



2003 ASSEMBLY BILL 644

November 10, 2003 - Introduced by Representatives KRUSICK, UNDERHEIM, BERCEAU, BOYLE, GUNDERSON, HAHN, HINES, JESKEWITZ, KRAWCZYK, OLSEN, OTT, POPE-ROBERTS, SHILLING, TAYLOR, VAN ROY and ZEPNICK, cosponsored by Senators ROESSLER, CARPENTER and RISSER. Referred to Committee on Aging and Long-Term Care.

1 **AN ACT** *to renumber and amend* 50.09 (1); *to amend* 50.09 (title), 50.09 (2),
2 (4) and (5) and 50.09 (6) (a), (b) and (d); and *to create* 16.009 (1) (em) 7., 20.432
3 (1) (gt), 50.034 (3) (e), 50.034 (9) and 50.09 (1g) of the statutes; **relating to:**
4 authorizing access by the long-term care ombudsman or his or her
5 representative to a client or resident in a residential care apartment complex,
6 imposing an annual assessment on occupied apartments of residential care
7 apartment complexes, expanding rights of residents of facilities to include
8 residents of residential care apartment complexes, requiring posting of a
9 notice, requiring the exercise of rule-making authority, and making an
10 appropriation.

Analysis by the Legislative Reference Bureau

Under current law, under the Long-Term Care Ombudsman Program, the long-term care ombudsman or his or her designated representative may enter a long-term care facility at any time, without notice, and have access to clients and residents of the facility. "Long-term care facility" is defined to be a nursing home, a community-based residential facility, a place in which care is provided under a

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continuing care contract, a swing bed in an acute care or extended care facility, or an adult family home. The ombudsman or representative may communicate in private with a client or resident, review records with consent of the client or resident or his or her legal counsel, and have access to records of the long-term care facility or of the the Department of Health and Family Services (DHFS) concerning regulation of the long-term care facility.

Also under current law, residential care apartment complexes are certified or registered and otherwise regulated by DHFS. A “residential care apartment complex” is defined as a place where five or more adults reside that consists of independent apartments, each of which has an individual lockable entrance and exit, a kitchen with a stove, and individual bathroom, sleeping and living areas, and that provides to a resident not more than 28 hours per week of supportive, personal, and nursing services.

Lastly, current law specifies rights of residents of nursing homes and community-based residential facilities, including the rights to have private and unrestricted communication with others, to present grievances without justifiable fear of reprisal, and to be fully informed of all services, charges for services, and changes in service.

This bill expands the definition of a long-term care facility, for purposes of activities by the long-term care ombudsman or his or her designated representative, to include residential care apartment complexes.

The bill imposes an assessment on each residential care apartment complex of \$12 per year per occupied apartment, which must be paid annually by the complex to DHFS by July 1, based on occupied apartments for the complex for the preceding June. The assessment must be enforced and collected by DHFS and credited to an appropriation of program revenues for expenditure by the Board on Aging and Long-Term Care for activities under the Long-Term Care Ombudsman Program in residential care apartment complexes.

The bill also includes residents of residential care apartment complexes as persons entitled to the rights that are specified under current law for residents of nursing homes and community-based residential facilities.

Finally, the bill requires a residential care apartment complex to post in a conspicuous location a notice of the name, address, and telephone number of the Long-Term Care Ombudsman Program.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 1 **SECTION 1.** 16.009 (1) (em) 7. of the statutes is created to read:
2 16.009 (1) (em) 7. A residential care apartment complex, as defined in s. 50.01
3 (1d).

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1 (c) By July 1 annually, a complex shall submit to the department the amount
2 due under par. (b) for each occupied apartment of the complex for the preceding June.
3 The department shall verify the number of apartments of a complex and, if necessary,
4 make adjustments to the payment, notify the complex of changes in the payment
5 owing, and send the complex an invoice for the additional amount due or send the
6 complex a refund.

7 (d) Sections 77.59 (1) to (5), (6) (intro.), (a), and (c), and (7) to (10), 77.60 (1) to
8 (7), (9), and (10), 77.61 (9) and (12) to (14), and 77.62, as they apply to the taxes under
9 subch. III of ch. 77, apply to the assessment under this subsection.

10 (e) 1. The department shall enforce and collect the assessment under this
11 subsection and shall develop and distribute forms necessary for levying and
12 collection.

13 2. The department shall promulgate rules that establish procedures and
14 requirements for levying the assessment under this subsection.

15 (f) 1. An affected complex may contest an action by the department under this
16 subsection by submitting a written request for a hearing to the department within
17 30 days after the date of the department's action.

18 2. An order or determination made by the department under a hearing as
19 specified in subd. 1. is subject to judicial review as prescribed under ch. 227.

20 **SECTION 6.** 50.09 (title) of the statutes is amended to read:

21 **50.09** (title) **Rights of residents in certain facilities and complexes.**

22 **SECTION 7.** 50.09 (1) of the statutes is renumbered 50.09 (1m), and 50.09 (1m)
23 (intro.), (b), (c), (e), (f) 1. and 3., (g), (j) (intro.) and 2. (intro.) and a. and (L), as
24 renumbered, are amended to read:

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1 50.09 (1m) ~~RESIDENTS' RIGHTS.~~ (intro.) Every resident in a ~~nursing home or~~
2 ~~community-based residential facility~~ or a complex shall, except as provided in sub.
3 (5), have the right to:

4 (b) Present grievances on the resident's own behalf or others to the facility's
5 staff or administrator of the facility or complex, to public officials or to any other
6 person without justifiable fear of reprisal, and to join with other residents or
7 individuals within or outside of the facility or complex to work for improvements in
8 resident care.

9 (c) Manage the resident's own financial affairs, including any personal
10 allowances under federal or state programs, unless the resident delegates, in
11 writing, such responsibility to the facility or complex and the facility or complex
12 accepts the responsibility or unless the resident delegates to someone else of the
13 resident's choosing and that person accepts the responsibility. The resident shall
14 receive, upon written request by the resident or guardian, a written monthly account
15 of any financial transactions made by the facility or complex under such a delegation
16 of responsibility.

17 (e) Be treated with courtesy, respect and full recognition of the resident's
18 dignity and individuality, by all employees of the facility or complex and licensed,
19 certified or registered providers of health care and pharmacists with whom the
20 resident comes in contact.

21 (f) 1. Privacy for visits by spouse. If both spouses are residents of the same
22 facility or complex, they shall be permitted to share a room or apartment unless
23 medically contraindicated as documented by the resident's physician in the
24 resident's medical record.

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1 3. Confidentiality of health and personal records, and the right to approve or
2 refuse their release to any individual outside the facility or complex, except in the
3 case of the resident's transfer to another facility or complex or as required by law or
4 3rd-party payment contracts and except as provided in s. 146.82 (2) and (3).

5 (g) Not to be required to perform services for the facility or complex that are not
6 included for therapeutic purposes in the resident's plan of care.

7 (j) (intro.) Be transferred or discharged, and be given reasonable advance notice
8 of any planned transfer or discharge, and an explanation of the need for and
9 alternatives to the transfer or discharge. The facility or complex to which the
10 resident is to be transferred must have accepted the resident for transfer, except in
11 a medical emergency or if the transfer or discharge is for nonpayment of charges
12 following a reasonable opportunity to pay a deficiency. No person may be
13 involuntarily discharged for nonpayment under this paragraph if the person meets
14 all of the following conditions:

15 2. (intro.) The funding of his or her care in the ~~nursing home or~~
16 ~~community-based residential~~ facility under s. 49.45 (6m) is reduced or terminated
17 because of one of the following:

18 a. He or she requires a level or type of care which is not provided by the ~~nursing~~
19 ~~home or community-based residential~~ facility.

20 (L) Receive adequate and appropriate care within the capacity of the facility
21 or complex.

22 **SECTION 8.** 50.09 (1g) of the statutes is created to read:

23 50.09 (1g) In this section, "complex" means a residential care apartment
24 complex.

25 **SECTION 9.** 50.09 (2), (4) and (5) of the statutes are amended to read:

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1 50.09 (2) The department, in establishing standards for ~~nursing homes and~~
2 ~~community-based residential facilities~~ and complexes may establish, by rule, rights
3 in addition to those specified in sub. (1) ~~(1m)~~ for residents in such facilities or
4 complexes.

5 (4) Each facility or complex shall make available a copy of the rights and
6 responsibilities established under this section and the facility's rules of the facility
7 or complex to each resident and each resident's legal representative, if any, at or prior
8 to the time of admission to the facility or complex, to each person who is a resident
9 of the facility or complex, and to each member of the facility's staff of the facility or
10 complex. The rights, responsibilities and rules shall be posted in a prominent place
11 in each facility or complex. Each facility or complex shall prepare a written plan and
12 provide appropriate staff training to implement each resident's rights established
13 under this section.

14 (5) Rights established under this section shall not, except as determined by the
15 department of corrections, be applicable to residents in such facilities or complexes,
16 if the resident is in the legal custody of the department of corrections and is a
17 correctional client in such a facility or complex.

18 **SECTION 10.** 50.09 (6) (a), (b) and (d) of the statutes are amended to read:

19 50.09 (6) (a) Each facility or complex shall establish a system of reviewing
20 complaints and allegations of violations of residents' rights established under this
21 section. The facility or complex shall designate a specific individual who, for the
22 purposes of effectuating this section, shall report to the administrator.

23 (b) Allegations of violations of such rights by persons licensed, certified or
24 registered under chs. 441, 446 to 450, 455 and 456 shall be promptly reported by the
25 facility or complex to the appropriate licensing, examining or affiliated credentialing

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1 board and to the person against whom the allegation has been made. Any employee
2 of the facility or complex and any person licensed, certified or registered under chs.
3 441, 446 to 450, 455 and 456 may also report such allegations to the board. ~~Such~~ The
4 board may make further investigation and take such disciplinary action, within the
5 board's statutory authority, as the case requires.

6 (d) The facility or complex shall attach a statement, which summarizes
7 complaints or allegations of violations of rights established under this section, to the
8 report required under s. 50.03 (4) (c) 1. or 2. The statement shall contain the date
9 of the complaint or allegation, the name of the persons involved, the disposition of
10 the matter and the date of disposition. The department shall consider the statement
11 in reviewing the report.

12 **SECTION 11. Nonstatutory provisions; board on aging and long-term**
13 **care.**

14 (1) RESIDENTIAL CARE APARTMENT COMPLEX ACTIVITIES. The authorized FTE
15 positions for the board on aging and long-term care are increased by 1.0 PR position
16 on July 1, 2004, to be funded from the appropriation account under section 20.432
17 (1) (gt) of the statutes, as created by this act, for the purpose of performing long-term
18 care ombudsman activities in residential care apartment complexes.

19 **SECTION 12. Nonstatutory provisions; health and family services.**

20 (1) ASSESSMENTS ON RESIDENTIAL CARE APARTMENT COMPLEXES; RULES.

21 (a) The department of health and family services shall submit in proposed form
22 the rules required under section 50.034 (9) (e) 2. of the statutes, as created by this
23 act, to the legislative council staff under section 227.15 (1) of the statutes no later
24 than the first day of the 4th month beginning after the effective date of this
25 paragraph.

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1 (b) Using the procedure under section 227.24 of the statutes, the department
2 of health and family services may promulgate rules required under section 50.034
3 (9) (e) 2. of the statutes, as created by this act, for the period before the effective date
4 of the rules submitted under paragraph (a), but not to exceed the period authorized
5 under section 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24
6 (1) (a), (2) (b), and (3) of the statutes, the department is not required to provide
7 evidence that promulgating a rule under this paragraph as an emergency rule is
8 necessary for the preservation of the public peace, health, safety, or welfare and is
9 not required to provide a finding of emergency for a rule promulgated under this
10 paragraph.

SECTION 13. Initial applicability.

11 (1) ASSESSMENTS ON RESIDENTIAL CARE APARTMENT COMPLEXES. The treatment of
12 section 50.034 (9) of the statutes first applies to an assessment due from a residential
13 care apartment complex for June 2004.

SECTION 14. Effective date.

14 (1) This act takes effect on July 1, 2004.

15
16
17 (END)