



ROBERT L. COWLES

Wisconsin State Senator, 2nd Senate District

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Testimony on 2023 Assembly Bill 162

Senator Robert Cowles

Assembly Committee on Health, Aging and Long-Term Care

February 14th, 2024

Thank you, Chair Moses and Committee Members, for holding a hearing and allowing me to testify on Assembly Bill 162. This legislation would extend the required time in which assisted living facilities must notify residents and their families of evictions from their facilities.

Under current law, nursing homes and community-based residential facilities, more commonly known as assisted living facilities, are required to give a 30-day written notice to a resident, their family, and legal guardian before the resident is evicted from their current facility. An eviction announcement can be emotionally strenuous news, especially for a senior who has grown accustomed to his or her familiar surroundings and daily care routine in their facility. AB 162 as amended by Assembly Substitute Amendment 2 would attempt to combat that by lengthening the 30-day notice period to 60 days.

Although it is not the first instance, the April announcement of evictions of MA patients from the Emerald Bay Retirement Community in Hobart has raised awareness on this issue. While Emerald Bay followed the existing laws and notified their residents of the evictions, the residents and their families still shouldered great stress in having to mentally prepare themselves to move out as their managed care organization (MCO) tries to find a new home, hopefully in the same county and close to their loved ones.

The stress caused by shifts to a new facility is dramatic, particularly for families with a senior who is frail, has special accommodation or care needs, or is receiving memory care. After hearing from impacted families in my district, and having experienced something somewhat similar with an abrupt care worker change for a member of my family, I believe we need to bring greater attention to this trauma.

By extending the required eviction notice from 30 days to 60 days for providers and MCOs, more can be done to ease the worries of residents and their loved ones as they prepare to move their loved ones into a new aging care facility. In the amendment, not only did we shorten the timeframe from 90 days to 60 days for the advance notice at the suggestion of providers and MCOs, but we also ensured this legislation only applies to MA contract disputes, and does not include instances where a resident is moved due to a whole facility closure, fraud, or health and safety concerns. We believe this was a reasonable concession, but other suggestions from a certain limited number of providers and MCOs are outside the bill's scope.

With more time to find their new home, families and care facilities can better prepare patients for a nerve-racking transition in the caretakers, their neighbors, and the scenery around them in their nursing home or assisted living facility. In my opinion, this is the least we can do, and I'm glad that the Senate elected to support this patients' rights legislation with a voice vote in January on the Senate floor.



JOY GOEBEN

STATE REPRESENTATIVE • 5th ASSEMBLY DISTRICT

Assembly Committee on Health, Aging and Long-Term Care

Testimony on AB 162

Thank you Chairman Moses and members of the committee for hearing AB 162, which changes the written relocation or eviction notice from 30-days to 60-days.

This bill requires that nursing homes or Community Based Residential Facilities and care management organizations provide a 60-days' written notice to a resident, to the resident's guardian, and/or to a member of the resident's family, before the resident is required to be relocated or evicted.

Under current law, only 30-days' written notice, prior to relocation or eviction is required. This issue was brought to my attention when concerned family members contacted my office seeking any help they could find.

The families told me that an assisted living facility in my district had decided to change its policies and to stop providing care to participants in the Medicaid's Family Care program. In the middle of winter, in Wisconsin, the residents were given 30-days to find a new home.

In the realm of nursing homes and residential facilities, finding alternative living inside a 30-day window is short. One family had to move their mother to a facility located hours away, because nothing closer was available at the time.

Consider the amount of stress that could be alleviated or prevented if residents and their families were given a reasonable amount of time to make arrangements, once they receive a relocation or eviction notice.

Adding insult to injury, how about the resident who does not have family, or their family lives in another state, or the only relative is also elderly and unable to assist. The resident, if capable, is left to figure this out for themselves even if they lack the mental capacity to do so.

Given the staffing shortage of long-term care facilities, residents and their families should receive timely notification to prepare for change.

Thank You.



State of Wisconsin
Department of Health Services

Tony Evers, Governor
Kirsten L. Johnson, Secretary

TO: Members of the Assembly Committee on Health, Aging and Long-Term Care

FROM: HJ Waukau, Legislative Director

DATE: February 14, 2024

RE: AB 162 relating to: Nursing Home Facility Closure

The Department of Health Services (DHS) would like to submit written testimony for information only on Assembly Bill 162 (AB 162), regarding the notification of certain facility closures, change in type or level of services or means of reimbursement accepted, and care management organization notification of contract termination with a provider that is a nursing home or community-based residential facility. Additionally, Assembly Substitute Amendment 1 provides clarification around when notification must be provided, and Assembly Substitute Amendment 2 change the initial timeline for notification from 90 days to 60 days.

Facility closures are often a hardship and burden placed on residents who are in a vulnerable state of health, while also negatively impacting their families and loved ones. AB 162, as amended by Substitute Amendment 1, would increase the amount of time a community-based residential facility, nursing home, or managed care organization (MCO) is required to notify residents to find a new place of residence, and it would clarify the current statutory requirement which states that the resident must receive a 60-day notice. Extending the timeline for notification to 60-days increases resident choice and may also keep them in their counties and closer to home for longer. Additionally, residents can choose to move sooner if they agree.

While the increased time requirement may be a boon for residents and families it may be difficult for some providers to meet if the facility is closing due to low staffing or financial difficulties. When a facility announces that they will be closing, some staff may leave to find other employment, which would have an impact on the facilities and residents. Some facilities have historically provided a bonus to encourage staff to stay through the relocation process. The bill may have the unintended consequence of providers refusing to take back members who were sent to a different or more intensive facility and are looking to return.

Additionally, the 60-day notification requirement in the bill as written may not allow DHS to take swifter action if required. If in the unfortunate circumstance a care management organization is not fulfilling their contract obligations and DHS needs to terminate a contract faster than 60 days to protect the health and safety of its members, it is unclear if the current language would inhibit more immediate action. Further, the proposed language for Wis. Stat. 46.284(4)(km) would not be in conflict with federal regulations under 42 CFR 438.10(f)(1) requiring a 30-day prior notice. It would however require DHS to update its MCO contracts to align with state statutes.

We thank the Committee for the opportunity to provide written testimony for information only on AB 162 and we offer ourselves as a resource for Committee members for any follow up or additional information that may be needed.



Wisconsin Health Care Association

Wisconsin Center for Assisted Living

Wisconsin Long-Term Care Providers: Practical Concerns with AB 162/SB 155

On behalf of the hundreds of skilled nursing providers and assisted living centers across Wisconsin we are honored to represent, the Wisconsin Health Care Association/Wisconsin Center for Assisted Living respectfully shares its current opposition to SB 155/AB 162 as amended.

1. SB 155/AB 162 would create an environment that has the reverse outcome the bill intends.

This policy would have unintended consequences that would create additional hardships for providers and for many residents currently enrolled in the Family Care program. The bill would, in many circumstances, create longer timelines for which providers would be required to accept inadequate rates from Family Care MCOs. This would result in the bill having the opposite outcome of its intention: it would lead to more current Family Care residents having to be relocated because more providers will conclude that they can no longer participate in Family Care. This is a situation that benefits nobody – not the resident, or the resident’s family/friends, or the provider.

Rather than focusing on notice requirements for terminating an MCO contract, we believe a more direct and impactful approach would be to examine ways in which all parties can come to agreeable terms on rates *so residents can stay in their current settings*.

2. More practical alternatives are available.

Providers agree that residents deserve the respect and dignity of receiving adequate time in these circumstances to make the right decision for themselves and their families.

WHCA/WiCAL believes that, instead of creating a brand new “contract termination notice” requirement which will create a separate set of timelines for a provider to follow (along with current relocation timelines), a more practical solution would be to work within the current relocation process framework and establish more spelled out timing expectations for providers’ responsibilities related to relocation notice.

Current law already requires nursing home providers and community-based residential facilities who end their participation in Family Care to notify residents and hold an initial relocation conference with residents and families. WHCA/WiCAL proposes creating a timeline within statute that a provider must notify affected residents/family of the relocation conference/relocation announcement meeting within a number days after DHS approves the facility’s relocation plan. Sample language would be:

“50.03(14)(e) Upon approval of, agreement to or imposition of a plan for relocation, the facility shall establish a date of closing or changing of the type or level of services or means of reimbursement and shall notify the department of the date. The date may not be earlier than 90 days from the date of approval, agreement or imposition if 5 to 50 residents will be relocated, or 120 days from the date of approval, agreement or imposition if more than 50 residents will be relocated. **The facility shall also, within 10 days of department approval, provide notice to each resident who is to be relocated, to the resident’s guardian, if any, and to a member of the resident’s family, if practicable, unless the resident requests that notice to the family be withheld, that the facility’s relocation plan has been approved and that the facility will work with each resident to plan and implement an individual relocation plan as required under 50.03(14)(c) 5 and 6.**”

This approach would create a new statutory timeframe within the current relocation process. It would not insert a new “contract termination” notice requirement which may include its own compliance timeframe.

On a more fundamental level, we believe it is typically in all parties' interest – the resident (first and foremost), the provider, and the MCO – that the resident be able to remain in their current placement if possible and if the resident wishes to stay. This would eliminate any disruption of care, services, or activities of daily living, as there would be no relocation of the resident(s).

Unfortunately, we are seeing circumstances where the provider and the MCO cannot renegotiate a new agreeable rate for those Family Care participants, leading providers to conclude that Family Care is not a viable option moving forward. While we understand the intention of this bill and believe there is a way to do it that is more practical, we also believe that a more meaningful approach to this issue is to explore policies which would help facilitate productive negotiations between providers and MCOs to avoid relocation decisions in the first place.

While WHCA/WiCAL remains opposed to this bill at this time, we are prepared to work with the bill authors on practical changes, and continue to offer our organization as a resource to the bill authors and any other legislators who may want to engage on this issue or any issue related to long-term care.

FOR MORE INFORMATION, CONTACT:

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To: Members of the Assembly Health, Aging, and Long-Term Care Committee
From: Michael Pochowski, President & CEO
Date: Wednesday, February 14, 2024
Re: Assembly Bill 162: Oppose

The Wisconsin Assisted Living Association (WALA) represents over 1,600 assisted living facilities which includes community-based residential facilities (CBRF), residential care apartment complexes (RCAC), and adult family homes (AFH).

On behalf of WALA, we are opposed to Assembly Bill 162, relating to notification of certain facility closures, change in type or level of services or means of reimbursement accepted, and care management organization notification of contract termination with a provider that is a nursing home or community-based residential facility.

Under current law, nursing homes and assisted living facilities are required to give a 30-day written notice to a resident, their family, and legal guardian if the facility exits the Family Care Program. Assembly Bill 162 would extend that required notice period to 60-days.

WALA opposes this policy change as it would extend up to two (2) months a provider having to accept a low or inadequate reimbursement rate in the Family Care Program while costs and expenses continue to rise. In short, we believe such policies put providers at a disadvantage in a state Medicaid managed care system most recognize is underfunded.

Under the Family Care Program, managed care organizations (MCOs) contract with assisted living facilities and negotiate the reimbursement rates received for each resident. When an assisted living facility and MCO are unable to agree upon a reimbursement rate, the facility has the contractual option to terminate the agreement with the MCO. When that happens, the facility works with the resident(s), their family, legal guardian, the MCO, the Board on Aging and Long-Term Care Office of the State Long Term Care Ombudsman, the Division of Medicaid Services, and the Division of Quality Assurance to ensure the resident(s) find adequate placement.

An assisted living facility will not evict a resident after the 30th day, given resident protections found in state statute, administrative rules, and the DHS resident relocation plan (<https://www.dhs.wisconsin.gov/relocation/index.htm>).

In addition, MCO contractual obligations to the providers are 30-day notifications. This proposed statutory change would create an inconsistency between obligations for providers and MCOs. Keep in mind, if a provider is exiting the Wisconsin Medicaid program, it is likely due to low or inadequate reimbursement rates. For example, the Family Care estimate in the most recent state budget and provided to the Legislative Fiscal Bureau used \$13.02/hour as the median direct care worker wage. Whereas the current market is closer to \$17-\$20/hour. Interestingly, the IRIS (Include, Respect, I Self-Direct) program will be assuming \$18.83/hour for caregivers. Medicaid program cost inconsistencies like this have led to strains in provider reimbursement – a situation that has led some providers to exit the Family Care program.

Wisconsin Assisted Living Association (WALA)
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We should be solving the real problem of recognizing actual market costs/prices, such as wages, in the Family Care program which would reduce the number of providers having to leave the program.

Therefore, WALA requests committee members **vote no** on Assembly Bill 162.

Thank you for your consideration in this matter. If you have any questions, please feel free to contact me at (414) 803-7415 or via e-mail at mpochowski@ewala.org. or our lobbyist, Forbes McIntosh.



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TO: Representative Moses, Chair, Assembly Committee on Health, Aging and Long-Term Care

FROM: Martha Cranley, State Director, AARP Wisconsin

Subject: Testimony in Favor of Assembly Bill 162: Notification of Certain Facility Closures

February 14th, 2024

Thank you for the opportunity to submit testimony in support of Assembly Bill 162 (Senate Bill 155) which requires, before a resident of a nursing home or community-based residential facility (CBRF) is relocated, a nursing home or CBRF 90 days written notice to the resident, prospective guardian, and the resident's family. AARP WI is pleased to see needed attention given to this issue which prioritizes not leaving families in the dark about where their loved one will receive care with required earlier notice. We believe in all placement options being available to people and families to empower people to choose how they live as they age.

Current law falls short as "30 days' written notice prior to relocation" doesn't give families adequate time to research, find, and decide where to place loved ones in a new location. We've all seen this pan out in the news and media as facilities will abruptly say they are closing, leaving dozens of families hurt and scrambling at the same time.

AARP WI stands with our advocating partners for Wisconsin's aging population in support of this bill authored by Representative Goeben and Senator Cowles. We appreciate their leadership and focus on our target vulnerable population who many times experience the challenges of finding great places of care and fear the relocation process. Communities all over Wisconsin will benefit from earlier notice to minimize the negative impacts of facility closures and relocation of loved ones.

Thank you for the opportunity to provide input on this common-sense legislation and we at AARP look forward to working with more legislators to promote options that support our aging population.

We urge all members of this committee and the full Legislature to vote yes on AB 162.

Martha Cranley
State Director
AARP Wisconsin

