

For Your Action

FYA-07-07
May 15, 2007

To: WAHSA RCAC Operators
From: John Sauer, Executive Director
Tom Ramsey, Director of Government Relations
Subject: Thursday Vote on Ombudsmen in RCACs

The Legislature's Joint Committee on Finance (JFC), which is reviewing and modifying Governor Doyle's 2007-09 budget bill (2007 Senate Bill 40), has scheduled a vote on the budget of the Board on Aging and Long-Term Care (BOALTC) for this Thursday, May 17th. Of particular interest to WAHSA RCAC operators is a provision which would expand the authority of the BOALTC to provide ombudsman services in RCACs and to extend the nursing home/CBRF residents' rights under Chapter 50 to include RCAC tenants. If this measure is to be defeated, your legislators must hear from you prior to Thursday's meeting (which begins at 10:00 a.m.), especially if your legislator(s) is a member of the JFC.

Attached is a copy of our memo to the members of the JFC outlining WAHSA's objections to this proposal. Please feel free to use our arguments to defend your position but make sure those arguments are tailored to your RCAC and your tenants. Simply parroting our arguments is an ineffective way to convey your position: your legislators want to know how such proposals impact your operations, your RCAC tenants, and your staff. We would suggest that you focus on the invasion of privacy concerns of this proposal and the difference between the institutional focus of nursing homes, CBRFs and other long-term care "facilities" and the "housing with services" focus of the RCAC.

For those of you who are represented by a member of the JFC (listed below), we are requesting you contact your legislator(s)/JFC member(s) by phone prior to Thursday's meeting (preferably Wednesday) and leave the following message either with your legislator(s), or if he/she is not available, with the staff member who either staffs the Joint Committee on Finance and/or is responsible in the office for Board on Aging and Long-Term Care issues (if your legislator is not available, ask whomever answers the phone if you could please speak to that particular staff person): *Please support Alternative #4 in LFB*



(Legislative Fiscal Bureau) *Issue Paper #161 to delete the Governor's recommended statutory change to expand the authority of the Board on Aging and Long-Term Care to provide ombudsman services in RCACs and to extend the nursing home/CBRF residents' rights under Chapter 50 to RCAC tenants. In addition, please oppose any implementation of a RCAC apartment tax.* From there, you can share with your legislator and/or his/her key staffer why this is your position.

The voting procedure the JFC follows begins with an issue paper researched and written by the Legislative Fiscal Bureau (LFB). The issue paper (in this case, LFB Issue Paper #161, dated May 17, 2007) contains a brief description of current law and the Governor's budget recommendation. The body of the issue paper is the discussion points, which outline the arguments for and against the Governor's recommendation. Finally, the issue paper contains alternatives which the JFC can vote on. In the case of LFB Issue Paper #161, there are four alternatives listed: Alternative #1 is to approve the Governor's recommended statutory changes, which if adopted would permit ombudsman access to RCACs and extend Chapter 50 residents' rights to RCAC tenants; Alternative #2 would approve the Governor's recommended statutory changes but would fund a RCAC ombudsman position through the program revenue generated by an annual \$12 per occupied RCAC apartment tax; Alternative #3 is the same as Alternative #2, except the \$12 RCAC apartment tax would generate GPR (general purpose revenues) instead of program revenue to fund the additional ombudsman position; and Alternative #4, which WAHSA supports, which would delete the Governor's recommended statutory changes. Individual JFC members also may offer motions to amend the proposal in ways not covered by the alternatives.

The JFC is a 16-member committee evenly divided this session by 8 Republicans (6 from the Assembly and 2 from the Senate) and 8 Democrats (6 from the Senate and 2 from the Assembly). In order for an alternative or a motion to pass, it must garner at least 9 votes (a tie vote defeats the alternative/motion). The only way, therefore, to remove a position from the budget recommended by the Governor is to gain 9 votes for removal of that position. If the 8 Democrats choose to vote en masse in support of the Governor's position, the Republicans don't have the necessary votes to overcome that position. Thus, we will need at least 9 votes in support of Alternative #4 in LFB Issue Paper #161 in order to delete the Governor's proposal on ombudsmen in RCACs and Chapter 50 residents' rights for RCAC tenants. The vote of the 8 Democrats on the JFC could very well decide the outcome of this issue in the committee (if the Governor's position survives in the JFC, there will be further opportunities to remove it in both the Senate, which is controlled by the Democrats, and the Assembly, which is controlled by the Republicans, or in the conference committee comprised of leadership from both houses and both parties which most likely will craft the final budget). **Your contacts will be key in determining the outcome of this vote.**

We specifically ask the following WAHSA RCAC operators to please make the following phone contacts to their legislator(s) who serves on the Joint Committee on Finance prior to this Thursday's vote on ombudsmen in RCACs and Chapter 50 residents' rights for RCAC tenants:

1. Lincoln Lutheran of Racine: Senator John Lehman (D-Racine) at 608-266-1832 and Representative Robin Vos (R-Racine) at 608-266-9171
2. Bethany Home, Waupaca): Senator Luther Olsen (R-Ripon) at 608-266-0751
3. St. Joseph Residence, New London: Senator Luther Olsen
4. Markesan Resident Home: Senator Luther Olsen
5. Iola Nursing Home: Senator Luther Olsen

6. Homme Heights, Wausau: Senator Russ Decker (D-Weston), the Senate Chair of the JFC and quite possibly THE key vote on this issue, at 608-266-2502
7. Memorial Hospital of Taylor County, Medford: Senator Russ Decker
8. Pleasant View Health Care Corporation, Phillips: Senator Russ Decker
9. Glenview/Shell Lake Indianhead Memorial Hospital, Shell Lake: Senator Bob Jauch (D-Poplar) at 608-266-3510
10. Mequon Jewish Campus: Senator Alberta Darling (R-River Hills) at 608-266-5830
11. Newcastle Place, Mequon: Senator Alberta Darling
12. Luther Manor, Wauwatosa: Senator Lena Taylor (D-Milwaukee) at 608-266-5810
13. Trinity Village Assisted Living/Trinity Health Services, Milwaukee: Senator Lena Taylor
14. Odd Fellow Rebekah Home Association, Green Bay: Senator Dave Hansen (D-Green Bay) at 608-266-5670
15. Christian Community Home, Hudson: Representative Kitty Rhoades (R-Hudson), the Assembly Chair of the JFC and possibly the other KEY vote, at 608-266-1526
16. Clement Manor, Greenfield: Representative Jeff Stone (R-Greendale) at 608-266-8590
17. Meriter Health Services, Madison: Representative Mark Pocan (D-Madison) at 608-266-8570
18. Cedar Community, West Bend: Representative Steve Kestell (R-Elkhart Lake) at 608-266-8530

For member RCACs not listed above but close to the districts of JFC members, please feel free to contact the offices listed above (or below). For instance, Madison RCACs should contact Representative Pocan's office and the office of Senator Mark Miller (D-Monona at 608-266-9170); Milwaukee and suburban Milwaukee RCACs should contact Senator Darling's office if you are located on the north and east sides, Senator Taylor's office on the west and northwest sides, and the office of Representative Pedro Colon (D-Milwaukee at 608-267-7669) on the south side; Waukesha County RCACs should contact Representative Stone's office; and Green Bay RCACs should contact Senator Hansen's office. We do not have WAHSA-member RCACs in the districts of the following JFC members: Representatives Dan Meyer (R-Eagle River at 608-266-7141) and Scott Suder (R-Abbotsford at 608-267-0280). If any member RCAC is in the vicinity of their districts or somehow has a tie to either of those two legislators, please make a phone contact to them.

For the remaining member RCACs who are not making JFC contacts, are contacting JFC members who do not actually represent them, or are contacting one JFC member but not the other legislator who represents them, we ask you to please contact your State Senator and/or State Representative by phone and ask them to convey to their colleagues on the JFC your opposition to the Governor's RCAC/ombudsman proposal. You can use the same procedure outlined in Paragraph #3 on page one of this memo.

Please share any feedback you might receive on this issue with Tom Ramsey at the WAHSA office (1-800-466-7011 or tramsey@wahsa.org). And thank you in advance **FOR YOUR ACTION.**

Wisconsin Association of Homes and Services for the Aging, Inc.

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May 15, 2007

To: Senator Russ Decker, Senate Chair
Representative Kitty Rhoades, Assembly Chair
Members, Joint Committee on Finance

From: John Sauer, Executive Director
Tom Ramsey, Director of Government Relations

Subject: **WAHSA Support for Alternative #4 in LFB Issue Paper #161 *Ombudsman Services for Residents of Residential Care Apartment Complexes* (Board on Aging and Long-Term Care)**

The Wisconsin Association of Homes and Services for the Aging (WAHSA) is a statewide membership organization of 187 *not-for-profit* corporations principally serving the elderly and persons with a disability. Membership is comprised of religious, fraternal, private not-for-profit, county, and municipal organizations which own, operate and/or sponsor nursing homes, facilities for the developmentally disabled (FDD), community-based residential facilities (CBRF), HUD Section 202 Supportive Housing for the Elderly apartment complexes, apartment complexes for independent seniors and community service programs ranging from Alzheimer's support, child and adult day care, homecare and hospice to Meals on Wheels. WAHSA members also operate 59 not-for-profit *residential care apartment complexes* (RCAC).

WAHSA members support Alternative #4 in LFB Issue Paper #161, which would delete the Governor's recommended statutory change to expand the authority of the Board on Aging and Long-Term Care (BOALTC) to provide ombudsman services in RCACs and to expand the nursing home/CBRF resident rights under s. 50.09, Wis. Stats., to include RCAC tenants. Correspondingly, WAHSA members oppose Alternatives #1, #2 and #3 under LFB Issue Paper #161.

Our opposition to this provision in 2007 SB 40 (Page 62, #8 under the LFB Budget Summary Document) and support for its deletion is based on the following:

- **Permitting ombudsmen unbridled access to the apartments of RCAC tenants is an invasion of privacy.** SB 40 would expand the definition of "long-term care facility" to include RCACs. Under s. 16.009(4)(b)1a, Wis. Stats., current statute reads "the ombudsman or designated representative *MAY AT ANY TIME, WITHOUT NOTICE, ENTER, AND HAVE IMMEDIATE ACCESS TO A CLIENT OR A RESIDENT IN A LONG-TERM CARE FACILITY.*" (Emphasis added).



Therefore, SB 40 would permit an ombudsman to enter the private apartment of a RCAC tenant without the permission of that tenant. Do we expect that to happen often if this provision becomes law? No. Should such access ever be permitted without the prior consent of the RCAC tenant or upon the tenant's request? No.

- **RCACs are not “long-term care facilities.”** As defined under HFS 89.13(1), Wis. Adm. Code., a “residential care apartment complex” means “a place where five or more adults reside *that consists of independent apartments, each of which has a lockable entrance and exit*, a kitchen, including a stove, and individual bathroom, sleeping and living areas . . . ‘Residential care apartment complex’ *does not include* a nursing home or a community-based residential facility . . .” (Emphasis added). Unlike a nursing home, a CBRF, or any other long-term care facility, a RCAC is a personal residence; the requirement of a lockable entrance and exit means the tenant controls who comes into the apartment and who does not. The only difference between a senior living in his/her own apartment and receiving COP services and a tenant receiving home- and community-based care in a RCAC is the RCAC provider, not the county, is the service provider to the RCAC tenant. Current statute and SB 40 permit ombudsman services to be provided to COP clients in their homes or apartments *upon their request*; why should RCAC tenants be treated any differently? Why should they be asked to give up their privacy when COP clients are not?
- **Even LFB Issue Paper #161 does not fully recognize the distinction between the long-term care facility (i.e., nursing home, CBRF) and the RCAC apartment where long-term care services are provided.** The RCAC was created to foster independence, privacy and dignity. Its focus is housing with services. Its intent was to expand home- and community-based care to a congregate setting. One way the Legislature attempted to distinguish the facility/provider/institutional flavor of a nursing home or CBRF from the home-like atmosphere of the RCAC was by what it referred to those who resided in each. Under s. 50.01(6), a “resident” is defined as “a person who is cared for or treated in and is not discharged from a nursing home, community-based residential facility or adult family home, irrespective of how admitted.” Individuals who reside in a RCAC are not considered “residents” under Chapter 50 even though the RCAC was created under s. 50.034. On the other hand, HFS 89.13(32) defines a “tenant” as “an individual who resides in and has a service agreement with a residential care apartment complex.” Those who reside in a nursing home/CBRF are “residents;” those who reside in RCACs are “tenants.” The distinction may be semantics to some but it was intentional by the Legislature. So the title of Issue Paper #161 Ombudsman Services for *Residents* of Residential Care Apartment Complexes technically is inaccurate; it should refer to *tenants* of RCACs.
- **Unlike the resident of a nursing home or CBRF, the RCAC tenant must have the cognitive ability to understand and sign a contract as a condition of admission.** The NOTE under HFS 89.29 Admission and Retention of Tenants reads: “This (admission) requirement is included because (RCAC) tenants need to be competent to understand and express their needs and preferences, enter into a service agreement, and understand and accept risk.” Because they are independent and able to make their own decisions, the need for ombudsman services is significantly less for RCAC tenants than for nursing home/CBRF residents.

- **This issue is not new; it was vetoed from the 1997-99 budget and died in committee as 2003 Assembly Bill 644.** This provision, with the annual “bed tax” of \$12/occupied RCAC bed, was vetoed from 1997 Assembly Bill 100, the 1997-99 budget bill, by Governor Tommy Thompson. In his veto message, the Governor wrote: “I object to the expansion of the ombudsman program to residential care apartment complexes since these facilities are designed as home-like environments for the elderly and disabled.” The Assembly Aging and Long-Term Care Committee held a February 19, 2004 public hearing on 2003 AB 664; an executive session was never held on the bill and AB 664 died in committee.
- **Where is the need for this expanded service?** According to LFB Issue Paper #161, the only rationale for this provision appears to be “BOALTC has received calls from residents (sic) 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.” There are over 9,000 RCAC tenants; how many phone calls has the BOALTC received from these tenants or family members? HFS 89, the RCAC rule, has a grievance procedure specific to RCAC tenants; did the BOALTC inform those RCAC callers of that grievance procedure and was it utilized? The code also specifies that RCAC tenants can file complaints with the Division of Quality Assurance (DQA) in the Department of Health and Family Services? Did the BOALTC inform those callers of that right and did they utilize it? If the answer to these questions is “yes,” where is the need for change? And if the answer is “no,” the question becomes “why not?” Issue Paper #161 indicates that only 28 RCAC complaints were filed with the DQA in 2006 and only 3 of those complaints were substantiated. Does this warrant the potential invasion of privacy that could result from the adoption of this provision?
- **The extension of the nursing home/CBRF residents’ rights under s. 50.09 to RCAC tenants is unnecessary because RCAC tenants have their own tenant rights under HFS 89.** Subchapter III of HFS 89, the RCAC rule, contains an expansive list of tenants’ rights specifically tailored to RCAC tenants. At the same time, virtually all the nursing home/CBRF residents’ rights under Chapter 50 are provided in similar form to RCAC tenants under HFS 89. Extending the Chapter 50 nursing home/CBRF residents’ rights to RCAC tenants is unnecessary, potentially confusing, and possibly conflicting.
- **Some nursing home/CBRF residents’ rights under Chapter 50/SB 40 either are not applicable or not relevant in the RCAC setting.** Under Section 1796 of 2007 SB 40, s. 50.09(1m)(f)1 would grant a RCAC tenant the right to “privacy for visits by spouse.” Unless the RCAC tenant and his/her spouse are experiencing marital discord, they will be sharing the RCAC apartment and such a “right” is unnecessary. Regardless of the “situation,” the RCAC tenant still controls who enters and who does not enter his/her apartment. This “right” is not relevant in the RCAC setting. Under s. 50.09(1m)(j) of the budget bill, a RCAC tenant has the right to not be involuntarily discharged for nonpayment of charges if the Medicaid funding for the tenant’s care is reduced or terminated because the tenant requires a level or type of care that is not provided by the RCAC. RCAC tenants are not eligible for Medicaid funding.

- **Some important tenants' rights in HFS 89 are not included under the Chapter 50 nursing home/CBRF residents' rights.** Specifically, the nursing home/CBRF residents' rights statute does not contain the right of "self direction" which is guaranteed RCAC tenants under HFS 89.34(3). That provision states a RCAC tenant has the right "to make reasonable decisions relating to activities, daily routines, use of personal space, how to spend one's time and other aspects of life in the residential care apartment complex."
- **WAHSA members strongly oppose Alternative #2 under LFB Issue Paper #161, which would impose an annual \$12 "RCAC occupied bed tax" to pay for an additional ombudsman position to provide ombudsman services in RCACs.** WAHSA members have been vigorously fighting the "nursing home bed tax" contained in SB 40; our opposition to such a bed tax certainly would extend to RCAC tenants. Why should RCAC tenants be required to pay for a service they never requested and indeed may strongly oppose? Why did the Governor choose to ignore the BOALTC's budget request to impose the RCAC bed tax? Indeed, if this issue is so important, why did the Governor choose not to fund it at all? If expanding the responsibilities of the ombudsman to include RCAC oversight is good public policy (which we don't believe it is), state GPR funds, and not tenant funds, should pay for that expansion.

WAHSA members believe the role of the ombudsman should remain focused on the challenges facing the residents of nursing homes, CBRFs, adult family homes and the other long-term care facilities under its jurisdiction, as well as recipients of COP services. Expanding the domain of the BOALTC's ombudsman program to include RCACs would divert their limited staff and resources away from the areas most in need of their services.

Thank you for considering our viewpoints on this important matter.