



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #167

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

[LFB 2009-11 Budget Summary: Page 111, #6]

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 all 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, 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. The 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 and CBRFs, as well as persons who receive community-based long-term care services. Program staff focuses on educating individuals about long-term care consumer's 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.

Over the last 22 months, the BOALTC has received 258 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. The Board argues that the acuity of residents living in an RCAC has increased over time as these facilities have begun admitting individuals with higher level needs, particularly dementia. As a result, the Board feels it is necessary to provide the residents of these facilities with access to advocacy services in order to ensure safety and access to quality care.

3. 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.

4. 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 DHS 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.

5. Currently, the regulation of RCACs is overseen by the Division of Quality Assurance (BQA) within the Department of Health Services (DHS). All RCACs must be either registered or certified by DHS. To be registered, the facility must submit a form to DHS 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, DHS 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.

6. 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. A certified facility must provide documentation to DHS 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 DHS 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>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>
Registered	84	88	93	100
Certified	<u>104</u>	<u>115</u>	<u>125</u>	<u>147</u>
Total	188	203	218	247
Number of Residents	8,003	8,980	9,562	10,579

7. 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 DHS. 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 four 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 50% of the cases of reported misconduct in each year were not substantiated by investigators.

RCAC Reported Incidents of Misconduct

	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>
Allegation Caregiver Misconduct				
Physical Abuse	5	2	5	4
Sexual Abuse	2	0	0	1
Mental Abuse	0	0	0	0
Verbal Abuse	1	2	1	0
Neglect	4	7	2	9
Misappropriation	25	22	20	28
Not Reportable	<u>0</u>	<u>1</u>	<u>0</u>	<u>0</u>
Total	37	34	28	42
Caregiver Misconduct Outcome				
Referred to DRL	0	6	2	2
Substantiated	8	6	8	10
Not Substantiated/Not Misconduct	29	22	18	23
Currently under Appeal	0	0	0	3
Pending	<u>0</u>	<u>0</u>	<u>0</u>	<u>4</u>
Total	37	34	28	42

8. In its 2009-11 agency budget submission, the Board requested both the authority to provide advocacy services to residents of RCACs, and for 1.0 ombudsman position to support the anticipated increase in workload. The additional position would not work exclusively responding to issues raised by RCAC residents. Instead, the Board's current ombudsman positions (15.0 long-term care ombudsman positions located throughout the state) would assist in responding to requests for assistance by RCAC residents. The additional position requested by the Board would reduce the need for current ombudsman staff to absorb the additional workload relating to assisting RCAC residents.

The Board requested funding of \$51,000 (\$30,600 GPR and \$24,600 PR) in 2009-10 and \$61,400 (\$36,800 GPR and \$24,600 PR) in 2010-11 to support the additional position. The program revenue portion of funding under this proposal would come from federal medical

assistance (MA) administrative funding passed through to the Board from DHS. If the Committee decides 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 requested funding and position authority for this purpose.

9. While the administration recognizes the additional workload associated with this proposal, the Governor's budget reflects an attempt to minimize position increases and require agencies to absorb workload whenever possible. Further, there is some uncertainty about how much additional work this expansion may create for the Board. For these reasons, the Committee may wish to approve the Governor's recommendations relating to this item and not provide additional staff for the Board at this time.

10. Finally, if the Committee determines that the current rules governing the operation of RCACs and the efforts of DHS 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 DHS with concerns.

ALTERNATIVES

1. Approve the Governor's recommended statutory changes.

2. Modify the Governor's recommendation by providing \$51,000 (\$30,600 GPR and \$20,400 PR) in 2009-10 and \$61,400 (\$36,800 GPR and \$24,600 PR) to support 1.0 additional ombudsman position (0.60 GPR position and 0.40 PR position), for the Board, beginning in 2009-10. In addition, increase funding for MA contracts in DHS by \$20,400 FED in 2009-10 and \$24,600 FED in 2010-11 to reflect MA claims for a portion of the cost of the position.

ALT 2	Change to Bill	
	Funding	Positions
GPR	\$67,400	0.60
FED	45,000	0.00
PR	<u>45,000</u>	<u>0.40</u>
Total	\$157,400	1.00

3. Delete provision.

Prepared by: Cory Kaufman