), I have in this redraft deleted the delayed effective date; okay?
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Debora A. Kennedy
Managing Attorney
Phone: (608) 266-0137
E-mail: debora.kennedy@legis.wisconsin.gov

Kennedy, Debora

From: Milioto, Steve - DOA
Sent: Friday, December 29, 2006 2:08 PM
To: Kennedy, Debora
Subject: RE: LRB Draft: 07-0358/2 Long-Term Care Ombudsman Program expansion

Hi Debora --

I have no concerns w/ either of your two points in the drafter's note. Best, Steve

From: Natzke, Noah [mailto:Noah.Natzke@legis.wisconsin.gov]
Sent: Thursday, December 28, 2006 3:11 PM
To: Milioto, Steve - DOA
Cc: Johnston, James - DOA; Hanaman, Cathlene - LEGIS; Palchik, Laurie A - DOA
Subject: LRB Draft: 07-0358/2 Long-Term Care Ombudsman Program expansion

Following is the PDF version of draft 07-0358/2.



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-0358/23

DAK:kjf+jld:nwn

D-NOTE

DOA:.....Milioto, BB0047 - Long-Term Care Ombudsman Program expansion

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

don't gen

1 AN ACT ...; **relating to:** authorizing access by the long-term care ombudsman or
2 his or her representative to a client of the Family Care Program or to a client
3 or resident in a residential care apartment complex, expanding rights of
4 residents of facilities to include residents of residential care apartment
5 complexes, and requiring posting of a notice.

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

HEALTH

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 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 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.

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.

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.

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 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.

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.

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.

For further information see the *state and local* 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:

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).

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

5 16.009 (2) (p) (intro.) Contract Employ staff within the classified service or
6 contract with one or more organizations to provide advocacy services to potential or

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

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

11 50.034 (3) (e) Post in a conspicuous location in the residential care apartment
12 complex a notice, provided by the board on aging and long-term care, of the name,
13 address, and telephone number of the Long-Term Care Ombudsman Program under
14 s. 16.009 (2) (b).

15 **SECTION 4.** 50.09 (title) of the statutes is amended to read:

16 **50.09 (title) Rights of residents in certain facilities and complexes.**

17 **SECTION 5.** 50.09 (1) of the statutes is renumbered 50.09 (1m), and 50.09 (1m)
18 (intro.), (b), (c), (e), (f) 1. and 3., (g), (j) (intro.) and 2. (intro.) and a. and (L), as
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21 ~~community-based residential facility or a complex~~ shall, except as provided in sub.
22 (5), have the right to:

23 (b) Present grievances on the resident's own behalf or others to the facility's
24 staff or administrator of the facility or complex, to public officials or to any other
25 person without justifiable fear of reprisal, and to join with other residents or

SECTION 5

1 individuals within or outside of the facility or complex to work for improvements in
2 resident care.

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

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

15 (f) 1. "Privacy for visits by spouse." If both spouses are residents of the same
16 facility or complex, they shall be permitted to share a room or apartment unless
17 medically contraindicated as documented by the resident's physician or advanced
18 practice nurse prescriber in the resident's medical record.

19 3. Records confidentiality Confidentiality of health and personal records, and
20 the right to approve or refuse their release to any individual outside the facility or
21 complex, except in the case of the resident's transfer to another facility or complex
22 or as required by law or 3rd-party payment contracts and except as provided in s.
23 146.82 (2) and (3).

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

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

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

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

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

16 **SECTION 6.** 50.09 (1g) of the statutes is created to read:

17 50.09 (1g) In this section, "complex" means a residential care apartment
18 complex.

19 **SECTION 7.** 50.09 (2), (4) and (5) of the statutes are amended to read:

20 50.09 (2) The department, in establishing standards for ~~nursing homes and~~
21 ~~community-based residential~~ facilities and complexes may establish, by rule, rights
22 in addition to those specified in sub. (1) (1m) for residents in such the facilities or
23 complexes.

24 (4) Each facility or complex shall make available a copy of the rights and
25 responsibilities established under this section and the facility's rules of the facility

SECTION 7

1 or complex to each resident and each resident's legal representative, if any, at or prior
2 to the time of admission to the facility or complex, to each person who is a resident
3 of the facility or complex, and to each member of the facility's staff of the facility or
4 complex. The rights, responsibilities, and rules shall be posted in a prominent place
5 in each facility or complex. Each facility or complex shall prepare a written plan and
6 provide appropriate staff training to implement each resident's rights established
7 under this section.

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

12 **SECTION 8.** 50.09 (6) (a), (b) and (d) of the statutes are amended to read:

13 50.09 (6) (a) Each facility or complex shall establish a system of reviewing
14 complaints and allegations of violations of residents' rights established under this
15 section. The facility or complex shall designate a specific individual who, for the
16 purposes of effectuating this section, shall report to the administrator.

17 (b) Allegations of violations of such rights by persons licensed, certified, or
18 registered under chs. 441, 446 to 450, 455, and 456 shall be promptly reported by the
19 facility or complex to the appropriate licensing, examining, or affiliated
20 credentialing board and to the person against whom the allegation has been made.
21 Any employee of the facility or complex and any person licensed, certified, or
22 registered under chs. 441, 446 to 450, 455, and 456 may also report such allegations
23 to the board. ~~Such~~ The board may make further investigation and take such
24 disciplinary action, within the board's statutory authority, as the case requires.

D-NOTE

Milioto

To Steve Milioto:

This redraft makes very minor, technical changes to the titles of s. 50.09 (1m) (f) 1. ✓ and 3. ✓, so renumbered in the bill.

DAK

40 ✓

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

LRB-0358/3dn
DAK:kjf&jld:pg

January 22, 2007

To Steve Milioto:

This redraft makes very minor, technical changes to the titles of s. 50.09 (1m) (f) 1. and 3., as renumbered in the bill.

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



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-0358/3
DAK:kjf&jld:pg

DOA:.....Milioto, BB0047 - Long-Term Care Ombudsman Program
expansion

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

1 **AN ACT ...; relating to:** authorizing access by the long-term care ombudsman or
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4 residents of facilities to include residents of residential care apartment
5 complexes, and requiring posting of a notice.

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HEALTH AND HUMAN SERVICES

HEALTH

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 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 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.

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.

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.

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 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.

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.

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.

For further information see the *state and local* 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:

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).

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

5 16.009 (2) (p) (intro.) Contract Employ staff within the classified service or
6 contract with one or more organizations to provide advocacy services to potential or

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

10 SECTION 3. 50.034 (3) (e) of the statutes is created to read:

11 50.034 (3) (e) Post in a conspicuous location in the residential care apartment
12 complex a notice, provided by the board on aging and long-term care, of the name,
13 address, and telephone number of the Long-Term Care Ombudsman Program under
14 s. 16.009 (2) (b).

15 SECTION 4. 50.09 (title) of the statutes is amended to read:

16 **50.09 (title) Rights of residents in certain facilities and complexes.**

17 SECTION 5. 50.09 (1) of the statutes is renumbered 50.09 (1m), and 50.09 (1m)
18 (intro.), (b), (c), (e), (f) 1. and 3., (g), (j) (intro.) and 2. (intro.) and a. and (L), as
19 renumbered, are amended to read:

20 50.09 (1m) ~~RESIDENTS' RIGHTS.~~ (intro.) Every resident in a ~~nursing home or~~
21 ~~community-based residential facility~~ or a complex shall, except as provided in sub.
22 (5), have the right to:

23 (b) Present grievances on the resident's own behalf or others to the facility's
24 staff or administrator of the facility or complex, to public officials or to any other
25 person without justifiable fear of reprisal, and to join with other residents or

1 individuals within or outside of the facility or complex to work for improvements in
2 resident care.

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

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

15 (f) 1. 'Privacy for visits by spouse.' If both spouses are residents of the same
16 facility or complex, they shall be permitted to share a room or apartment unless
17 medically contraindicated as documented by the resident's physician or advanced
18 practice nurse prescriber in the resident's medical record.

19 3. Confidentiality of health and personal records, and the right to approve or
20 refuse their release to any individual outside the facility or complex, except in the
21 case of the resident's transfer to another facility or complex or as required by law or
22 3rd-party payment contracts and except as provided in s. 146.82 (2) and (3).

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

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

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

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

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

16 **SECTION 6.** 50.09 (1g) of the statutes is created to read:

17 50.09 (1g) In this section, "complex" means a residential care apartment
18 complex.

19 **SECTION 7.** 50.09 (2), (4) and (5) of the statutes are amended to read:

20 50.09 (2) The department, in establishing standards for ~~nursing homes and~~
21 ~~community-based residential facilities~~ and complexes may establish, by rule, rights
22 in addition to those specified in sub. (1) (1m) for residents in such the facilities or
23 complexes.

24 (4) Each facility or complex shall make available a copy of the rights and
25 responsibilities established under this section and the facility's rules of the facility

1 or complex to each resident and each resident's legal representative, if any, at or prior
2 to the time of admission to the facility or complex, to each person who is a resident
3 of the facility or complex, and to each member of the ~~facility's~~ staff of the facility or
4 complex. The rights, responsibilities, and rules shall be posted in a prominent place
5 in each facility or complex. Each facility or complex shall prepare a written plan and
6 provide appropriate staff training to implement each resident's rights established
7 under this section.

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

12 SECTION 8. 50.09 (6) (a), (b) and (d) of the statutes are amended to read:

13 50.09 (6) (a) Each facility or complex shall establish a system of reviewing
14 complaints and allegations of violations of residents' rights established under this
15 section. The facility or complex shall designate a specific individual who, for the
16 purposes of effectuating this section, shall report to the administrator.

17 (b) Allegations of violations of such rights by persons licensed, certified, or
18 registered under chs. 441, 446 to 450, 455, and 456 shall be promptly reported by the
19 facility or complex to the appropriate licensing, examining, or affiliated
20 credentialing board and to the person against whom the allegation has been made.
21 Any employee of the facility or complex and any person licensed, certified, or
22 registered under chs. 441, 446 to 450, 455, and 456 may also report such allegations
23 to the board. ~~Such~~ The board may make further investigation and take such
24 disciplinary action, within the board's statutory authority, as the case requires.

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

7 (END)