



JOY GOEBEN

STATE REPRESENTATIVE • 5th ASSEMBLY DISTRICT

September 20, 2023

Thank you Committee Chair Cabral-Guevara and members of the committee for hearing SB 155 / AB 162, which changes the written relocation or eviction notice from 30-days to 90-days.

This bill requires that nursing homes or Community Based Residential Facilities and care management organizations provide a 90-days' written notice to a resident, to the resident's guardian, and/or to a member of the resident's family, before the resident is required to be relocated or evicted.

Under current law, only 30-days' written notice, prior to relocation or eviction is required. This issue was brought to my attention when concerned family members contacted my office seeking any help they could find.

The families related that an assisted living facility in my district had decided to change its policies and to stop providing care to participants in the Medicaid's Family Care program.

In the middle of winter, in Wisconsin, the residents were given 30-days to find a new home. In the realm of nursing homes and residential facilities, finding alternative living inside a 30-day window is short.

One family had to move their mother to a facility located hours away, because nothing closer was available at the time. They were told she could be moved again when something closer opened up.

Consider the amount of stress that could be alleviated or prevented if residents and their families were given a reasonable amount of time to make arrangements, once they receive a relocation or eviction notice.

Adding insult to injury, how about the resident who does not have family, or their family lives in another state, or the only relative is also elderly and unable to assist. The resident, if capable, is left to figure this out for themselves.

Given the staffing shortage of long-term care facilities, residents and their families should receive timely notification to prepare for change.

ROBERT L. COWLES

Wisconsin State Senator, 2nd Senate District

STANDING COMMITTEES:

Natural Resources & Energy, Chair

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Economic Development & Technical Colleges

Testimony on 2023 Senate Bill 155

Senator Robert Cowles
Senate Committee on Health
September 20, 2023

Thank you, Chairwoman Cabral-Guevara and committee members, for allowing me to testify on Senate Bill 155. SB 155 would extend the required time in which assisted living facilities must notify residents and their families of evictions from their facilities.

Under current law, nursing homes and community-based residential facilities, more commonly known as assisted living facilities, are required to give a 30-day written notice to a resident, their family, and legal guardian before the resident is evicted from their current facility. An eviction announcement can be emotionally strenuous news, especially for a senior who has grown accustomed to his or her familiar surroundings and daily care routine in their facility. SB 155 would attempt to combat that by lengthening the 30-day notice period to 90 days.

Although it is not the first instance, the April announcement of evictions of MA patients from the Emerald Bay Retirement Community in Hobart has raised awareness on this issue. While Emerald Bay followed the existing laws and notified their residents of the evictions as soon as possible, roughly 40 days prior, the residents and their families still shoulder great stress in having to mentally prepare themselves to move out as their managed care organization (MCO) tries to find a new home, hopefully in the same county and close to their loved ones.

The stress caused by shifts to a new facility is dramatic. Having lived through it myself with a member of my own family, as well as these stories from Green Bay whose families were impacted in my district, should bring greater attention to this trauma.

By extending the required eviction notice from 30 days to 90 days for providers and MCOs under SB 155, more can be done to ease the worries of residents, their families, and their guardians as they prepare to move their loved ones into a new aging care facility. With more time to find their new home, families and care facilities can better prepare patients for a nerve-racking transition in the caretakers, neighbors, and scenery around them in their nursing homes or assisted living facilities.

Assisted-living homes are rejecting Medicaid and evicting seniors

Some residents who drained their nest eggs to cover private-pay rates have been evicted after turning to Medicaid to pay their bills.



By [Christopher Rowland](#)

April 6, 2023 at 7:06 a.m. EDT

Shirley Holtz, 91, used a walker to get around. She had dementia and was enrolled in hospice care. Despite her age and infirmity, Holtz was evicted from the assisted-living facility she called home for four years because she relied on government health insurance for low-income seniors.

Holtz was one of 15 residents told to vacate Emerald Bay Retirement Community near Green Bay, Wis., after the facility stopped accepting payment from a state-sponsored Medicaid program. And Emerald Bay is not alone. A recent spate of evictions has affected dozens of assisted-living residents in Wisconsin who depended on Medicaid to pay their bills — an increasingly common practice, according to industry representatives.

The evictions highlight the [pitfalls of the U.S. long-term care system](#), which is showing fractures from the pandemic just as a wave of 73 million baby boomers is hitting an age where they are likely to need more day-to-day care. About 4.4 million Americans have some form of long-term care [paid for by Medicaid](#), the state-federal health system for the poor, a patchy safety net that industry representatives say pays facilities too little.

Residents of assisted-living facilities — promoted as a homier, more appealing alternative to nursing homes — face an especially precarious situation. While federal law protects Medicaid beneficiaries in nursing homes from eviction, the law does not protect residents of assisted-living facilities, leaving them with few options when turned out. In Wisconsin, residents who entered facilities on Medicaid, as well as those who drained their private savings after moving in and subsequently enrolled in Medicaid, have been affected.

“It’s a good illustration of how Medicaid assisted-living public policy is still in its Wild West phase, with providers doing what they choose in many cases, even though it’s unfair to consumers,” said Eric Carlson, a lawyer and director of long-term services and support advocacy at the nonprofit group Justice in Aging. “You can’t just flip in and out of these relationships and treat the people as incidental damage.”

The U.S. government does not monitor or regulate assisted-living facilities, and no federal data is available on the frequency of evictions. In Wisconsin, The Washington Post counted at least 50 Medicaid-related evictions since the fall based on statements by operators, as well as nonprofit and government Medicaid agencies.

But evictions have become so common that some states, including New Jersey, have enacted policies to curb them. Nationally, state ombudsman programs for long-term care received 3,265 complaints related to evictions from assisted-living facilities in 2020, the latest data available. That data does not detail the reason for the evictions, though ombudsmen said most complaints arose after operators declared that a resident’s needs had become too great to be handled at the facility.

Emerald Bay did not explain why it stopped participating in Medicaid. But advocates, family members and the nonprofit that managed the facility’s Medicaid contract contend the motivation was financial: Medicaid reimbursement is lower than full private-pay rates.

Family members said they were upset and angry. Holtz spent her entire savings paying out of pocket with the understanding that she would be permitted to stay once she qualified for low-income insurance, her relatives said. Ann Marra, Holtz’s daughter, said her mother — who worked much of her life as a professional secretary and raised her family in Algoma, a small town on Lake Michigan — deserved better treatment.

Marra feared the eviction would affect her mother’s mental health.

“It’s cruel, heartless and sad,” she said.

After a stressful search, Holtz’s family moved her on March 13 to an assisted-living facility that still honors state Medicaid. Emerald Bay’s operator, Baka Enterprises, did not respond to requests for comment.

Advocates for assisted-living residents worry that pandemic-induced economic conditions are contributing to the problem in pockets of the country. Profits in assisted-living facilities are threatened by a shortage of staff and big spikes in labor costs, inflation that is jacking up the costs of goods, and higher interest rates. Meanwhile, occupancy rates continue to lag behind pre-pandemic peaks.

The industry blames evictions on insufficient Medicaid funding. Reimbursements, made under federal waivers that allow states to spend Medicaid dollars for elderly care outside of nursing homes, are not keeping up with rising costs, industry representatives said.

“Chronic Medicaid underfunding is not sustainable and is limiting participation as well as driving many providers out of the waiver program, reducing access to care options,” said LaShuan Bethea, executive director of the National Center for Assisted Living trade group.

The gap in pay rates between Medicaid and the full amount charged to families paying out of pocket varies among states. While private-pay rates are often \$5,000 a month or more, Medicaid in many states pays only about \$3,000 a month, said Paul Williams, vice president of government relations at Argentum, a trade association representing assisted-living facilities.

Operators “have tried to hold off [canceling Medicaid contracts] as long as they can, hoping the reimbursement will be increased to help them afford inflation factors,” Williams said. “Hope has diminished in some states of that happening, and they’re saying, ‘I cannot do this anymore.’”

In 2020, about 18 percent of 818,000 residents in U.S. assisted-living facilities were supported by Medicaid payments, according to [federal data](#), a ratio that has remained stable for at least a decade.

In Wisconsin, at least four facilities have canceled Medicaid managed-care contracts in recent months. In addition to Emerald Bay’s 15 residents, Cedarhurst of Madison had 28 residents who were Medicaid beneficiaries when it terminated its contract last year. Residents found out they were being evicted after being called to a group meeting in late fall, said one of those told to leave, Elizabeth Burnette.

“Residents were in tears to hear they had to find another place to live,” Burnette, 80, said. “Most of us are incapacitated in some way, with walkers and in wheelchairs or mobile beds.”

Cedarhurst has been operating the facility, which is owned by Massachusetts-based real estate investment trust Diversified Healthcare Trust, since November 2021. Going to 100 percent private pay at the Madison site was a “tough decision” made in conjunction with Diversified Healthcare, Cedarhurst spokeswoman Christie Schrader said.

“When we took over management, we inherited Medicaid residents with special cases who required advanced care that we do not offer at our communities,” Schrader said. “Therefore, we believed it was in the residents’ best interest to aid them in finding alternative placement which could care for them in the way they deserve.”

The lobbying and trade group in Wisconsin that represents the long-term care industry said assisted-living operators recognize evictions are highly stressful for residents and their families.

“Not only is it traumatic for the resident and the family, it’s also traumatic for the facility. It really is,” said Rick Abrams, president and CEO of the Wisconsin Health Care Association/Wisconsin Center for Assisted Living. “This is the residents’ home. Everyone understands that.”

He said evictions usually occur when an assisted-living facility and one of the state’s nonprofit Medicaid managed-care organizations cannot agree on the monthly rates for care of an elderly person. Written notices given to residents in the recent evictions stated little about the rationale.

HarborChase of Shorewood, outside Milwaukee, had six Medicaid residents when it said it was ending its Medicaid contracts in January, according to managers of the state’s nonprofit Medicaid managed-care organizations.

“With the new year comes necessary changes,” Karin Bateman, chief operating officer of Vero Beach, Fla.-based Harbor Retirement Associates, HarborChase of Shorewood’s parent company, wrote in a three-paragraph letter to residents on Jan. 6 that informed them that the facility would no longer accept Medicaid. “Our 60-day notice of Medicaid termination gives you time to plan accordingly.”

Harbor Retirement Associates did not respond to requests for comment.

The evictions carry an especially harsh sting for residents who enter assisted-living facilities paying full rates out of pocket with the understanding that, once their nest egg has been spent down, they can remain in the facility under Medicaid. Such arrangements are common across the country and are discussed with families by marketing staff, according to elder-law attorneys and industry experts.

But facilities may have strict limits on the number of beds they designate as Medicaid-eligible, or they can back out of state Medicaid contracts completely. Such caveats may be buried in the fine print of resident agreements or are not addressed at all in the contracts, according to contract provisions in the Wisconsin cases reviewed by The Post. Families often sign such contracts in a time of stress, as they are seeking a safe place for a parent who can no longer remain in their own home.

“This is how people are getting screwed, by promises that the place will take [Wisconsin Medicaid] if they stay for two years. Then they either sell to another company, or change their minds and opt out of the program entirely, which you really can’t stop them from doing. At that point, the family has used up their funds,” said Carol Wessels, a lawyer specializing in elder law in Mequon, Wis.

Family members are often left feeling betrayed.

“It’s appalling to say the least,” said Megan Brillault, whose mother, Nancy Brillault, was evicted from HarborChase of Shorewood after spending most of her \$120,000 savings. “They said, ‘Here, let us take your money, all your life savings, and you can live here forever,’ and 10 months later they’re saying, ‘We miscalculated, and we are no longer taking Medicaid beds.’”

Megan Brillault provided an email to The Post in which a HarborChase representative said Nancy could transition to Medicaid after paying private-pay rates for one year. The residency contract did not address the issue, said Brillault, a lawyer.

Medicaid pays for nursing home care directly. It’s an entitlement — if a low-income person qualifies, the state must fund a nursing home bed. Medicaid pays all costs in nursing homes, including room and board, as well as care.

Assisted living is different. At those facilities, Medicaid money can be used to reimburse only the cost of care, such as bathing and dressing, and not room and board, although some states offer supplemental payments to help with rent and food.

With the overwhelming majority of residents paying privately, the median operating profit for U.S. assisted-living facilities in 2019 was 29 percent before deductions for interest and rent payments, according to the National Investment Center for Seniors Housing & Care.

Kate McEvoy, executive director of the National Association of Medicaid Directors, said states want to give elderly people options outside of nursing homes but are squeezed between restrictions on how Medicaid money can be used and the high costs of assisted living.

“This has been a challenge in what has primarily been a proprietary, market-driven model,” she said.

In the eviction notice emailed to Holtz’s family in Wisconsin, Baka Enterprises, Emerald Bay’s operator, said it had decided to terminate its contracts with the state’s Medicaid program that covers services for the elderly. It did not provide a reason but cited a provision of its contract with residents that allowed it to discharge them if they could not afford private-pay rates and the facility did not have designated Medicaid beds.

Kris Holtz, Shirley Holtz’s son, said he was not aware of the provision when he moved his mother into Emerald Bay. Shirley Holtz paid private rates for 26 months before qualifying for Medicaid. She lived at Emerald Bay for another two years at the Medicaid rate before receiving the eviction notice, he said.

The Emerald Bay Medicaid contract was managed by a nonprofit called Lakeland Care. “In the end, Emerald Bay asked us to pay the full private-pay rate for these members, which we are unable to do as a Medicaid-funded agency,” Lakeland Care’s chief executive officer, Sara Muhlbauer, said in a written statement to The Post.

Experts say moving elderly people out of familiar surroundings can induce a condition called “transfer trauma” that accelerates decline. Shirley Holtz’s relatives detected rapid changes after the eviction, said Marra, her daughter. Her mother lost 15 pounds, she said, and quickly stopped using her walker.

On April 3, three weeks after moving out of Emerald Bay and into the new facility, Shirley Holtz died. “The move was a huge factor in her decline,” Marra said in a text.

Even as she mourned, Marra texted an expletive to describe the U.S. long-term care system, punctuated by a red-faced frown emoji. “Kinda angry right now,” she said.

LOCAL

'It isn't right': Resident dies 3 weeks after transferring from Emerald Bay assisted living in Hobart



Benita Mathew

Published 5:02 a.m. CT April 27, 2023 | Updated 2:32 p.m. CT Aug. 29, 2023

If you asked someone to describe Shirley Holtz in one word, most of them would say sweet.

Holtz, 91, could usually be found smiling and laughing or singing along and harmonizing to music with others, even as her dementia progressed.

As her symptoms started to advance more rapidly, Holtz never lost her joy, her family told the Press-Gazette.

Holtz lived in Algoma most of her life. She raised her four children on her own most of the time and worked hard to provide for her family as a professional secretary for doctors in Algoma.

She had hoped that would be enough when the time came for her to move into her new home at a retirement community.

After she had a stroke, Holtz could no longer live alone and in April 2018 moved into assisted living at Emerald Bay Retirement Community in Hobart. She transitioned into a memory care unit, which provides care for residents with dementia, at the facility in 2021.

Holtz qualified for Family Care, the state's Medicaid program created for elderly and adults with disabilities. After a resident's financial resources run out, Family Care kicks in to cover the costs of the facility. Holtz needed to cover the costs of the facility for two years before the Medicaid reimbursements started covering her care.

After five years at the facility, Holtz was told in February she had 30 days to find a new place to live. Medicaid reimbursements were no longer keeping up with the rising costs of

inflation, BAKA Enterprises — which owns Emerald Bay — said in a letter to families. So, Holtz and 14 other residents on the Family Care program had to leave the facility.

Holtz's family was given five facilities to choose from, but they didn't think they would provide the same quality of care.

A spot at Alpha Senior Concepts in Howard later opened up and on March 13 she moved in.

But soon after she settled in, Holtz's children started noticing changes in their mom. She lost 15 pounds, stopped eating, and couldn't drink water.

At Emerald Bay, she was slowly going through the stages of dementia over a few years. After she moved, "she went through the whole thing," said Ann Marra, Holtz's daughter.

"She went in with a walker and in less than a week, she wasn't using her walker. She was in a wheelchair," said Kris Holtz, Shirley's son.

Holtz passed away April 3, three weeks after move-in day. Her family believes that the impact of moving her into another facility, commonly referred to as transfer trauma, led to her decline and ultimately her death.

As her family grieves their mom, Holtz's children are left frustrated at a system they say didn't take care of her when she really needed it. Advocates say the resident dismissals are a sign that the Medicaid system for seniors needs change, but it's complicated. Meanwhile, families are left wondering what to do when their loved one with dementia has to uproot everything into a new home.

RELATED: 'I feel like my grandma has been discarded by society': Fifteen Emerald Bay Medicaid residents react to evictions

RELATED: Long-term care facilities are struggling to keep vulnerable residents on Medicaid across Wisconsin

What happens after dismissal from a facility

Holtz's family have been trying to sift through the mix of emotions of loss and anger.

They could tell the move affected Holtz and led to her decline. The staff at Alpha Senior Concepts was great and helpful toward their mom, but the transfer was just too much for someone with dementia like their mom to handle, Marra said.

"The move really expedited the process," Marra said.

Kate Kahles, program manager of the Alzheimer's Association Wisconsin chapter, has seen a trend of long-term care facilities struggling to keep up with rising costs amid low Family Care payments. It's an issue that has regularly come up in area support group meetings, she said.

Discharges reflect a larger problem in the system of how seniors afford long-term care.

It's a difficult situation for all the families, residents, staff, and providers impacted, said Rick Abrams, CEO and president of the Wisconsin Health Care Association and Wisconsin Center for Assisted Living.

Residents living in memory care, or dementia-care units, are more medically fragile, typically requiring more care for their needs than others living in assisted living. Memory care units also tend to cost more than other units because of the level of care.

Holtz had to pay about \$6,700 a month for memory care at Emerald Bay.

Long-term care providers can decide whether they want to be a provider for people in Family Care and how many Family Care residents they will take into the facility depending on the revenue they will bring in. A managed care organization will negotiate with the facility to set a reimbursement rate for the resident.

Emerald Bay's Medicaid reimbursement rates cover less than half of the residents' costs, Katherine Tegen, CEO of BAKA Enterprises, told the Press-Gazette after the letter went out in January. Due to increased costs of living, higher staff wages, inflation, the Medicaid rate no longer sustains the residents, Tegen said.

Providers are required to give residents at least 30 days' notice if they will be discharged from a facility under state law. But they won't be discharged until they find another adequate facility agreed upon by the MCO and family even if the search goes beyond a month, Abrams said.

Lakeland Care, a managed care organization in contract with Emerald Bay, said in a statement that all residents who were transferred from Emerald Bay were "successfully moved."

"It is important for members and our communities to know that no member will be displaced until a safe and secure placement is found," the statement said.

Holtz's children, though, have come to understand that no move is secure for residents with dementia. While those in assisted living can better understand the transfer, the smallest change can make a profound impact on them.

"Moving someone out of memory care — there's just no reason for it," said Kris Holtz.

To address the issue, Gov. Tony Evers called for implementing a rate band system, or fee schedule, in his budget proposal based on recommendations from the Task Force on Caregiving. The proposal system would include built-in increases based on inflation annually. In the current system, the facility and MCO negotiate a rate for each Family Care resident.

Instead, the fee schedules would create categories of residents based on their needs and set a rate for each category, and reduce the chances of discharges from facilities, Abrams said.

"Creation of the fee schedules will bring predictability in how much facilities are going to get paid," Abrams said.

Marra and Holtz have turned their grief into advocacy. They've reached out to local lawmakers to share their mom's story so others don't have to go through her trauma.

"She worked hard all her life, paid taxes all her life, and never got on medical assistance from the government at all until now when she really needed it," Marra said. "It isn't right."

The trauma of change

It can be particularly difficult for residents with memory loss like Holtz to relocate because it's common for residents with dementia or Alzheimer's to advance more quickly when they go into a new environment, Kahles said.

It can happen when they switch rooms in a facility, go to the emergency room in a hospital, or move to a new facility entirely. Often called transfer trauma, or relocation stress syndrome, residents with dementia can feel a great deal of fear or anxiety when they are unfamiliar with the new space.

If their loved one is in the early stages of dementia, try to include them in the process to decide where they want to move, she said. How you discuss the move with them can impact them, too. If family members can calmly tell them that they will be moving into a new facility, that will help ease their loved one as well.

With any big change, loved ones with dementia can experience an increase in depression or feeling of isolation which can exacerbate their dementia symptoms, Kahles said.

Family and staff should pay attention to any mood changes or if they are becoming more withdrawn and communicate those changes to their primary care provider or neurologist.

“It may be possible that some of that progression is potentially mood-related,” Kahles said. “We want to make sure that we are addressing that and giving people the highest quality of life possible.”

That’s why investing more time talking to the staff at the new facility is important in the move, she said. Tell them about your loved one’s routine, what name they like to be called, or if they had a nickname staff called them at the previous facility. Make sure the staff knows the foods they like to eat, clothes they like to wear, or any other preferences they might have.

“Having that familiarity in the way that caregivers address them and support them is really going to help reduce that trauma,” Kahles said.

That should also be reflected in their room, too. Decorating the room as similarly as possible to their old room will help. If they used any blankets, hung up photos, preferred a nightstand or lamp, or had religious symbols set up in the room, make sure they’re also in the new room before your loved one settles in.

Maintaining routine visits from family members or religious services will also help your loved one feel familiar in their schedule.

“(It’s) really just trying to focus on being the person to take them along on that journey and supporting them through the challenges that come with having to find a new place,” Kahles said.

Thinking about his mother's tumultuous care, Holtz can't help but think about what will happen to him in the future.

“I’m concerned when I get that age,” Kris Holtz said. “Where are they going to put me?”

Where to find help

The Alzheimer’s Association runs virtual and in-person support groups for family caregivers who have a loved one with dementia at a facility.

Virtual:

Family Caregivers for a Loved One with Dementia at a Facility: Every other Friday at 10 a.m.-11:30 a.m.

Family Caregivers for a Loved One with Dementia in the Early Stages: fourth Tuesday of the month at 10 a.m.-11:30 a.m.

In-person in Green Bay:

Schmitt Park: fourth Wednesday of the month from 2-3 p.m.

Woodside Senior Communities: third Tuesday of the month from 1:30-2:30 p.m.

A full list of resources and support groups can be found at www.alz.org/crf. Call the 24/7 helpline at 800-272-3900 to register.

More: Green Bay-area retirement home to evict residents on Medicaid at end of February, citing costs, inflation

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ROBERT L. COWLES

Wisconsin State Senator, 2nd Senate District

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New developments in case of Emerald Bay Retirement Community evictions

Brady Meyer

WBAY

February 1st, 2023

HOBART, Wis. (WBAY) - The people being evicted from the Emerald Bay Retirement Community will all have a place to go - before March 1st. That is what our reporter Jason Zimmerman was assured today after numerous conversations with health services officials and state lawmakers, plus a number of other agencies.

However, there's no guarantee it will be in Brown County.

Those evicted have until February 28th to move out.

The facility, which is managed by Baka Enterprises, contends that those impacted should have learned about the cancellation of Medicaid contracts the first week of January from Lakeland Care District, their family care provider.

The company also said that it made an offer to retain their current members - and Lakeland Care District did not offer them an opportunity to negotiate.

The Green Bay area facility Emerald Bay has based its decision on the rising cost of running the operation, tied to inflation. Many people affected are struggling with the decision. Carey Bartlett is the daughter-in-law of one of the evicted residents: "I wish they would come here and sit down and face these people face-to-face and look them in the eye and say you know what, you have nothing left. You're not worth any value anymore because they can't make money off of them."

ROBERT L. COWLES

Wisconsin State Senator, 2nd Senate District

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A representative for State Senator Rob Cowles tells us that he's aware of the Medicaid situation, and he's looking into the issue.

We expect to hear more from the company, as they plan to take questions from us tomorrow morning. We will update you on the latest developments as soon as we learn them.

The following statement arrived minutes ago from Lakeland in our reporter's email - we are publishing it unedited:

"In December, Lakeland Care, Inc. was notified that its members at the Emerald Bay Retirement Community were being charged over and above the negotiated rate. According to our Family Care and provider contracts, providers may not bill a member for covered or non-covered services - except in special circumstances that require prior approval. Our residential rates are determined, negotiated and locked into a contract, based on the individual needs of each member. Residential partners around the state honor the same rate structure with Lakeland Care.

After we notified Emerald Bay of their inability to charge members these additional fees, Emerald Bay notified us of their intent to terminate their contract on the afternoon of Wednesday, January 4, 2023. On Monday, January 9th, we began notifying and working with our members and legal decision makers on relocation plans. Emerald Bay notified us on January 17th that they would be issuing involuntary discharge notifications.

As of today, we have found new placements for six members, and are working diligently to ensure our remaining members find new care facilities as soon as possible. Our commitment remains to our members' health and safety, and we are continuing to keep DHS apprised on this issue."

ROBERT L. COWLES

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In addition, Senator Rob Cowles sent this statement, also minutes ago:

“I am concerned by the news that yet another facility in our region is no longer accepting Medical Assistance patients. Moving ahead, in coordination with our nonpartisan service agencies, the Legislature needs to ensure that the burdens these facilities face are in the forefront of our minds as we kick-off discussions for the 2023-25 State Budget and continue in the 2023-24 Legislative Session, starting with the issue of the unreasonably short notice residents like these are provided considering their specialized living needs. For residents and families impacted by this decision, I’d encourage you to stay in contact your managed care organization and also reach-out to the Brown County Aging and Disability Resource Center to ensure that you’re prepared for these changes.”

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ROBERT L. COWLES

Wisconsin State Senator, 2nd Senate District

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Woman dies 3 weeks after Emerald Bay Retirement Community eviction

Emily Roberts

WBAY

April 27, 2023

HOBART, Wis. (WBAY) - Shirley Holtz's smile lives on through a photograph on her daughter's coffee table, weeks after her death.

"She's friendly. She loved to smile and talk to people. My god, she'd talk to a stranger going down the street for an hour even though she's in a hurry to go to the store!" Daughter Ann Marra said. "She's the most wonderful woman I'll ever know."

91-year-old Holtz left Emerald Bay Retirement Community and Memory Care March 13 after receiving an eviction notice. She soon moved into Alpha Senior Concepts.

As we first alerted you, 15 residents of Emerald Bay had to move out because the retirement home is no longer accepting Family Care Medicaid payments. That decision is based on rising costs and inflation.

Family members said Holtz's dementia created challenges on top of an already stressful move.

"She was completely lost when she moved into there. She walked in with a walker within a week she was in a wheelchair," Marra explained. "It just brings on a lot more confusion for them, new people, they have to learn new faces, learn new people. They're not going to remember their names but they'll recognize faces."

Marra said her mother stopped eating and drinking and within two weeks, her condition changed significantly:

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“My god I could hardly recognize her. She was 85 pounds and she was non-responsive.”

Holtz died April 3... less than three weeks after making the move.

“In mom’s case she just gave in and stopped the fighting,” Marra told Action 2 News.

She claimed the stress her mother felt while being transferred led to her quick deterioration. It’s a phenomenon she called transfer trauma. According to the Crisis Prevention Institute, transfer trauma is the “stress that a person with dementia may experience when changing living environments” and “if this trauma extends for any period of time the person may be at risk for isolation and depression, anxiety, resistance to care, and similar behavior disturbances.”

Emerald Bay issued a statement in response:

“In terms of whether relocation killed this resident? Absolutely not but I can’t share why I’m so sure of that because it’s HIPAA and it’s her personal health care information,” Emerald Bay Manager Kathy Tegen said. “We couldn’t continue the contract so we can’t keep her without being paid so she had to relocate. She took her time. She drug it out for a long time and I was okay with that. We want each family to get the community they want and be comfortable and safe.”

The Alzheimer’s Association has a free online community for anyone impacted by Alzheimer’s or dementia called ALZConnected. Members can post questions about dementia-related issues, offer support and create public and private groups.

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State of Wisconsin
Department of Health Services

Tony Evers, Governor
Kirsten L. Johnson, Secretary

TO: Members of the Senate Committee on Health
FROM: HJ Waukau, Legislative Director
DATE: September 20, 2023
RE: SB 155 relating to: Nursing Home Facility Closure

The Department of Health Services (DHS) would like to submit written testimony for information only on Senate Bill 155 (SB 155), regarding the notification of certain facility closures, change in type or level of services or means of reimbursement accepted, and care management organization notification of contract termination with a provider that is a nursing home or community-based residential facility.

Facility closures are often a hardship and burden placed on residents who are in a vulnerable state of health, while also negatively impacting their families and loved ones. SB 155 would increase the amount of time a community-based residential facility, nursing home, or managed care organization (MCO) is required to notify residents to find a new place of residence, and it would clarify the current statutory requirement which states that the resident must receive a 90-day notice. Extending the timeline for notification to 90-days increases resident choice and may also keep them in their counties and closer to home for longer. Additionally, residents can choose to move sooner if they agree.

While the increased time requirement may be a boon for residents and families it may be difficult for some providers to meet if the facility is closing due to low staffing or financial difficulties. When a facility announces that they will be closing, some staff may leave to find other employment, which would have an impact on the facilities and residents. Some facilities have historically provided a bonus to encourage staff to stay through the relocation process. The bill may have the unintended consequence of providers refusing to take back members who were sent to a different or more intensive facility and are looking to return.

Additionally, the 90-day notification requirement in the bill as written may not allow DHS to take swifter action if required. If in the unfortunate circumstance a care management organization is not fulfilling their contract obligations and DHS needs to terminate a contract faster than 90 days to protect the health and safety of its members, it is unclear if the current language would inhibit more immediate action. Further, the proposed language for Wis. Stat. § 46.284(4)(km) would not be in conflict with federal regulations under 42 CFR 438.10(f)(1) requiring a 30-day prior notice. It would however require DHS to update its MCO contracts to align with state statutes.

We thank the Committee for the opportunity to provide written testimony for information only on SB 155 and we offer ourselves as a resource for Committee members for any follow up or additional information that may be needed.



**Wisconsin
Association of
Health Plans**

From: Tim Lundquist, Senior Director of Government & Public Affairs
To: Members, Senate Committee on Health
RE: Senate Bill 155
Date: September 20, 2023

The Wisconsin Association of Health Plans is the voice of 12 community-based health plans that serve government programs, employers, and individuals across the state in a variety of health insurance markets. Association members serve as key state partners in Wisconsin's Medical Assistance program by providing access to acute and primary care services through the BadgerCare Plus and SSI programs and to long-term care services through the Family Care and Family Care Partnership programs. Association member health plans work every day with providers across Wisconsin to ensure that Family Care and Family Care Partnership beneficiaries have access to high quality long-term care services and supports, with a focus on ensuring beneficiaries' quality of life and ability to live as independently as possible.

The Association appreciates the opportunity to comment on Senate Bill 155, legislation relating to notification of certain facility closures. The Association agrees with the basic principle advanced by the bill, which is that residents of nursing homes or community-based residential facilities (CBRFs) be notified as soon as practicable of a forthcoming relocation and with adequate time to secure a new site of care. However, the Association has concerns with the bill as currently drafted.

Section 1 of Senate Bill 155 creates a new section of statute that requires care management organizations, when terminating a contract with a provider that is a nursing home or CBRF, provide at least 90 days' written notice of the termination to the provider, to any resident who is to be relocated, to the resident's guardian, if any, and to a member of the resident's family, if practicable, unless the resident requests that notice to the family be withheld.

Section 2 of the bill amends Wis. Stat. 50.03 to require a nursing home or CBRF to provide 90 days – instead of the currently required 30 days – notice of a required relocation to a resident, the resident's guardian, if any, and to a member of the resident's family, if practicable, unless the resident requests that notice to the family be withheld. Under current law, these "Chapter 50 closures" are invoked when the "facility is closing, intends to close or is changing its type or level of services or means of reimbursement accepted and will relocate at least 5 residents or 5 percent of the residents, whichever is greater."

Care management organizations, commonly referred to as MCOs, must meet requirements set out by state law, administrative code, and contract with the Department of Health Services (DHS) when they contract, monitor contracts, and terminate contracts with providers. Together, these numerous requirements outline parameters to ensure appropriate notice for members and providers, member and provider grievance and appeals processes, and protection of member rights. For example, the current contract between MCOs and DHS requires that the MCO "must make a good faith effort to give written notice of termination of a contracted provider, by the later of 30 calendar days prior to the effective date of the termination or fifteen (15) calendar days after receipt or issuance of the termination notice, to each member who received their

primary care from, or was seen on a regular basis by, the terminated provider.” In other words, the combination of current statute, administrative code, and the DHS contract define a framework to achieve the general requirement contemplated under Senate Bill 155 for an MCO to notify its members of a contract termination with a nursing home or CBRF.

The Association is also concerned with the specific requirement under Senate Bill 155 to provide 90 days’ notice of a contract termination. MCOs understand the importance of giving impacted members timely notification of provider contract terminations, especially in the event a member must be relocated from a nursing home or CBRF. Further, as described above, MCOs are contractually required by DHS to make a good faith effort to provide members notice either 30 calendar days before the termination effective date or within 15 calendar days of receipt or issuance of a provider termination notice, whichever is later. However, the 90-day notice requirement specified under Senate Bill 155 is a significant increase from the current contract standard and is a difficult standard to meet under certain circumstances.

For example, MCOs may not be aware of a likely or actual contract termination 90 days in advance if there is a facility closure, member quality or safety concerns that require immediate intervention, provider financial solvency concerns that require immediate intervention, or a provider is being terminated “for cause.” Any of these circumstances may require an MCO to act quickly to terminate a provider contract and/or relocate the member from a nursing home or CBRF, which may not allow for a 90-day member notification. While Senate Bill 155 does not prohibit MCOs from terminating a provider contract with an effective date of less than 90 days, the bill as drafted does not contemplate circumstances in which MCOs must act expeditiously. Therefore, MCOs who terminate provider contracts with an effective date of less than 90 days would be in violation of the member notice requirement established by Senate Bill 155. The Association is concerned that MCOs could be in violation of this proposed member notice requirement because it is seeking to fulfill other responsibilities to both Medicaid members and the Department of Health Services.

Finally, as mentioned previously, “Chapter 50 closures” are invoked under a specific set of circumstances defined by current state law. However, Senate Bill 155 establishes a general requirement that MCOs provide member notices upon termination of a contract with a nursing home or CBRF – not just under the more limited circumstances specified for provider notices under Wis. Stat. 50.03. Thus, while Senate Bill 155 appears to intend to place the same notice requirements on MCOs and providers, the bill’s requirements for MCOs are actually broader than those for providers.

The Association respectfully requests Senate Bill 155 be amended to address the concerns raised above. The Association appreciates the bill authors’ willingness to discuss these issues and stands ready to work with legislators to address these concerns. If committee members have any questions, please reach out directly to Association Senior Director of Government & Public Affairs Tim Lundquist at 608-255-8599.

WHCA / WiCAL

Wisconsin Health Care Association Wisconsin Center for Assisted Living

September 20, 2023

WHCA/WiCAL Testimony on Senate Bill 155

Chairwoman Cabral-Guevara and Members of the Senate Committee on Health:

Good afternoon, and thank you for the opportunity to submit testimony on Senate Bill 155. Long-term care (LTC) providers appreciate this committee's (as well as the bill author's) willingness to work with health care stakeholders on this and many other health care-related matters.

While well-intentioned, LTC providers believe that there are more effective ways to address the author's concerns of ensuring adequate notice of discharge/relocation to residents. Providers fear that the bill as currently drafted would create new challenges for providers and residents, including potential increased difficulty in ensuring adequate payments for the care and services for Wisconsin's Family Care participants, as well as increased concerns of continuity of care.

The purpose of this bill, as we understand it, is to minimize circumstances where residents and their families are put in a position to hastily make or accept decisions related to relocation when an LTC facility notifies residents, families, and others that it intends to close or to stop accepting a particular payment source. Providers agree that LTC residents deserve the respect and dignity of receiving adequate time in these circumstances to make the right decision for themselves and their families. Providers believe the current notice requirement ensures a sufficient and fair amount of time, as other checks and balances also come into play. For example, providers maintaining operations but no longer accepting Family Care will not evict residents after the 30th day, given resident relocation protections found in state statute, administrative rules, and the state's resident relocation plan.

And importantly, if a provider is closing for urgent reasons, extenuating circumstances such as workforce shortages, increasing costs, etc. may preclude them from giving more than 30 days' notice.

This proposal arose after a situation at an assisted living facility where the facility made the operational decision to no longer accept Family Care as a payor source. While we are not affiliated with this facility, it is our understanding that the facility's decision at that time was based on inadequate Family Care payments, and a breakdown during negotiation of new contract terms with the facility and a Family Care Managed Care Organization (MCO). MCOs are contracted with the state to manage the Family Care, Family Care Partnership, and PACE programs, which includes providing and planning care and services for Family Care participants.

On a more fundamental level, we believe it is typically in all parties' interest – the resident (first and foremost), the provider, and the MCO – that the resident be able to remain in their current placement if possible and if it the resident wishes to. This would eliminate any disruption of care, services, or daily living, as there would be no relocation of the resident(s). This was the goal of the facility in this case, but unfortunately the provider and the MCO could not negotiate a rate for those Family Care participants in advance of the new rate year, leading the provider to conclude that Family Care was not a viable option moving forward.

Instead of focusing on notice requirements, we believe a more direct and impactful approach would be to examine ways in which all parties can come to agreeable terms well in advance of the new rate year.

In fact, extending the notice requirement beyond 30 days will create more imbalance at the negotiating table, as providers will be forced to cease ongoing negotiations much sooner than the current practice if a longer notice deadline is implemented. While we believe more effective alternatives exist than changing the notice requirement timeline, we would respectfully request that related to this specific concern, in order to keep negotiations ongoing in good faith, SB 155 be amended to require the MCO to honor the terms of the existing contract either until new contract terms are agreed upon, or until the resident has been appropriately relocated to a new and appropriate setting.

On behalf of our provider members, we are always happy to meet again and discuss this matter – including what we believe to be more practical alternatives and/or compromise solutions – further with Senator Cowles and others who may be interested.

Thank you again for the opportunity to share our perspective on this bill.

RICK ABRAMS

CEO

Wisconsin Health Care Association/Wisconsin Center for Assisted Living

rick@whcawical.org



Date: September 20, 2023
To: Chair, Vice Chair, and Members of the Senate Committee on Health
From: Jim Orheim, President/CEO, LeadingAge Wisconsin
Subject: SB 155; Notification of Certain Facility Closures, Change in Type or Level of Services or Means of Reimbursement Accepted

Chairperson, Vice Chair, and Committee members - thank you for this opportunity to provide testimony regarding Senate Bill 155.

LeadingAge Wisconsin represents hundreds of senior living providers across the state. The shared mission of our largely non-profit members is to provide exceptional quality care to their residents and to serve their communities.

Clinicians and social workers have shared with us the distress and disruption residents experience when faced with relocating, especially those dealing with dementia or in need of memory care. We also recognize the value of the bond between direct care workers and the individuals they serve and strive to maintain these long-standing relationships whenever possible through stable employment and consistent provider support.

Involuntary discharges from our member facilities are rare and extremely unfortunate, occurring only in exceptional circumstances. These unfortunate situations may arise from unsuccessful negotiations between a provider and a Family Care Managed Care Organization. In instances where economic constraints necessitate such discharges, our members commit to offering residents as much time as possible to secure an alternative, often bearing the costs themselves.

While we acknowledge the well-intentioned nature of Senate Bill 155 in safeguarding residents, we believe it falls short in addressing the underlying issue of caregiver underfunding within Medicaid-covered residential services. By extending notice requirements, the bill may inadvertently give Managed Care Organizations more time for negotiation, potentially causing undue distress to residents and their families.

The real problem is the Family Care system is in need of reform. By not providing reimbursement for services that adequately reflects the cost of care, providers are often faced with using the possibility of discharge as their only means of securing fair treatment from Managed Care Organizations. None of our provider members want to put the elderly in the middle of business decisions, but it is becoming an unfortunate consequence of the current program design, and one which we encourage this committee and others to thoroughly review.

Family Care Managed Care Organizations frequently react rather than proactively plan for changes in resident acuity levels. Regulatory constraints and caregiver shortages further limit what can be done for a resident within any particular licensed setting. The prolonged search for suitable alternative placements due to these challenges places undue strain on residents, their families, and providers. Furthermore, low Medicaid reimbursement also adversely affects other senior citizens who privately fund their assisted living care, as cross-subsidization is necessary to continue serving the Family Care population.

In the upcoming months, the Department of Health Services is expected to propose a fee schedule for Family Care providers. We hope that this proposal will align with the actual costs of providing quality care. While we are open to considering longer notice requirements, we believe that such an investment would go further in addressing the challenges faced by Wisconsin residents and families seeking quality residential care without the fear of facility closures or contract terminations with Managed Care Organizations.

We look forward to further discussions on solutions that ensure long-term care providers in Wisconsin can continue to provide the highest quality care to their residents.

Sincerely,

Jim Orheim
President/CEO
LeadingAge Wisconsin



To: Senator Rachael Cabral-Guevara, Chair
Members of the Senate Committee on Health

From: Michael Pochowski, President & CEO

Date: Wednesday, September 20, 2023

Re: Senate Bill 155: Oppose

On behalf of the Wisconsin Assisted Living Association (WALA) we are submitting testimony in explanation of our opposition to Senate Bill 155: Notification of Certain Facility Closures, Change in Type or Level of Services or Means of Reimbursement Accepted.

My apologies for not testifying in person today, however the WALA member fall conference is occurring this week in Brookfield, Wisconsin. Otherwise, I would have liked to appear today.

Under current law, nursing homes and community-based residential facilities (CBRFs) are required to give a 30-day written notice to a resident, their family, and legal guardian if the facility exits the Family Care Program. Senate Bill 155 would extend that required notice period to 90-days.

WALA opposes this bill in its current form as it increases the burden on CBRFs and could extend up to three (3) months a provider having to continue to accept a low or inadequate reimbursement rate(s) in the Family Care Program while costs and expenses continue to rise. This could also be viewed as an advantage for the MCO in the contract negotiation process and could be an incentive to delay relocation if no other provider will accept the proposed rate.

Keep in mind, if a long-term care provider is exiting the Wisconsin Medicaid program, it is likely their assessment that the reimbursement rate(s) being offered are inadequate to cover actual costs of providing quality care. Further, it is generally understood that reimbursement in Family Care is less than what private-pay residents in the same CBRF facility pay.

WALA also believes the proposed statutory changes contained in SB-155 would create further inconsistencies as many MCO contractual obligations to the providers require 30-day notifications. The point being many of our members believe the state is putting providers at a disadvantage as compared to MCOs in the reimbursement rate setting process.

What is Family Care?

Family Care is Wisconsin's Medicaid managed long-term care program for older adults and adults with disabilities. According to the Department of Health Services (DHS) website, "the

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goal is to get members the services they need to live in a home setting when possible¹.” Individuals must meet financial (poverty) and functional (care needs) eligibility requirements.

DHS contracts with and makes capitation payments to managed care organizations (MCOs). According to a Legislative Fiscal Bureau informational paper, *“the capitation payment DHS makes to MCOs represent the average cost calculated across all members of each respective MCO in each geographic service area. These average costs reflect the case mix risk based on an individual’s level of functional eligibility, labor costs, and administrative costs.”*² It should be noted, the estimate in the most recent 2023-2025 biennial budget used \$13.02 as the median direct care worker wage – which most in the profession would agree does not accurately reflect market wage realities of today. Keep in mind that labor costs usually represent approximately 80% of a long-term care facility’s budget.

And, while it’s clear that capitation payments are made using various models and information, it also depends on the amount of funding allocated to the program in the state biennial budget.

As an example of what reimbursement looks like, *“monthly capitation rates paid to MCOs in calendar year 2022 ranged from \$3,006.34 to \$4,710.43 for individuals who meet a nursing home level of care standard and from \$522.37 to \$685.04 for other qualifying individuals who do not meet the nursing home level of care standard.”*³

MCO capitation rates are reviewed and established by DHS annually that go into effect each calendar year beginning on January 1. MCOs are provided draft rates in September and final rates usually in late November/early December. The capitation rate information is not shared publicly until after the first of the new contract year. This is one of the reasons why annual rate negotiations between MCOs and providers can often occur during the last few months of the calendar \ fiscal year and can lead to delays or missing annual contract deadlines. And, if a contract is up at the beginning of the calendar year the provider is at a disadvantage as the MCO knows what their capitation rates will be, but not the provider. But it should be noted that there are many contracts with providers that start and end in other months of the year.

When a CBRF and MCO are unable to agree upon a reimbursement rate(s), the MCO and CBRF have the contractual option to not renew the agreement. When that happens, the CBRF works with the resident(s), their family, legal guardian, the MCO, the Board on Aging and Long-Term Care - Office of the State Long Term Care Ombudsman, the Division of Medicaid Services, and the Division of Quality Assurance to ensure the resident(s) find adequate placement.

CBRFs cannot evict residents after the 30th day, given resident protections found in state statute, administrative rules, and the DHS resident relocation plan⁴.

While relocations are not the norm, but when they do occur providers have at times communicated frustrations with the process. As an example, efforts to relocate an individual(s)

¹ [Wisconsin Department of Health Services \(DHS\): Family Care: Home \(website\)](#)

² [Wisconsin Legislative Fiscal Bureau: Informational Paper #45 Medical Assistance & Related Programs \(01-2023\)](#)

³ [Wisconsin Legislative Fiscal Bureau: Informational Paper #45 Medical Assistance & Related Programs \(01-2023\)](#)

⁴ [Wisconsin Department of Health Services: Resident Relocation Manual](#) (and corresponding state statutes)

to a facility in the same or nearby community can often depend on whether the new facility will accept the same rate rejected by the original provider. And, if providers in a region do not find the rate acceptable – it can lead to individuals being placed farther away from where they would otherwise have chosen.

No fair state appeals process for providers. When a provider feels the MCO proposed reimbursement rate(s) is/are too low or contract provisions unfair, there is no state fair hearings process by which providers can appeal. In addition, the MCO contracts usually limit what the provider can communicate to the resident regarding the situation. And providers can have little control of the relocation effort if other providers in the area also do not accept the MCO rates.

Further, keep in mind how long-term care contracts operate with respect to notices of termination from the resident and/or the MCO to the provider. When resident utilization or health needs require a change in facility, or a health condition leads to an immediate termination of services – contract and payment notifications are usually 30-days – unless policy or contract terms specify otherwise.

From the provider perspective this legislation is trying to deal with a symptom of the real issue at hand – establishing and funding fair and adequate reimbursement. If we were to tackle this one aspect and truly recognize market caregiver wages in the calculation of capitation rates and provider reimbursement – the likelihood of providers exiting Family Care might diminish.

In conclusion, WALA opposes Senate Bill 155 in its current form as we believe a 30-day notice is sufficient, especially when termination notices from residents and MCOs to the provider are also 30-days. Any changes should be balanced to ensure equitable treatment with notices.

Thank you for your consideration in this matter. If you have any questions, please feel free to contact me or our lobbyist, Forbes McIntosh.

The Wisconsin Assisted Living Association (WALA) is the largest trade association in Wisconsin representing the assisted living profession with over 1,500 facility members. This includes community-based residential facilities (CBRF), residential care apartment complexes (RCAC), and adult family homes (AFH). WALA's mission is support assisted living communities, staff, and residents through advocacy, education, and service.