



ISSUE PAPER

Expansion of Ombudsman Oversight to Resident Care Apartment Complexes

The Governor's Budget Proposal: Under current law, the long term care ombudsman investigates complaints of improper care in, and serves as an advocate for residents of, nursing homes, Community Based Residential Facilities (CBRFs), Adult Family Homes (AFHs), hospices, facilities providing care under continuing care contracts, and swing beds in hospitals. Assembly Bill 75 authorizes the ombudsman to investigate complaints in, and serve as an advocate for residents of, Residential Care Apartment Complexes (RCACs), and requires RCACs to post a notice regarding the ombudsman program.

WHCA/WiCAL Position: Oppose. Ombudsman oversight authority was rejected by the legislature in the 1995 statutory creation of the RCAC registration and certification category. The same rationale which prompted its rejection then applies today, and is the basis for WHCA/WiCAL's opposition to this proposal.

RCACs are fundamentally independent living arrangements. Elderly and disabled individuals choose to live in this environment independently with limited support, personal, or nursing services. The proposed expanded authority for the Ombudsman program alters and runs counter to the philosophy and purpose of the RCAC communities. Specifically, the individuals that reside in RCACs are independent, autonomous decision-makers. These settings are their homes, with individual apartments and separate entrances for each unit. RCACs are fundamentally and programmatically different from other long term care providers and to extend Ombudsman authority to these settings runs counter to the goals and purpose of the RCAC environment.

By amending the definition of "long term care facility," within Wis. Stats. Sec. 16.009, to include RCACs, Ombudsman are granted sweeping access and power within an environment that is predicated on individual autonomy and mutual agreements between residents and operators. Conclusive evidence of this proposition is found in the introductory section of DHS 89 entitled "Authority and Purpose." This section reads:

DHS 89.11 Authority and purpose. This chapter is promulgated under the authority of s. 50.034, Stats., to establish standards and procedures for the certification or registration of residential care apartment complexes in order to promote the health and safety of persons residing in and receiving services from those facilities. **This chapter is intended to ensure that all residential care apartment complexes provide each tenant with an independent apartment in a setting that is home-like and residential in character; make available personal, supportive and nursing services that are appropriate to the needs, abilities and preferences of individual tenants; and operate in a manner that protects tenants' rights, respects tenant privacy, enhances tenant self-reliance and supports tenant autonomy in decision-making including the right to accept risk.** [Emphasis added]

Expanding the oversight and access authority runs counter to and is in conflict with the stated authority and purpose of the RCAC setting. Just as we would not expect an Ombudsman to have access to individuals' residential homes, this should remain true for RCACs.

There is a notable absence of the explanation of need for this expansion. We are unaware of any compelling or demonstrated need to expand this program, the cost of which will surely only increase as these residential options grow. RCAC residents are not without options should they have issues or complaints regarding their residence. The proposed expansion will only serve to fundamentally alter the intended environment and goals of these settings.

WHCA

Wisconsin Health Care Association

WiCAL

Wisconsin Center for Assisted Living
