



## 1995 ASSEMBLY BILL 890

February 15, 1996 – Introduced by Representatives KRUSICK, URBAN, BOCK, BOYLE, CULLEN, HAHN, HANSON, MORRIS-TATUM, R. POTTER, RYBA and L. YOUNG, cosponsored by Senator BURKE. Referred to Committee on Aging and Long-Term Care.

1     **AN ACT to amend** 49.49 (4m) (b); **to repeal and recreate** 49.49 (4); and **to create**  
2           49.49 (4g) and 50.045 of the statutes; **relating to:** prohibiting discrimination  
3           and other actions by nursing homes toward persons who are eligible for medical  
4           assistance, creating a private cause of action for persons suffering medical as-  
5           sistance discrimination, requiring certain procedures for admissions by nurs-  
6           ing homes and providing penalties.

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### *Analysis by the Legislative Reference Bureau*

This bill prohibits all of the following by persons in connection with the medical assistance program:

1. The knowing and wilful failure or refusal to accept an applicant for admission to a nursing home because the applicant is a medical assistance recipient or a potential medical assistance recipient.
2. The knowing and wilful transfer of a medical assistance recipient, within a nursing home, or failure or refusal to retain the medical assistance recipient or potential recipient as a patient, solely because of his or her medical assistance status.
3. The knowing and wilful solicitation, acceptance or receipt of a duration-of-stay agreement as a precondition for admitting a patient to a nursing home or hospital. A “duration-of-stay agreement” is defined in the bill.

The bill creates a private cause of action by a person injured by medical assistance discrimination for damages or to correct acts or omissions by a nursing home. The action may be for damages, injunctive relief or mandamus to compel prosecution by the department of justice (DOJ) or the district attorney under the jurisdiction that DOJ or the district attorney has in current law for prosecution of criminal laws affecting the medical assistance program.

Lastly, the bill establishes all of the following procedures that a nursing home must follow in admitting any persons:

1. Admitting a person in the order in which he or she applied for admittance.
2. Offering placement on a waiting list to persons who inquire concerning bed availability.
3. Provision to applicants or persons requesting placement on a waiting list of a receipt specifying the date and time that the application or request was made.
4. Maintenance of a record, available to specified persons and certain governmental agencies, of applications for admission and requests for waiting list placement and production of the record for the department of health and social services as a condition of the nursing home's license renewal.

Violation of the required nursing home admittance procedures, under the bill, subjects the nursing home to the structure, under current law, of administratively imposed nursing home penalties, including imposition of forfeitures.

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

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

1           **SECTION 1.** 49.49 (4) of the statutes is repealed and recreated to read:

2           49.49 (4) PROHIBITED FACILITY CHARGES OR OTHER ACTIONS. (a) In this subsection,  
3           “duration-of-stay agreement” means a contract to pay a fixed daily or monthly rate  
4           for a fixed period of time for care and treatment in an intermediate care facility or  
5           skilled nursing home, that corresponds to the rate for care and treatment charged  
6           by the intermediate care facility or skilled nursing home to persons who are ineligible  
7           for medical assistance.

8           (b) No person, in connection with medical assistance services, the cost of which  
9           is paid for in whole or in part by the state, may, as a precondition of admitting a pa-  
10          tient to a hospital, skilled nursing home or intermediate care facility, or as a require-  
11          ment for the patient's continued stay in the hospital, skilled nursing home or inter-  
12          mediate care facility, do any of the following:

1           1. Knowingly and wilfully charge, solicit, accept or receive, in addition to any  
2 amount otherwise required to be paid under the medical assistance program, any  
3 gift, money, donation or other consideration.

4           2. Knowingly and wilfully solicit, accept or receive a duration-of-stay agree-  
5 ment.

6           (c) Whoever violates this subsection shall be fined not less than \$5,000 nor more  
7 than \$25,000 or imprisoned for not more than 5 years or both.

8           **SECTION 2.** 49.49 (4g) of the statutes is created to read:

9           49.49 **(4g)** DISCRIMINATION. (a) *Prohibited conduct.* No person, in connection  
10 with the medical assistance program, may do any of the following:

11           1. Knowingly and wilfully fail or refuse to accept an applicant for admission to  
12 an intermediate care facility or a skilled nursing home because the applicant is a re-  
13 cipient of medical assistance or is, becomes or may become eligible for medical assis-  
14 tance.

15           2. Knowingly and wilfully transfer within an intermediate care facility or with-  
16 in a skilled nursing home or fail or refuse to retain as a patient a person who is a recip-  
17 ient of medical assistance or is, becomes or may become eligible for medical assis-  
18 tance, solely because of that status.

19           (b) *Penalties.* 1. Whoever violates par. (a) 1. shall be fined not less than \$5,000  
20 nor more than \$25,000 or imprisoned for not more than 5 years or both. Each viola-  
21 tion constitutes a separate offense.

22           2. Whoever violates par. (a) 2. shall be fined not less than \$1,000 nor more than  
23 \$10,000 or imprisoned for not more than one year in the county jail or both.

1           (c) *Private cause of action.* A person who suffers an injury or pecuniary loss be-  
2 cause of a violation of this subsection, or of rules promulgated under this subsection,  
3 has an independent cause of action for any one of the following:

4           1. Damages against the intermediate care facility or skilled nursing home,  
5 which, if proven, shall be assessed in an amount sufficient to compensate the person  
6 for injury or pecuniary loss, plus costs, including reasonable attorney fees.

7           2. If the person alleges that the violation has impaired or is foreseeably related  
8 to impairing the person's health, safety, personal care, rights or welfare, injunctive  
9 relief against the intermediate care facility or skilled nursing home.

10          3. If the person alleges that the violation has impaired or is foreseeably related  
11 to impairing the person's health, safety, personal care, rights or welfare, mandamus  
12 against the department of justice or the district attorney to compel prosecution under  
13 s. 49.495.

14          **SECTION 3.** 49.49 (4m) (b) of the statutes is amended to read:

15          49.49 (4m) (b) ~~A person who~~ Whoever violates this subsection ~~may~~ shall be re-  
16 quired to forfeit not less than \$100 nor more than \$15,000 for each statement, repre-  
17 sentation, concealment or failure.

18          **SECTION 4.** 50.045 of the statutes is created to read:

19          **50.045 Facility admission procedures.** (1) Every individual who applies  
20 for admission to a nursing home shall, if admitted, be admitted as unoccupied beds  
21 are available, in the order in which he or she, or another on his or her behalf, applied.

22          (2) If a nursing home has no unoccupied beds, the nursing home shall offer  
23 placement on a waiting list to every individual who inquires or to every individual  
24 on whose behalf another inquires concerning the availability of unoccupied beds.

1           **(3)** The nursing home shall provide to every individual who applies or on whose  
2           behalf another applies for admission to the nursing home, or to every individual who  
3           requests or on whose behalf another requests placement on a waiting list, a receipt  
4           specifying the date and time that the application or request was made.

5           **(4)** For each fiscal year of a nursing home, the nursing home shall keep a record  
6           of all of the following:

7           (a) The name of an individual specified under sub. (3).

8           (b) The name of the individual and the date on which an inquiry specified under  
9           sub. (2) was made.

10          (c) The name of any individual admitted to the nursing home and the date of  
11          admission.

12          (d) The source of payment for every individual admitted to the nursing home,  
13          including changes and dates of changes in the source of payment, if made.

14          (e) The name of any individual who, following admission to the nursing home,  
15          was transferred from one bed to another in the nursing home and the date of the  
16          transfer.

17          **(5)** The record specified under sub. (4) shall be available to all of the following:

18          (a) The individual specified under sub. (3), his or her legal counsel, or his or her  
19          guardian, if any.

20          (b) The department.

21          (c) The board on aging and long-term care.

22          (d) Any federal, state or county governmental agency, under a written request  
23          by the agency, for performance of a legally authorized function.

