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THE IMPACT OF WISCONSIN'S NEW CONCEALED CARRY LAW ON LONG-TERM CARE FACILITIES

Governor Walker signed the concealed carry bill, now known as Act 35, into law in July, making Wisconsin the 49th state to legalize the carrying of concealed weapons. Beginning on Act 35's effective date, November 1, 2011, Wisconsin residents with a valid license will be able to carry concealed weapons into most public places.

The New Law

Under the new law, Wisconsin residents at least 21 years of age who complete a training program and meet minimal background requirements will be eligible for a license. Once licensed, the licensee will be permitted to carry concealed weapons—including handguns, electronic tasers, billy clubs and knives (other than switchblades)—into most public places. A weapon is concealed if it is hidden from ordinary view.

Concealed weapons will remain illegal in schools, police stations and several other public buildings, as will weapons that are not concealed and firearms that fall outside the definition of weapon (*e.g.*, rifles or shotguns). In addition, certain owners and occupants of property will be allowed to prohibit firearms in or on their property by posting adequate notice. Employers will also be able to prohibit their employees from carrying concealed weapons during the course of their employment.

Prior to the enactment of Act 35, Wisconsin residents were generally permitted to carry weapons that were not concealed. The new law does little to limit an individual's right in these situations. Nonetheless, private entities such as long-term care facilities retain the right to adopt internal policies and procedures to control weapons on their property, whether concealed or carried openly.

Prohibiting Carrying of Concealed Weapons by Residents

The concealed carry law creates a new provision in the Wisconsin trespass statute that allows certain owners or occupants of buildings to prohibit individuals from carrying firearms in or on their property. Specifically, "nonresidential buildings"—including nursing homes, community-based residential facilities, residential care apartment complexes, adult family homes and hospice facilities—may prevent individuals from carrying firearms into any part of the building or its grounds (with the exception of firearms located in vehicles that are driven or parked in a parking lot or facility) by posting signs to notify individuals of the restriction. Proper signage must be at least 5 by 7 inches and posted in a prominent place near all entrances of the building (or all probable access points to the grounds to which the restriction applies) so that any individual entering can be reasonably expected to see it.¹

Independent living facilities are not included in the definition of "nonresidential buildings," and therefore, would not be able to restrict individuals from carrying concealed weapons to

¹ See Wis. Stat. § 948.605(2)(b)1m, 18 U.S.C. 922(q)(2)(B)(i). Although an individual is subject to a Class B forfeiture for possessing a firearm within 1,000 feet of the grounds of a school, it is not illegal to do so on "private property not part of school grounds." Therefore, independent living facilities should not rely on the restriction on carrying firearms in a school zone to insulate against concealed carry. Rather, it must comply with the notice provisions of Act 35.

the same extent. Rather, under Act 35, independent living facilities are only permitted to restrict nonresidents from carrying firearms in the common areas or grounds of the building. Restrictions must be made by posting a sign in a prominent place near all entrances to the common areas or all probable access points to the grounds to which the restriction applies.

Independent living facilities likely cannot prohibit residents from keeping concealed weapons in their own apartments or any common areas or grounds by simply posting signs. However, independent living facilities that wish to ban concealed weapons should consider amending their leases or building rules to ensure compliance with the desired concealed weapon policy. In doing so, such facilities should explore how new policies may coincide with existing lease agreements that permit residents to store weapons in individual units.

It is important to recognize, however, that the new trespass provisions discuss the prohibition of firearms as opposed to all weapons (as defined above). Based on the language of Act 35, it is unclear whether the new trespass provisions apply to weapons that are not firearms. Accordingly, in an effort to reduce confusion over what items are banned and to reinforce a facility's position on prohibition, "nonresidential" and independent living facilities may want to incorporate both terms—"firearms" and "weapons"—on their signs. Furthermore, to clarify their policies regarding parking lots, facilities should consider placing, at the entrances and probable access points of any parking lot or facility, signs that clearly assert that all concealed weapons are to be kept within a locked vehicle at all times.

Prohibiting an Employee's Carrying of Concealed Weapons

Although licensees may legally carry concealed weapons, employers may prohibit their employees from doing so during the course of their employment. However, employers may not, as a condition to employment, prohibit an employee from carrying a concealed weapon in his or her own motor vehicle, regardless of whether the vehicle is used in the course of employment or parked in the employer's parking lot. Employers may adopt internal policies discussing how a concealed weapon must be stored in a vehicle (such as requiring that it remain in the vehicle and that the vehicle remain locked at all times).

Immunity

Under a noteworthy caveat to the new legislation, owners and operators that do not prohibit an individual from carrying a concealed weapon on their property will enjoy immunity from any resulting liability. Further, "[a]n employer that does not prohibit one or more [of its] employees from carrying a concealed weapon ... is immune from any liability arising from its decision."² What, exactly, the extent of such immunity might be is an open question.

If, for example, a nursing home prohibits employees from carrying concealed weapons, but permits other licensees to do so, it would be immune from liability if a visitor's concealed handgun accidentally fires and strikes an employee. However, if an employee, in violation of the restriction on concealed weapons, brings a handgun to work that accidentally fires, the nursing home would be liable as if, and to the same extent, it would have been prior to the enactment of Act 35. Stated differently, a facility's decision to prohibit the carrying of concealed weapons should not expose it to greater liability than it had before Act 35's enactment.

Another open question under Act 35 is whether a facility may be able to maintain immunity under the law by not prohibiting, but merely regulating or limiting the carrying of concealed weapons on its property. It is possible that only an outright prohibition of the carrying of concealed weapons would cost a facility its statutory immunity under Act 35, as under the text of the act, the immunity applies to those who "do not prohibit" individuals or employees

² See Wis. Stat. § 175.60(21) (c).

from carrying concealed weapons.³ A facility could certainly argue that it may create policies regulating or limiting the carrying of concealed weapons that would not reach the level of prohibiting the carrying of concealed weapons.

In determining whether to prohibit concealed carry, employers must also consider their duty under the federal Occupational Safety and Health Act (OSHA) to provide their employees with a place of employment that is "free from recognized hazards that are ... likely to cause [their employees] death or serious physical harm."⁴ Although it is unlikely that an employer will be in violation of OSHA if it decides not to prohibit its employees from carrying concealed weapons, employers should at minimum consider the risks of concealed carry inherent to their organization.

How Should Long-Term Care Facilities Respond to the New Law?

In light of the new legislation, all long-term care facilities should consider whether they will prohibit concealed weapons on their property. Facilities should weigh the benefits of immunity against the risks of liability when making a decision whether or not to prohibit employees and other licensees from carrying concealed weapons. Although a facility may not be subject to any greater liability arising out of its decision to permit concealed weapons on the premises, it may be at an overall greater risk of adverse events occurring that involve weapons. Additionally, long-term care facilities, like all businesses, should consider the impact of their decision on their current and potential residents (*i.e.*, are they gun-rights supporters or opponents?)

Facilities that opt to permit the carrying of concealed weapons by employees should ensure that proper internal policies are in place, including any applicable limitations, employee background checks and other security measures. Facilities that prohibit concealed weapons for employees should adopt and distribute policies that reinforce the ban and address the potential disciplinary action for violations. Further, long-term care facilities that would like to ban concealed weapons on their premises should have the required signage in place before November 1, and update all policies, leases and building rules as necessary by the same date. Facilities may be able to purchase signs through private businesses, their local chambers of commerce or other local business groups.

The Health Care team at Reinhart Boerner Van Deuren s.c. is available to assist your facility in the development and adoption of policies to address the new concealed carry law, or to consult with you regarding any other legal or regulatory issues. Please feel free to contact [Rob Heath](#), the Chair of the Health Care Department, at 414-298-8205 or any member of Reinhart's Health Care team to discuss any questions or concerns related to your facility.

This *Headlines in Long-Term Care Facilities, Assisted Living and Senior Housing Law E-Alert* provides general information and should not be construed as legal advice or a legal opinion. Readers should seek legal counsel concerning specific factual situations confronting them.

³ See *Wis. Stat. § 175.60(21) (b) and (c)*.

⁴ See *29 U.S.C. § 654(a)(1)*.