



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #461

### **Bureau of Assisted Living Staffing (Health Services -- Quality Assurance)**

[LFB 2023-25 Budget Summary: Page 298, #2]

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#### **CURRENT LAW**

The Department of Health Services (DHS) Bureau of Assisted Living (BAL) in the Division of Quality Assurance conducts activities relating to the initial certification, licensing, and registration of specific facilities, conducts ongoing surveys, and investigates complaints against these facilities. Surveys may be announced or unannounced.

BAL is responsible for licensing and surveying community-based residential facilities (CBRFs), three- or four-bed adult family homes (AFHs), and residential care apartment complexes (RCACs). Generally, assisted living facilities provide services for individuals who need some level of care monitoring services, but do not need 24-hour access to nursing services as offered in nursing homes. In addition, BAL certifies adult day cares (ADCs), which provide services for part of a day in a group setting to adults who need an enriched health, supportive, or social experience.

BAL also houses the behavioral health certification section (BHCS) which certifies alcohol and other drug abuse (AODA) and mental health treatment programs. Currently, BAL is authorized 75.0 full time equivalent (FTE) positions, including 49.0 surveyors.

#### **DISCUSSION POINTS**

1. Assembly Bill 43/Senate Bill 70 (AB 43/SB 70) would provide \$1,814,500 (\$1,114,500 GPR and \$700,000 FED) in 2023-24 and \$2,312,700 (\$1,420,500 GPR and \$892,200 FED) in 2024-25 to fund 32.0 additional positions (19.68 GPR and 12.32 FED), beginning in 2023-24, to address a backlog of surveys BAL conducts in response to complaints, to license new facilities, and to meet its standard of conducting a licensing survey for every facility at least once every two years.

2. Of the additional positions, 27.0 would be assigned to BAL's work regulating assisted living facilities, 4.0 would be assigned to the behavioral health certification section within BAL, and 1.0 would be an attorney assigned to the Office of Legal Counsel (OLC) to meet the anticipated increase in workload resulting from additional surveys.

3. As of April 6, 2023, BAL had a backlog of 2,738 surveys, of which 406 were surveys BAL conducts in responses to complaints, 1,126 were surveys of facilities that had not been surveyed in two years, 252 were surveys that BAL conducts as part of facilities' pending initial licensure, and 954 were verification visits used to ensure that a facility has addressed a violation. In an effort to address the growing backlog during the COVID-19 pandemic, the Department has been using one-time federal funds to hire limited term employees and contractors to perform survey work. However, DHS indicates that due to the one-time nature of those funds the backlog is anticipated to continue in the future without additional staff.

4. DHS indicates that a reasonable workload for a surveyor would be 85 surveys annually based on total annual survey volume if DQA were to achieve the requirement to recertify facilities every two years, as well as current volumes for complaint investigations, initial licensing, surveys, and enforcement or revisit surveys.

5. Using this metric, DHS estimates that BAL would need an additional 16.0 surveyors. Further, DHS indicates that the addition of these surveyors also necessitates an increase of 6.0 supervisor positions, 9.0 support staff positions, and 1.0 attorney positions to manage the additional workload.

6. Though the number of surveyors has increased, the number of supervisors and support staff have been at the same levels since 2006. DHS indicates that the additional surveyor staff have increased productivity in reviewing new applications, but that there is a backlog of administrative work. Currently, there are 2.0 support staff providing support to nine to ten surveyors in each region. Further, the Administration notes that the increase in support staff would help with processing supporting paperwork related to surveys, freeing up more time for surveyors to complete surveys. The additional support staff would coordinate, manage, and monitor the license and certification program, conduct quality assurance reviews, monitor receipt of required license fees, monitor licensing status of facilities, and process licensing transmittals.

7. Currently, BAL has 7.0 FTE supervisors and 68.0 FTE total other staff, including surveyors, support staff, and other analysts. This is a staff-to-supervisor ratio of 9.7:1. The bill would add 6.0 FTE supervisors and 25.0 other staff, which would result in a total of 13.0 FTE supervisors and 93 other staff. This would result in a ratio of 7.2:1 staff to supervisors.

8. The Administration notes that higher investigation volume will result in higher workload for attorneys in OLC. OLC attorneys review, analyze, and advise BAL on enforcement actions. OLC represents the Department in any administrative appeals and hearings stemming from enforcement actions. This includes case conferences, witness preparation, exhibit preparation and submission, participating in the hearing, and preparation of any post-hearing briefs. Currently, OLC has approximately 1.75 FTE devoted to BAL work on average at any given time.

9. Generally, Wisconsin state agencies that regulate professions, including the Department of Safety and Professional Services, the Office of the Commissioner of Insurance, and the Department of Financial Institutions, collect fees from individuals and entities to support their regulatory functions. Fee revenue increases as the number of regulated professionals and entities increase, providing a funding source to meet agencies' increased costs of regulation. According to DHS, BAL positions are funded with a combination of GPR (21.1%), federal Medicaid revenue (39.2%), and licensing fees (PR, 39.6%).

10. According to DHS, the assisted living industry has grown 76% since 2003, or roughly 3% each year. More recently, the average growth rate of assisted living facilities between 2016 and 2021 was 3%.

11. Current fees charged to assisted living facilities vary, depending on the type of facility, and are summarized in the following table. In addition to these fees, DQA may assess a \$200 revisit fee if a facility is cited, requiring a revisit to ensure the facility returns to compliance. Fees were last updated in 2009. Fees in the table are set by statute and administrative code.

### **Current Fees by Assisted Living Facility Type**

<u>Facility Type</u>	<u>State Statute or Administrative Code establishing fee</u>
CBRFs	s. 50.037 (2), Wis. Stats., "...biennial fee is ... \$389, plus a biennial fee of "\$50.25 per resident..."
AFHs	s. 50.033 (2), Wis. Stats., "... biennial licensure fee ... is \$171."
ADCs	s. 49.45 (47) (c), Wis. Stats., "...biennial fee ... is \$127."
	s. 49.45 (47) (d), Wis. Stats., "The Department, by rule may increase any fee specified in par. (c)."
RCACs, Certified	DHS 89.53 (3), Wis. Adm. Code, "... in an amount determined by the Department...." Currently \$445.00 plus \$7.60 for each apartment unit every year.

12. As with fees for assisted living facilities, fees for mental health day treatment for children and youth crisis stabilization facilities authorized by Chapters DHS 40 and DHS 50 of Wisconsin Administrative Code, outpatient mental health clinics and AODA programs have also not been updated since 2009, however, unlike assisted living fees, these fees can be set by DHS as a matter of policy.

13. Annual fees for outpatient mental health clinics and AODA programs vary based on a number of factors, including the number of offices at which services are provided. Currently the fees range from \$550 for one service or program to \$1,350 for five services or programs, with an additional \$100 per service or program beyond five. Further, outpatient mental health clinics and AODA programs are charged either \$200 or \$500 depending on the tier of the branch office.

14. For, mental health day treatment for children and youth crisis stabilization facilities authorized by Chapters DHS 40 and DHS 50 of Wisconsin Administrative Code, annual fees range from \$1,100 for one service or program to \$2,700 for five services or programs, with an additional \$200 per service or program beyond five.

15. Despite the growth of the assisted living industry resulting in additional staff workload,

the Administration indicates that there is insufficient fee revenues to cover additional BAL positions. As such, the Committee could choose to provide \$1,814,500 (\$1,114,500 GPR and \$700,000 FED) in 2023-24 and \$2,312,700 (\$1,420,500 GPR and \$892,200 FED) in 2024-25 to fund 31.0 positions within BAL and 1.0 position within OLC (19.68 GPR and 12.32 FED), beginning in 2023-24. [Alternative 1]

16. On the other hand, the Committee may feel that BAL should be authorized expenditures and positions supported with fee revenues. The Department indicates that in 2021, there were approximately 4,200 assisted living facilities and 1,400 outpatient mental health clinics, for a total of approximately 5,600 facilities. Based on the estimated annual GPR costs of 32.0 positions, average annual rates by facility would need to increase by \$254 based on 2021 estimates of the number of facilities.

17. It could be argued that a fee increase on long-term care providers would be a burden, especially when considering trends affecting the industry, such as staffing shortages exasperated by pandemic burnout and the low unemployment rate in the state, as well as inflation increasing many business costs.

18. While it is difficult to draw licensing fee comparisons between states due to different definitions for provider types and differences in fee structures, it may be worth comparing current licensing and certification fees of assisted living facilities in Wisconsin to those of surrounding states. Specifically, DHS notes that "Illinois and Minnesota assess a unit fee as well as a facility fee. Iowa only assigns a facility fee. Illinois' assisted living application fee is \$2,000 and they charge an additional \$20 per licensed unit on an annual basis. Minnesota charges an initial application fee of \$2,000 plus \$75 per resident or \$3,000 plus \$100 per resident if providing dementia care. Minnesota charges a renewal fee based on the proportion of residents receiving home and community-based waiver services. Iowa charges an initial application fee of \$750 and facilities must pay a biennial renewal of \$1,000."

19. Rather than increasing fees itself, the Committee could direct DHS to submit changes necessary to increase fees for assisted living facilities and outpatient mental health clinics to cover the cost of staffing DHS determines is necessary to ensure adequate protection of the health and wellbeing of vulnerable Wisconsinites. This approach would allow DHS to work with providers to find an equitable distribution of the necessary increase. For example, while it is estimated that average annual rates would need to be increased by \$254, the Department and providers may wish to increase fees for smaller facilities by a smaller amount than the increase for larger facilities, either across provider types or by modifying the per unit or resident fees rather than base fees. Under this alternative the Department could return before the Committee under Wis. Stat. 16.505/515 for additional PR expenditure authority and positions once fee revenues have been generated to support additional positions. [Alternative 2]

20. Finally, the Committee could choose to take no action on this item. [Alternative 3]

## ALTERNATIVES

1. Provide \$1,814,500 (\$1,114,500 GPR and \$700,000 FED) in 2023-24 and \$2,312,700 (\$1,420,500 GPR and \$892,200 FED) in 2024-25 to fund 32.0 positions within BAL (19.68 GPR and 12.32 FED), beginning in 2023-24.

ALT 1	Change to Base	
	Funding	Positions
GPR	\$2,535,000	19.68
FED	<u>1,592,200</u>	<u>12.32</u>
Total	\$4,127,200	32.00

2. Direct DHS to submit changes necessary to increase fees for assisted living facilities and outpatient mental health clinics to cover the cost of staffing DHS determines is necessary to ensure adequate protection of the health and wellbeing of vulnerable Wisconsinites.

3. Take no action.

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