



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

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Joint Committee on Finance

Paper #423

Caregiver Investigations and Background Checks (DHFS -- Community, Disability, and Elder Services)

[LFB 2005-07 Budget Summary: Page 284, #6]

CURRENT LAW

Under the caregiver background investigation program, certain types of providers, including nursing homes, hospitals, and community-based residential facilities, are required to obtain, and may share with other providers, certain background information on caregiver employees, including a criminal history, and information obtained from the nurse aide registry, the Department of Regulation and Licensing (R&L), and the Department of Health and Family Services (DHFS). These background checks are conducted to ensure that the caregiver: (a) does not have a conviction or pending charge relating to patient or resident abuse and has not been convicted of a serious crime; (b) does not have any record of patient, resident or client abuse or misappropriation of property; (c) has a valid license and no record of patient, resident, or client abuse; (d) does not have any substantiated reports of child abuse or neglect; and (e) in the case of child care providers, does not have any previous denials for a license, continuation of a license, certification or contract to operate an entity as a result of one of the above background checks. Providers are required to fill out a background investigation form produced by DHFS that, depending upon the type of employee, must be sent to DHFS or be maintained on file for inspection.

If the caregiver is not a resident of this state, or if at any time within the three years preceding the caregiver has not been a resident of the state, DHFS, the county, school board, or health care provider is required to make a good faith effort to obtain a criminal records search for that caregiver from any state in which that person resided during that time period. Providers are permitted to request fingerprints from caregivers who are not Wisconsin residents or who resided outside of the state prior to becoming a caregiver in order to obtain a criminal history from the FBI.

Currently, providers pay a fee of \$7.50 to support the cost of conducting each background check, of which \$5.00 is retained by the Department of Justice to support its costs of conducting the criminal background check, and \$2.50 is retained by DHFS to support costs DHFS incurs to obtain certain information to enable providers to comply with related statutory requirements. Under current law, the fee may not exceed the reasonable cost of obtaining the information.

Health care providers are required to report any client abuse or neglect or misappropriation of a resident's property to the DHFS Bureau of Quality Assurance (BQA) for non-credentialed caregivers and to R&L for credentialed caregivers. DHFS and R&L are then required to review and investigate these reports.

When an allegation of caregiver misconduct is referred to BQA and a perpetrator is named, the Office of Caregiver Quality Review (OCQ) within BQA assesses the case. The employer is given five to seven working days to investigate the allegation and to prepare a report for OCQ. If OCQ determines that there is sufficient reason to investigate the complaint, the case is either handled by the DHFS caregiver investigation unit within BQA or by North Shore Investigations, Inc., with which DHFS contracts to conduct these investigations. If the allegations are substantiated, the findings must be recorded on the DHFS caregiver misconduct registry for cases investigated by DHFS or recorded at R&L for cases investigate by R&L.

In 2004-05, approximately \$512,000 (\$235,500 GPR and \$276,500 FED) is budgeted to support 7.0 FTE positions in BQA's caregiver investigation unit, while \$200,000 (\$82,000 GPR and \$118,000 FED) is budgeted to support the caregiver investigation contract with North Shore Investigations.

GOVERNOR

Provide \$100,000 (\$50,000 PR and \$50,000 FED) annually to increase, from \$200,000 to \$300,000, the amount of funding that would be budgeted for DHFS to contract for investigations of caregivers in health facilities. This item would be supported by program revenue from caregiver background check fees and federal medical assistance matching funds.

In addition, make several statutory changes.

Caregiver Background Check Fees and Revenues. Permit DHFS to use caregiver background check, licensing, and regulatory fee revenues to support the costs of conducting caregiver misconduct investigations. Repeal the requirement that the caregiver background fee amount not exceed the reasonable cost of obtaining information.

FBI Caregiver Background Checks. Provide that an entity that receives information regarding the arrest or conviction of a caregiver from the Federal Bureau of Investigation (FBI) in connection with a criminal history search may use the information only to determine whether the caregiver's arrest or conviction record disqualifies him or her from serving as a caregiver. Further, provide that these entities are immune from civil liability to a caregiver for using arrest

or conviction information provided by the FBI to make an employment determination regarding the caregiver. Specify that these provisions would first apply to arrest and conviction information requested on or after the general effective date of this bill and before September 30, 2007. Further, specify that these provisions would not prohibit providers from sharing criminal background information.

DISCUSSION POINTS

1. In 2003-04, the BQA received 1,165 caregiver misconduct complaints. Of these complaints, 65 percent (757 cases) were referred to OCQ for investigation --184 were assigned to OCQ staff and 573 were assigned to the contractor. The following table identifies the total number of caregiver misconduct complaints BQA received, the number of complaints referred for investigation, and the number of cases assigned to OCQ and to the contractor in each year from 2000-01 through 2003-04.

Complaints, Referrals and Case Assignments Fiscal Years 2000-01 thru 2003-04

	<u>2000-01</u>	<u>2001-02</u>	<u>2002-03</u>	<u>2003-04</u>
Complaints	1,375	1,268	1,069	1,165
Referred for Investigation	46.3%	64.7%	70.3%	65.0%
OCQ	318	214	388	184
North Shore Investigations	<u>318</u>	<u>607</u>	<u>364</u>	<u>573</u>
Total	636	821	752	757

The number of cases that are referred for investigation varies from year to year. However, from 2001-02 thru 2003-04, an average of 777 caregiver misconduct cases were referred for investigation in each year. Based on this three-year average, it may be reasonable to assume that the number of cases that will require investigation will remain at this level in each year of the 2005-07 biennium.

2. Under the current contract with North Shore Investigations, DHFS reimburses the contractor \$437.75 for each investigation the contractor conducts. In previous years, the contract reimbursement rates were as follows: \$400 per case in 2000-01, \$475 per case in 2001-02, \$400 per case in 2002-03, and \$425 per case in 2003-04. These reimbursement rates are negotiated for each contract period. The current contract with North Shore Investigations will end on June 30, 2005.

3. The Governor's recommended funding increase (\$100,000 per year) assumes that the contractor would complete 200 additional cases per year and be reimbursed \$500 per completed case. This increase in cases is based on the administration's projections of the increase in

investigations that will be conducted and the transfer of cases that were previously conducted by DHFS staff to the contractor after positions were deleted from this unit as part of Act 33 budget reductions.

4. The state staff DHFS has assigned to conduct caregiver investigations has decreased in recent years. In response to funding and staff reductions enacted in Act 33 (the 2003-05 biennial budget act), DHFS deleted 3.5 positions in OCQ, including 2.3 positions that were deleted when the state began to contract for the operation of the nurse aide registry, and 1.2 positions that were deleted to enable DHFS to meet unspecified funding reductions. The agency believed that it was possible to absorb these staff reductions because the program had "matured" since the program's inception in 1999. Since the program began, staff resources have been reallocated both into and out of OCQ, based on the overall workload needs of BQA.

5. Based on the information DHFS has presented regarding historical workload for conducting caregiver investigations, it is not clear that this work cannot be performed with current authorized staff and base funding for contracted investigations. Since the contract reimbursement rate for conducting caregiver investigations is negotiable and the number of cases that are completed per DHFS employee varies considerably from year to year, it is possible that DHFS could support the projected cases with its current staff and funding for contracted services. However, providing additional funding to conduct investigations would enable DHFS to conduct more investigations should this be necessary in the future.

6. The Committee may wish to consider two additional issues relating to this program: (a) whether to replace GPR base funding for this function with program revenues, since fee revenue would appear to be an appropriate source of revenue to support caregiver investigations and sufficient revenues would be available to support this function; and (b) whether to reduce total program costs by contracting for all caregiver misconduct investigations and deleting state staff that currently conduct investigations.

7. In 2003-04, approximately \$706,700 in caregiver background check fee revenues were collected by DHFS. In 2004-05, \$317,500 GPR is budgeted to support caregiver misconduct investigations. Because program revenues collected by DHFS have exceeded program costs, DHFS lapsed \$572,500 PR to the general fund from this source in 2003-04 to meet Act 33 program revenue lapse requirements. In AB 100, the Governor proposes lapsing \$250,000 in 2005-06 and \$250,000 in 2006-07 from the appropriation to which these program revenues are credited, to the general fund. Rather than lapse surplus funds to the general fund annually, the Committee could increase PR budgeted for the program and reduce GPR funding by a corresponding amount, while still maintaining sufficient PR in the appropriation to meet the Governor's proposed lapse requirement in AB 100. If the Committee approves the Governor's provision that would enable DHFS to use caregiver background check fee revenues to support caregiver misconduct investigations, \$117,500 of the GPR could be deleted and replaced with \$117,500 PR from this appropriation annually. This change would reduce GPR funding to support this function to \$200,000 GPR annually.

8. The 1997-99 biennial budget act (1997 Wisconsin Act 27) authorized DHFS to

contract with an outside agency to perform a portion of the caregiver misconduct investigation function. The act also requested that the Legislative Audit Bureau (LAB) perform an evaluation audit to compare the investigation process of misconduct reports by DHFS, R&L, and any private investigators. However, the LAB did not conduct the audit because the language was permissive and the Legislative Audit Committees did not direct LAB to conduct the audit.

9. When cases are referred to OCQ for investigation, the cases are first assigned to state staff. However, state staff do not accept additional cases once they have eight or nine open cases. The remaining cases are referred to the contractor. The functions performed by the contractor and by state staff in the caregiver investigation unit are the same.

10. In 2003-04, DHFS paid North Shore Investigations \$221,421 for completing approximately 521 investigations at a reimbursement rate of \$425 per case. Under the current contract with North Shore Industries, the state reimburses the contractor \$437.75 per completed case. If DHFS contracted with North Shore Industries, or another entity, at a rate of \$450 per case, to conduct all of the projected caregiver misconduct investigations, it would cost approximately \$349,600 annually (777 investigations x \$450 per investigation). The total funding required for these contracted services would be \$160,800 PR and \$188,800 FED annually.

11. In 2004-05, \$712,000 (\$317,500 GPR and \$394,500 FED) and 7.0 positions (3.22 GPR positions and 3.78 FED positions) are budgeted to support these caregiver misconduct investigations. Of this funding amount \$286,200 (\$131,600 GPR and \$154,600 FED) and 3.0 (1.38 GPR position and 1.62 FED positions) are budgeted to support the caregiver misconduct complaint intake and screening function within the caregiver investigation unit. If the Committee wishes to contract out all of the caregiver misconduct investigations, these intake and screening staff should still be maintained. By contracting out for all of the investigations, funding and positions in the bill could be reduced by \$176,200 (-\$185,800 GPR, \$124,800 PR and -\$115,200 FED) annually and by 4.0 positions (-1.84 GPR positions and -2.16 FED positions), beginning in 2005-06.

12. The Governor is requesting the statutory changes to comply with the conditions of a federal grant DHFS received to participate in the federal background check pilot program. DHFS will receive approximately \$2,358,300 from January 2005 thru 2006-07 to pilot a fingerprint-based federal background check program in five counties (Dane, Douglas, Kenosha, La Crosse, and Shawano Counties) and to provide abuse prevention training to caregivers. Under the conditions of the grant, if these statutory provisions are not adopted, the amount of federal grant funding that the state receives may be phased-down.

ALTERNATIVES

1. Approve the Governor's recommended funding and statutory changes.
2. Adopt the Governor's funding and statutory changes. In addition, reduce funding by \$117,500 GPR annually and increase funding by \$117,500 PR annually to permit DHFS to use caregiver background check fee revenues to support caregiver background investigations.

<u>Alternative 2</u>	<u>GPR</u>	<u>FED</u>	<u>PR</u>	<u>TOTAL</u>
2005-07 FUNDING (Change to Bill)	- \$235,000	\$0	\$235,000	- \$352,400

3. Delete the Governor's funding increase (-\$50,000 PR and -\$50,000 FED annually), but adopt the Governor's statutory changes. In addition, reduce funding by \$117,500 GPR annually and increase funding by \$117,500 PR annually to permit DHFS to use caregiver background check fee revenues to support caregiver background investigations.

<u>Alternative 3</u>	<u>GPR</u>	<u>FED</u>	<u>PR</u>	<u>TOTAL</u>
2005-07 FUNDING (Change to Bill)	- \$235,000	-\$100,000	\$135,000	- \$200,000

4. Adopt the Governor's funding and statutory changes. In addition, reduce funding and positions in the bill by \$176,100 (-\$185,800 GPR, \$110,800 PR and -\$101,100 FED) annually and delete 4.0 positions (-1.84 PR positions and -2.16 FED positions), beginning in 2005-06, to contract for all caregiver misconduct investigations and no longer conduct this function with state staff and permit DHFS to use caregiver background check fee revenues to support caregiver misconduct investigations.

<u>Alternative 4</u>	<u>GPR</u>	<u>FED</u>	<u>PR</u>	<u>TOTAL</u>
2005-07 FUNDING (Change to Bill)	- \$371,600	- \$202,200	\$221,600	- \$352,200
2006-07 POSITIONS (Change to Bill)	- 1.84	- 2.16	0.00	- 4.00

5. Delete provision.

<u>Alternative 5</u>	<u>FED</u>	<u>PR</u>	<u>TOTAL</u>
2005-07 FUNDING (Change to Bill)	- \$100,000	- \$100,000	- \$200,000

Prepared by: Jessica Stoller