Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873
Email: fiscal.bureau@legis.wisconsin.gov • Website: http://legis.wisconsin.gov/lfb

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Ombudsman Relocation Specialist (Board on Aging and Long-Term Care)

[LFB 2013-15 Budget Summary: Page 69, #2]

CURRENT LAW

The Board on Aging and Long-Term Care (BOALTC) is authorized 1.0 PR ombudsman relocation specialist position that provides advocacy services exclusively to clients that are relocated from nursing homes. The position advocates for proper assessments of clients transitioning from one nursing home to another, assists with the appeals and grievance process, prepares informational documents, raises awareness regarding relocation stress, and facilitates meetings with clients, families, resident and family councils, and facilities.

The position is currently supported by federal civil monetary penalty (CMP) revenue the Department of Health Services (DHS) receives and transfers, as program revenue, to BOALTC to support the position. CMP revenues are paid by nursing facilities for violations of federal requirements. A portion of the revenue the Centers for Medicare and Medicaid Services (CMS) collects from nursing homes is returned to states to fund activities for the protection and benefit of nursing home residents. States may not use CMP funds for any other purposes.

GOVERNOR

Convert 1.0 ombudsman relocation position from PR to GPR, beginning in 2013-14. Increase funding by $81,500 GPR annually to fund: (a) salary and fringe benefit costs for the position ($64,000 annually); and (b) supplies and services costs relating to the activities of the position ($17,500 annually). Reduce funding by $64,800 PR annually to reflect the discontinuation of base PR funding for salary and fringe benefits (-$64,000) and supplies and services (-$800) relating to this position.

DISCUSSION POINTS

1. Since January, 2006, DHS has contracted with BOALTC to support 1.0 PR position in BOALTC, funded from civil monetary penalty revenues transferred from DHS, to protect resident rights and quality of care during resident relocations in planned and spontaneous closures and replacements of long-term care facilities. The initial contract, covering the two-year period from January 1, 2006, through December 31, 2008, has been renewed several times. In June, 2008, the Department of Administration submitted a request to the Joint Committee on Finance under s. 16.515/16.505(2) to create the position as a one-year PR project position, terminating on June 30, 2009. The Committee approved the administration's request.

As part of 2009 Wisconsin Act 28 (the 2009-11 biennial budget act), the position was extended for an additional two-year period, so that it would terminate on June 30, 2011. 2011 Act 32 (the 2011-13 biennial budget act) converted this position from a project position to a permanent position.

2. The Governor's recommendation to convert the position from PR to GPR is based on new federal guidance regarding the use of CMP revenue, as well as previous guidance from CMS that required states to use these funds for time-limited projects, rather than to support ongoing activities, for the benefit of nursing home residents.

In December, 2011, CMS issued a memorandum to states indicating that, beginning January 1, 2012, states must obtain approval from CMS for the use of federally imposed CMP, as follows:

- Effective January 1, 2012, CMS approval is required for any new project, new grantee, or new use of federally imposed CMP funds, as well as for any previously state-approved use or project that is planned or approved for a period that will endure more than 36 months from December 31, 2011.

- Current state-approved CMP projects or uses that a state has in effect prior to January 1, 2012, do not require retrospective CMS approval so long as the project, grantee, use or purpose is not planned to endure for a period of more than 36 months from December 31, 2011. If the period of performance is planned or approved for a period of more than 36 months, then the project must receive CMS approval.

3. In March, 2011, CMS issued final rules relating to the civil monetary penalties. In responding to a comment regarding the proposed rule, CMS indicated that the agency does "not intend to approve CMP uses that may create the reality or the appearance of an ongoing revenue demand so strong that it could affect the judgment of the state or CMS in imposing civil monetary penalties, or to fund activities for which a nursing home is already responsible under state or federal regulations or laws, or to fund program responsibilities for which Congress has specifically provided another ongoing funding source."

4. Prior to the enactment of the federal Patient Protection and Affordable Care Act, CMS did not have the authority to approve specific uses of CMP funds that were returned to states. Beginning in 2013, state agencies will be required to submit annual reports to CMS, detailing the

use of all CMP funds the state receives.

As the position has been supported with CMP funds since 2006, the administration determined that it was unlikely that CMS would approve continuing the support for the position with CMP revenue due to the explicit three-year limit on eligible projects.

5. According to a current position description, approximately 60% of the position's time is assigned to public education, information and outreach activities. These activities include: (a) promoting public education, planning and voluntary acts to resolve problems and improve conditions involving long-term care for elderly and disabled individuals; (b) providing information to residents, families and others pertaining to the discharge process in relocation activities; (c) promoting the establishment of, and participation in, resident and family councils to discuss informed choice and available alternative placements; (d) presenting to families and residents at informational sessions and promoting participation in resident and family councils throughout the closure and relocation process; (e) developing educational programs and providing information about issues and solutions related to closures; (f) providing assistance to staff of facilities and others to assure that rights of the consumer are honored, protected and acknowledged.

In addition, approximately 30% of the position's time is assigned to systems monitoring activities, which include: (a) advocating for the development and implementation of policies and regulations that promote the rights of long-term care consumers; (b) reviewing statements of deficiencies at facilities involved in closure or relocations; (c) communicating concerns about facility operations, practices, or policies relating to the closure or relocation process to DHS staff, including staff in the DHS Division of Quality Assurance. Finally, approximately 10% of the position's time is assigned to complaint investigations, including on-site visits to facilities engaged in replacement and closure, and to monitor the care and treatment of residents who still reside in the facility.

6. It is expected that the number of nursing homes facilities and licensed beds will continue to decrease, suggesting a continued need for the position to assist affected residents and family members. If the Committee wishes to ensure that the agency has the staff capacity to continue to perform the activities described above, it could approve the Governor's recommendation (Alternative 1).

Alternatively, the Committee could delete the GPR funding and position increase in the bill (Alternative 3). If the Committee selects this option, the Board would need to determine whether any of these activities could or should be reassigned to current ombudsman staff in the agency.

7. The agency is currently authorized 17.0 long-term care ombudsman services specialist positions, including 15.0 ombudsman positions that provide services to assigned state regions, 1.0 ombudsman program advocacy specialist position, and 1.0 ombudsman relocation specialist position (the position that would be converted to GPR funding in the bill). These positions are supervised by 1.0 ombudsman services supervisor position. However, the relocation specialist position specializes in relocation issues exclusively, and provides these services on a statewide basis. In addition, the agency's most recent Biennial Report, dated August, 2012, shows increasing information and consultation and educational programming services provided by the

ombudsman for each of the past several years. For these reasons, the agency would argue that the current activities of this position cannot be absorbed by other ombudsman staff without adversely affecting the ombudsman program.

8. The bill would increase funding for supplies and services relating to this position from $800 PR to $17,500 GPR annually. The agency indicates that this figure more closely reflects the actual costs of the activities of this position, particularly since the position provides services throughout the state, resulting in significant travel costs. However, the agency has, in the past, been able to support most of the supplies and services costs of this position within the agency's base supplies and services budget. If the Committee decides to authorize the position but determines that approximately half of these costs should continue to be funded from the agency's base supplies and services budget, it could modify the Governor's budget to increase funding for supplies and services relating to this position by $8,800 GPR annually, a reduction of $8,700 GPR annually, compared to the amounts in the bill (Alternative 2).

ALTERNATIVES

1. Adopt the Governor's recommendations.

2. Modify the Governor's recommendations by reducing funding for supplies and services relating to this position by $8,700 GPR annually so that $8,800 GPR annually would be provided to support the activities of the position.

ALT 2	**Change to Bill**
	Funding
GPR	- $17,400

3. Delete the Governor's recommendation to provide 1.0 GPR position and $81,500 GPR annually to maintain support for 1.0 ombudsman relocation specialist position.

ALT 3	**Change to Bill**	
	Funding	Positions
GPR	- $163,000	- 1.00

Prepared by: Charles Morgan