



Legislative Fiscal Bureau

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June, 2023

Joint Committee on Finance

Paper #462

Office of Caregiver Quality (Health Services -- Quality Assurance)

[LFB 2023-25 Budget Summary: Page 299, #3]

CURRENT LAW

Anyone can submit a report that alleges abuse, neglect or misappropriation of property by an employee or contractor of a Department of Health Services (DHS)-regulated health care settings and programs, and may do so by using a form on the DHS website.

In addition, certain providers are required to submit reports containing allegations of misconduct through the DHS Division of Quality Assurance's (DQA) misconduct incident reporting (MIR) system. Most providers are required to conduct an investigation within seven days of the incident, or the date that the provider knew, or should have known of the incident. Nursing homes must submit an initial, abbreviated report within 24 hours after discovery of the incident or allegation, and submit a comprehensive report within five working days. DQA screens and investigates reports of misconduct. If a report's allegations are substantiated, the findings are documented on DQA's misconduct registry. The caregiver reporting and investigation requirements are specified in administrative rule.

DHS-regulated health care settings and programs subject to requirements surrounding use of the MIR system include:

- Adult Day Care Centers
- Adult Family Homes
- Alcohol and Other Drug Abuse Treatment Programs
- Ambulatory Surgery Centers
- Clinical Laboratories
- Community-Based Residential Facilities
- Corporate Guardianships
- End-Stage Renal Disease Treatment Facilities
- Intermediate Care Facilities for Individuals with Intellectual Disabilities
- Home Health Agencies
- Hospice Care Providers
- Hospitals
- Mental Health Treatment Programs

- Nursing Homes
- Outpatient Rehabilitation Facilities
- Pain Clinics
- Personal Care Agencies
- Residential Care Apartment Complexes
- Rural Health Care Clinics
- Traumatic Brain Injury Care Units
- Ventilator Care Unit

The primary functions of the Office of Caregiver Quality (OCQ) within DQA are: (1) screening, investigating, and prosecuting reports of abuse, neglect, and misappropriation of client property in DHS-regulated health care settings and programs; and (2) operating an entity background check program that provides public assurances that entity owners, and other persons with access to clients, do not have criminal convictions or other governmental findings that would pose an unacceptable risk of victimization to persons receiving care.

Currently, OCQ has 11.0 full-time equivalent (FTE) positions, including 4.0 consumer protection investigators – advanced, 2.0 consumer protection investigators – senior, and 1.0 quality assurance program specialist – senior, 1.0 health services manager, 1.0 health services supervisor, 1.0 operations program associate, and 1.0 operations program associate. OCQ positions are funded from federal funds (FED) from Medicaid and Medicare reimbursement, (40%) and program revenue (PR) from licensing fees (60%).

DISCUSSION POINTS

1. The Administration indicates that workload for OCQ staff has increased significantly during the past 20 years, and that OCQ needs additional positions to conduct investigations into allegations of misconduct in long-term care facilities and expand the background check program.

2. According to the Department, in 2002, there were 4,084 regulated providers (assisted living facilities, long-term care facilities, and skilled nursing facilities, nursing facilities, and facilities serving people with developmental disabilities) subject to potential investigation by the misconduct investigation program. By 2021, that number had increased by 49%, to 6,083 providers. Further, data from the Department shows that during that same time period the number of reports made to OCQ increased from 1,207 reports in 2002 and 8,478 in 2021, an increase of 602%. However, the number of those reports that have been investigated has decreased significantly during that time. In 2002, 827 (or 69% of) reports were investigated, but in 2021, only 323 (or 4% of) reports were investigated.

3. Assembly Bill 43/Senate Bill 70 would provide \$739,700 (\$266,000 GPR, \$189,500 FED, and \$284,200 PR) in 2023-24 and \$912,100 (\$326,700 GPR, \$234,100 FED, and \$351,300 PR) in 2024-25, to fund 11.0 positions (4.0 GPR, 2.8 FED, and 4.2 PR) beginning in 2023-24. Of these 11.0 positions, 3.0 would be a quality assurance program specialist – senior positions and 8.0 would be consumer protection investigator – advanced positions.

4. The following table shows the number of reports received and investigated by OCQ between 2017 and 2021.

**OCQ Reports Received and Investigated
2017-2021**

<u>Year</u>	<u>Number of Reports</u>	<u>Number of Reports Investigated</u>	<u>Percentage of Reports Investigated</u>
2017	6,152	331	5%
2018	5,782	367	6
2019	7,780	466	6
2020	6,773	424	6
2021	8,478	323	4

5. The Department indicates that a report must meet the following four criteria in order for it to be investigated by OCQ: (a) the incident must have occurred in a DQA regulated entity, and the accused person must be a caregiver based on the definition in Administrative Code, and not licensed by the Department of Safety and Professional Services (DSPS); (b) the incident must meet the definition of abuse, neglect or misappropriation as outlined in Administrative Code; (c) if it is a report submitted by a provider, there must be a lack of evidence that the provider was able to definitively rule out abuse, neglect, or misappropriation occurred; and (d) the DQA regional office has not investigated and ruled out abuse, neglect, or misappropriation occurred. Using these criteria, all reports are triaged by OCQ. If reports do not meet these criteria, they are either referred to another agency for investigation, such as DSPS, or referred to a DQA regional office for other regulatory compliance review.

6. OCQ has had 6.0 investigator positions since 2014. To address the workload increase, DHS currently uses contracted staff to assist with investigations, a practice which began in 2006. The current contract is with North Shore Investigations and is for \$882,000 to fund three years of services. The contract does not specify an annual amount, but DHS estimates that it will spend about \$200,000 for 2022-23 based on the work directed by OCQ. Total spending over the three years cannot exceed the maximum contracted amount. DHS indicates that reliance on contractors requires significant training and oversight. Should the Committee provide additional staff for the misconduct investigation program, DHS indicates that the agency would still use some contractors, but in a more limited capacity. For example, contracted staff would still assist with the processing license applications during the renewal period, which occurs for approximately six months every four years.

7. Funding and position authority in AB 43/SB 70 would support 1.0 quality assurance program specialist-senior position and 4.0 consumer protection investigator-advanced positions for the misconduct investigation program. The Department indicates that the addition of an extra quality assurance specialist position is anticipated to increase investigation capacity by 40 cases per year. The four additional consumer protection investigator positions are expected to increase investigations by approximately 200 cases per year based on the current expectation that investigative staff complete approximately 50 investigations per staff person per year. Further, the four additional consumer protection investigator positions would ensure there are a minimum of two investigators for each DQA region.

8. OCQ is also responsible for operating the caregiver background check program. Statutes require health care and long-term care providers to conduct background checks for their staff. In 2021, between 35,000 and 40,000 background checks were conducted electronically each month to screen employees and contractors, consistent with state and federal law. In addition, state law requires DQA to conduct background checks for the license holder for entities it regulates. In 2021, OCQ received over 5,000 background check applications for license holders.

9. According to DHS the caregiver background check program is currently administered by a single contract employee, classified as a program assistant. This individual processes applications, provides ongoing technical assistance to the public and providers, maintains and develops systems, and develops and provides ongoing education.

10. The Administration argues that additional position authority is critical to maintain the operation of this program. As such, the bill would provide 2.0 quality assurance program specialist-senior positions for the caregiver background check program. The Department indicates that by adding these positions, OCQ will not be reliant on contract staff to perform high-level reviews of potential providers. Further, these positions would focus on improving program quality, rather than necessarily increase the quantity of reviews.

11. The 7.0 positions described in previous points of this paper would be funded through a combination of caregiver background check fees (PR) and federal Medicare and Medicaid funding (FED). Specifically, the bill would provide, \$473,700 (\$189,500 FED and \$284,200 PR) in 2023-24 and \$585,400 (\$234,100 FED and \$351,300 PR) in 2024-25 to fund 2.8 FED positions and 4.2 PR positions beginning in 2023-24.

12. In addition to the 7.0 positions previously discussed, AB 43/SB 70 would provide 4.0 GPR funded consumer protection investigator-advanced positions for the misconduct investigation program. Funding for those positions would be \$266,000 GPR in 2023-24 and \$326,700 GPR in 2024-25. These positions would primarily work on investigations under Chapter 51 (relating to the treatment and rehabilitation services in the state for mental disorders and developmental disabilities and for mental illness, alcoholism, and other drug abuse), which are state-funded activities and would therefore not be eligible for FED match.

13. DHS expects that the 4.0 additional consumer protection investigator positions would increase the number of investigations OCQ could conduct by approximately 200 cases per year, based on the current expectation that investigative staff complete approximately 50 investigations per staff person per year.

14. The Administration indicates that the 11.0 additional positions provided in the bill would not be sufficient to reduce the current contract with North Shore Investigations. Rather, the Administration believes that both the positions in the bill and the contract staff are needed to keep up with OCQ workload.

15. To ensure timely and thorough services for residents of regulated facilities the Committee may wish to provide \$739,700 (\$266,000 GPR, \$189,500 FED, and \$284,200 PR) in 2023-24 and \$912,100 (\$326,700 GPR, \$234,100 FED, and \$351,300 PR) in 2024-25, to fund 11.0

positions (4.0 GPR, 2.8 FED, and 4.2 PR) beginning in 2023-24. [Alternative 1]

16. Across various state agencies, fees are collected from regulated professions and entities to cover the costs associated with such regulation. As such, the Committee may feel that OCQ should be authorized expenditures and positions that can be covered within those collected revenues. For this reason, the Committee may wish to provide \$473,700 (\$189,500 FED and \$284,200 PR) in 2023-24 and \$585,400 (\$234,100 FED and \$351,300 PR) in 2024-25, to fund 7.0 positions (2.8 FED and 4.2 PR) within OCQ beginning in 2023-24. [Alternative 2]

17. However, DHS estimates that if fee revenues supporting OCQ operations are equal to, or less than, the average fee revenue amounts between 2016-17 and 2021-22, there could be insufficient fee revenues by 2028-29 to support OCQ staff with the addition of 4.2 PR positions as provided under Alternatives 1 and 2.

18. Due to concerns about future availability of funds to support OCQ staff, the Committee may choose to only provide GPR positions. Specifically, the Committee could feel that the work done by OCQ in keeping Wisconsin residents safe is a state responsibility beyond just the regulated professionals and entities and as such the Committee could provide \$266,000 GPR in 2023-24 and \$326,700 GPR in 2024-25, to fund 4.0 positions within OCQ beginning in 2023-24. [Alternative 3]

19. Finally, the Committee could choose to take no action on this provision, thereby retaining current staffing levels within OCQ. [Alternative 4]

ALTERNATIVES

1. Provide \$739,700 (\$266,000 GPR, \$189,500 FED, and \$284,200 PR) in 2023-24 and \$912,100 (\$326,700 GPR, \$234,100 FED, and \$351,300 PR) in 2024-25, to fund 11.0 positions (4.0 GPR, 2.8 FED, and 4.2 PR) in OCQ, beginning in 2023-24.

ALT 1	Change to Base	
	Funding	Positions
GPR	\$592,700	4.00
FED	423,600	2.80
PR	<u>635,500</u>	<u>4.20</u>
Total	\$1,651,800	11.00

2. Provide \$473,700 (\$189,500 FED and \$284,200 PR) in 2023-24 and \$585,400 (\$234,100 FED and \$351,300 PR) in 2024-25, to fund 7.0 positions (2.8 FED and 4.2 PR) in OCQ, beginning in 2023-24.

ALT 2	Change to Base	
	Funding	Positions
FED	\$423,600	2.80
PR	<u>635,500</u>	<u>4.20</u>
Total	\$1,059,100	7.00

3. Provide \$266,000 GPR in 2023-24 and \$326,700 GPR in 2024-25, to fund 4.0 GPR positions beginning in 2023-24, for OCQ to conduct investigations of facilities licensed under Chapter 51.

ALT 3	Change to Base	
	Funding	Positions
GPR	\$592,700	4.00

4. Take no action.

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