



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #161

Ombudsman Services for Residents of Residential Care Apartment Complexes (Board on Aging and Long-Term Care)

Bill Agency

[LFB 2007-09 Budget Summary: Page 62, #8]

CURRENT LAW

Under current law, a long-term care ombudsman employed by the Board on Aging and Long-Term Care (BOALTC) or a designated representative may enter a long-term care facility at any time, without notice, and have access to clients of the facility. For this purpose, long-term care facilities are defined as nursing homes, community-based residential facilities (CBRFs), places in which care is provided under a continuing care contract, swing beds within an acute or extended care facility, hospices, and adult family homes.

Currently, residential care apartment complexes (RCACs) are not included in the definition of a long-term care facility. A RCAC is defined as a place where five or more adults reside that consists of independent apartments with specified amenities, and that provide a resident with not more than 28 hours per week of supportive, personal, and nursing services.

GOVERNOR

Expand the statutory definition of "long-term care facility" to include RCACs, as it relates to the Board's authority to provide ombudsman services. Further, include residents of RCACs in the group of persons who are entitled to the rights that are specified under current law for residents of nursing homes and CBRFs, including but not limited to, the right to have private and unrestricted communication with others, to present grievances without fear of reprisal, to manage personal finances, to be treated with courtesy, to be guaranteed confidentiality of health and personal records, and to be fully informed of charges for services and changes in services.

Finally, require RCACs to post a notice with the name, address, and telephone number of the Board's ombudsman program in a conspicuous location.

DISCUSSION POINTS

1. BOALTC serves as an advocate for elderly long-term care consumers. The Board's ombudsman program investigates and resolves complaints on behalf of individuals living in nursing home residents and community-based residential facilities (CBRFs), as well as persons who receive community-based long-term care services. Program staff focuses on educating individuals about long-term care consumers rights under state and federal law, and include providing information about abuse prevention, restraint reduction, the use of advance directives, and reporting and investigating instances of abuse. BOALTC has received calls from residents of RCACs or their family members requesting assistance or advocacy, but due to the lack of statutory authority, ombudsman staff has been unable to assist these individuals.

To the extent that it may be considered beneficial for elderly residents of any facility to be aware of their rights as residents of a long-term care facility, and that they may benefit from available advocacy services should disputes with the managers of their living facilities arise, the Committee may wish to consider expanding the Board's authority to provide education and advocacy services for elderly residents of RCACs, as recommended by the Governor.

2. However, unlike the facilities currently included under the definition of "long-term care facilities" for the purpose of authorizing Board involvement and advocacy, residents of RCACs live comparatively independent lifestyles. They maintain private, independent apartments, and receive assistance in the form of supportive, personal, or nursing care for less than an average of four hours per day. It may be argued that these individuals are less dependent on their caregivers, and possess more privacy and personal independence than nursing home residents or individuals being served in a community living arrangement that is staffed around-the-clock (such as a CBRF). This difference in the level of personal independence generally associated with residents of RCACs may contribute to the perception that these individuals have a different relationship with their support staff, and therefore may be less vulnerable to the sort of instances of mistreatment or infringement on their personal rights by caregivers or facility staff that the ombudsman program would typically address.

3. Professional organizations representing RCACs have objected to extending the Board's authority to their operations in the past, arguing that RCACs were not intended to be long-term care facilities, but rather models of independent apartment living. In addition, the organizations point out that DHFS administrative rules already require RCACs to "provide each tenant with an independent apartment in a setting that is home-like and residential in character" and to "operate in a manner that protects tenants' rights, respects tenants' privacy, enhances tenant self-reliance, and supports tenant autonomy in decision making." While the organizations indicate support for the ombudsman program, they compare extending this authority to RCACs to authorizing ombudsman to enter private residences without permission, and argue that doing so infringes on a tenant's right

to privacy.

4. Currently, the regulation of RCACs is overseen by the Bureau of Quality Assurance (BQA) within the Department of Health and Family Services (DHFS). All RCACs must be either registered or certified by DHFS. To be registered, the facility must submit a form to DHFS that includes assurances that the facility meets statutory requirements for a RCAC, as well as applicable federal, state, and local ordinances, rules and regulations to operate the facility. The Department may, without notice, visit the facility at any time to determine whether the facility meets registration requirements. However, DHFS is not required to routinely inspect registered RCACs, verify compliance with the requirements for RCACs, or enforce contractual obligations under the service agreements that the facility maintains with residents.

5. Unlike registered RCACs, certified facilities must meet the standards for MA reimbursement eligibility, and are subject to more intense reviews and inspections by the Department. Certified facilities must provide documentation to DHFS demonstrating that the RCAC is in compliance with all applicable federal, state, and local licensing, building, zoning, and environmental statutes, ordinances, rules, and regulations, as well as any other documentation requested by DHFS to determine the applicant's compliance with administrative rules regulating RCACs. Initial certifications are valid for 12 months, and renewals are valid for up to 36 months.

The Department conducts periodic inspections of RCACs during the period of certification, and may visit at any time to verify that the operator remains in compliance with the terms of the certification. The Department may issue notices of violation, require a plan of correction, and issue sanctions and penalties for noncompliance with RCAC regulations. The following table shows the number of RCACs operating in Wisconsin for the four most recent calendar years, the number of residents served, and the distribution between "registered" versus "certified" facilities.

**RCAC Facilities and Populations
(By Calendar Year)**

<u>Number of Facilities</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>
Registered	67	77	84	88
Certified	<u>86</u>	<u>94</u>	<u>104</u>	<u>115</u>
Total	153	171	188	203
Number of Residents	6,055	6,614	8,003	8,980

6. State law and Wisconsin administrative code specify a range of incidents that certain facilities (including adult family homes, community based residential facilities, and RCACs) must report to DHFS. For RCACs, these incidents include certain incidents of caregiver misconduct, including abuse or neglect of a client, or misappropriation of the client's property. Providers are required to investigate allegations of caregiver misconduct and to investigate injuries of an unknown source, and to report any such incident if there is reasonable cause to believe that they or a

regulatory authority have or could obtain evidence to show the alleged incident occurred, and if there is reasonable cause to believe that the incident could meet the definition of abuse, neglect, or misappropriation. The following table shows the number of incidents, by type, reported to the Department as occurring in RCACs for the three most recent years available. Data indicating whether the reported incidents occurred at "registered" versus "certified" facilities was not readily available. As shown in the table, over 75% of the cases of reported misconduct in each year were not substantiated by investigators.

TABLE 2

RCAC Reported Incidents of Misconduct

	<u>2004</u>	<u>2005</u>	<u>2006*</u>
Allegation			
Physical Abuse	0	5	2
Sexual Abuse	1	2	0
Mental Abuse	1	0	0
Verbal Abuse	1	0	1
Neglect	4	4	2
Misappropriation	11	25	22
Not Reportable	<u>0</u>	<u>1</u>	<u>1</u>
Total	18	37	28
Outcome			
Substantiated	4	8	3
Not Substantiated	14	28	22
Currently under Appeal	0	0	1
Pending	<u>0</u>	<u>1</u>	<u>2</u>
	18	37	28

*Preliminary total

7. In its 2007-09 biennial budget request, BOALTC asked for both the authority to provide advocacy services to residents of RCACs, and for an additional ombudsman position to support the anticipated increase in workload. The Board proposed funding the position through an annual assessment of \$12 per occupied RCAC apartment, effective June 1, 2008. Based on the RCAC capacity, the annual assessment may generate as much as \$100,000 annually, depending on occupancy rates. The Board's request for position funding totaled \$41,100 in 2007-08 and \$51,100 in 2008-09. If the Committee chose to expand the Board's authority to include the oversight of RCACs and felt that additional staffing for the ombudsman program was necessary, the Committee could authorize the \$12 per apartment annual assessment and provide an additional position, funded from this revenue source, for this purpose.

8. However, other facilities whose residents are served by the Board (including nursing homes and CBRFs) do not pay a fee to support the cost of the Board's advocacy services. In order to

treat the residents of RCACs in a similar manner, the Committee could chose to instead provide a GPR-supported ombudsman position for this purpose.

9. If the Committee determines that residents of RCACs do not currently have appropriate access to advocacy services, but are uncertain of the potential demand for BOALTC services, it could approve the Governor's recommendation to expand the Board's authority to provide advocacy services to residents of RCACs, but not provide additional staffing at the current time.

10. Finally, if the Committee determines that the current rules governing the operation of RCACs and the efforts of DHFS to oversee these facilities are sufficient, the Committee could delete the Governor's provision from the bill. Under this alternative, residents of RCACs would retain the option of contacting DHFS with concerns.

ALTERNATIVES TO BILL

1. Approve the Governor's recommended statutory changes.

2. In addition to Alternative 1, require DHFS, as a condition of certifying, registering, or renewing the certification or registration of a RCAC, to assess a \$12 per year, per apartment fee, effective with the bill's general effective date, and to transfer this funding to the BOALTC's PR-S appropriation, and make necessary statutory changes to make this transfer. Further, provide \$41,100 PR in 2007-08 and \$51,100 PR in 2008-09 and 1.0 PR position funded from assessment revenues to provide ombudsman services to residents of RCACs.

ALT 2	Change to Bill			Change to Base		
	Revenue	Funding	Positions	Revenue	Funding	Positions
PR	\$100,000	\$92,200	1.00	\$100,000	\$92,200	1.00

3. In addition to Alternative 1, provide \$41,100 GPR in 2007-08 and \$51,100 GPR in 2008-09 and 1.0 GPR position funded from assessment revenues to provide ombudsman services to residents of RCACs.

ALT 3	Change to Bill		Change to Base	
	Funding	Positions	Funding	Positions
GPR	\$92,200	1.00	\$92,200	1.00

4. Delete provision.

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