



State of Wisconsin

LEGISLATIVE AUDIT BUREAU

AB479

DALE CATTANACH
STATE AUDITOR
SUITE 402
131 WEST WILSON STREET
MADISON, WISCONSIN 53703
(608) 256-2918
FAX (608) 257-0410

DATE: April 4, 1997

TO: Senator Robert W. Wirch and
Representative Mary A. Lazich, Co-chairpersons
Joint Legislative Audit Committee

FROM: Dale Cattanaach
State Auditor *Dale Cattanaach*

SUBJECT: Proposed Audit of the Department of Health and Family Services' Regulation of Nursing Homes—Background Information

At your request, we have gathered some background information the Joint Legislative Audit Committee may find useful in considering a request from 30 legislators for an audit of the Department of Health and Family Services' regulation of nursing homes. Legislators and a *Milwaukee Journal-Sentinel* series published in March 1997 have identified two separate areas of concern: 1) the policies, practices, and procedures related to certification of nurse's aides who may have records of patient abuse, misappropriation of patients' property, or other criminal records; and 2) the adequacy of the Department's practices and procedures for imposing and collecting financial penalties in response to findings of violations of federal or state nursing home regulations, especially repeated violations. Both of these areas are responsibilities of the Division of Supportive Living's Bureau of Quality Assurance, which inspects and certifies or licenses 43 types of health and community care providers and has other health-related regulatory responsibilities. The Bureau employs approximately 270 staff with an annual budget of \$16 million.

The State Nurse Aide Registry was created in 1990 in response to federal requirements. The registry currently identifies more than 100,000 people who have successfully completed requirements for nurse's aides. Since 1992, the State has also been required to investigate allegations of misappropriation of patients' property or of patient abuse or neglect, and to record substantiated findings on the registry. Approximately 320 aides are noted to have substantiated findings of abuse or misappropriation. Nursing homes are required to limit their hiring of nurse's aides to those who are on the registry without records of such misconduct. Currently, 15 positions are authorized in the registry unit. Eight positions are authorized as investigators; five are currently filled and the Department reports that three will be filled soon.

Current concerns about the registry include a backlog of complaints not yet investigated and the length of time between initial report and resolution. The Department has reported that more than 1,000 complaints are received in a year; as of April 1, 207 were pending resolution. Investigations are initiated based upon the severity of the allegations: the Department reports that some complaints are resolved as soon as two weeks after receipt, while more than 75 received in 1995 are still pending.

The Bureau's responsibilities also include enforcing federal and state regulations regarding the quality of nursing home care. Upon finding a violation, the Bureau can impose a state forfeiture or recommend that federal officials impose a penalty. In addition, in cases where a nursing home has violated a state statute or

Senator Robert W. Wirch
Representative Mary A. Lazich
Page 2
April 4, 1997

rule about which it had received a previous notice of violation within the past two years, the Department can triple the amount of the state forfeiture.

Current concerns include the number of violations cited, the length of time between violation and imposition of a penalty, and the amount of forfeitures assessed and collected. Of particular concern is the Department's limited use of triple forfeitures, and whether the legislative intent of this provision is being fulfilled.

An evaluation of the Department's current practices and procedures related to the regulation of nursing homes could include:

- a review of the Department's handling and disposition of complaints regarding the conduct of nurse's aides;
- a review of the policies and procedures governing the operation of the nurse aide registry, to determine the current limits of the registry's utility to nursing homes and possibilities for improvement;
- an assessment of the changes over time in the amount and type of nursing-home violations cited and penalties imposed as a result of inspections;
- an examination of the frequency with which financial penalties have not been collected over the past several years, and the reasons why some are not collected; and
- an examination of the frequency with which the Department has found repeat violations of state statutes and rules, and the frequency and the types of situations in which triple forfeitures are imposed.

If you have any additional questions regarding this request, please contact me.

DC/mg

cc: Senator Joseph Wineke
Senator Brian Burke
Senator Peggy Rosenzweig
Senator Dale Schultz

Representative Carol Kelso
Representative Scott Jensen
Representative Gregory Huber
Representative Doris Hanson

Representative Peggy Krusick

Joe Leean, Secretary
Department of Health and Family Services

 **CITIZEN ADVOCATES**
FOR NURSING HOME RESIDENTS

4565 NO. 126TH STREET P.O. BOX 104 BUTLER, WI 53007-0104
PHONE: (414) 783-7161

*A non-profit volunteer organization dedicated to improving the quality of care in
Nursing Homes.*

October 6, 1997

Representative Peggy Krusick
State Capitol, P.O. Box 8952
Madison, WI 53708-8952
Fax # (608) 282-3697

Re: **Assembly Bill 479. Nursing Home Forfeitures**

Dear Representative Krusick:

I am in receipt of your correspondence today regarding the public hearing on Assembly Bill 479, Nursing Home Forfeitures, which is scheduled for October 8, 1997. I regret that I will be unable to testify in person at this very important hearing.

I would appreciate it if you would consider this letter as our testimony in this matter.

Citizen Advocates for Nursing Home Residents is a non-profit volunteer state-wide organization dedicated to improving the quality of nursing home care. We have been in existence for eight years. During this time, we have continuously advocated for greater accountability of the nursing home industry. Assembly Bill 479 would have a very positive effect in this regard.


Strengthening the mandatory provisions for forfeitures against those homes which continuously violate State and Federal statutes will help send the proper message that the State of Wisconsin is serious about protecting the civil rights of our infirm and elderly citizens who must spend their remaining years in these institutions. It is this segment of our society which cannot always speak or stand up for their individual rights and therefore, we are entrusted with their safety and care.

In particular, the provision requiring forfeitures to be paid immediately, will greatly enhance the ability of the state to properly regulate and hold accountable, those in the industry who continue to fail to uphold the proper standards.

This bill should be passed and become law. The many nursing homes who continue to do a quality job, as well as the Department of Health and Family Services and the consumer should welcome this attempt to further strength our commitment to quality care.

Thank you for the opportunity to submit this written testimony.

Sincerely,


Robert J. Snow, President
Citizen Advocates for Nursing Home Residents

Wisconsin Association of Homes and Services for the Aging, Inc.

204 South Hamilton Street • Madison, Wisconsin 53703 • 608-255-7060 • FAX 608-255-7064

October 7, 1997

To: State Representative John Dobyms, Chair
Members, Assembly Committee on Government Operations

From: John Sauer, Executive Director
Tom Ramsey, Director of Government Relations

Subject: 1997 Assembly Bill 479

The 186 not-for-profit long term care organizations which comprise the Wisconsin Association of Homes and Services for the Aging (WAHSA) wish to voice their opposition to AB 497.

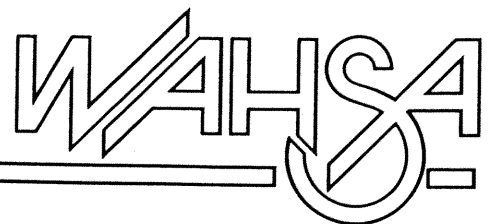
That opposition is based on the following reasons:

1) Further action on AB 497 at this time would be premature.

Earlier this year, Representative Krusick requested an audit be conducted by the Legislative Audit Bureau (LAB) of the Department of Health and Family Services' (DHFS) regulation of nursing homes. The Joint Legislative Audit Committee **approved** that audit request at its April 4, 1997 meeting (please see the attached).

You will note the scope of the LAB audit includes the following: 1) An assessment of the changes over time in the amount and type of nursing home violations cited and penalties imposed as a result of inspections; 2) An examination of the frequency with which financial penalties have not been collected over the past several years and the reasons why some are not collected; and 3) An examination of the frequency with which the Department has found repeat violations of State statutes and rules, and the frequency and the types of situations in which triple forfeitures are imposed.

It is our assumption that every bit of testimony taken today, both in support of and opposition to AB 497, will raise issues being addressed by the LAB audit. **But that audit is ongoing and is not expected to be concluded until the end of this year.**



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AB 497 was introduced more than four months after the audit request was granted and WAHSA members simply ask why: Why request an audit and then introduce legislation on issues the audit is intended to address before the audit even is concluded? Would it not make more sense and better use of the LAB's time to withhold the introduction of legislation at least until the LAB has issued its findings and base that legislation on those findings? What if the findings of the LAB audit conflict with the provisions of AB 497?

WAHSA members respectfully request that the Assembly Committee on Government Operations take no further action on 1997 AB 497 until the Legislative Audit Bureau issues its findings from the audit it is conducting on the regulation of nursing homes by the DHFS.

2) **AB 497 denies due process rights to nursing home providers.**

Where else in our judicial system is the penalty imposed before the trial is held? Section 2 of AB 497 would apply that dubious distinction to nursing home providers seeking to contest the assessment of a forfeiture by the DHFS. For those providers, who would be required to pay the assessed forfeiture within 10 days of its issuance yet prior to the forfeiture appeal hearing, the judicial principle appears to be "guilty until proven innocent."

Indeed, to a certain extent, that adage applies under current law and only would be exacerbated by AB 497. S.50.04(4)(c), Wis. Stats., requires a nursing facility which has been issued a notice of violation of state statutes or code by the DHFS to either immediately (for a Class "A" violation) or within a specified timeframe (for Class "B" or "C" violations) develop and implement a plan of correction, regardless of whether the facility agrees a violation has occurred. Under the current system, it is not uncommon for a facility to expend significant monetary and non-monetary resources to correct a problem that an administrative law judge later rules does not exist.

A simplified version of the current survey and appeals process is as follows: A survey of the nursing home by DHFS surveyors unearths several actions or activities which may or may not be in violation of state (or federal) statutes or codes. After the survey team consults with Central Office staff of the DHFS Bureau of Quality Assurance on its findings, the Bureau issues a notice(s) of violation(s) (NOV) to the facility. The facility, through the Informal Dispute Resolution process (IDR), can question the surveyor's determination that an action did or did not take place but it cannot question the surveyor's interpretation of the statute or code as it relates to that action. After the IDR, the facility must develop and implement its plan(s) of correction. The Bureau also may assess a forfeiture to the facility for any or all of the NOV's issued. **It is only at this point, after the NOV has been issued and the forfeiture assessed, that the facility can contest the NOV and/or the forfeiture assessment.** In other words, the NOV is issued and the forfeiture is assessed without the ability of the facility to provide "its side of the story." If a facility does not contest the forfeiture assessment, the forfeiture must be paid within 10 days of receipt of the notice of assessment; if the forfeiture is contested and upheld either by administrative or judicial review, it must be paid within 10 days of the exhaustion of all appeal rights.

As noted earlier, Section 2 of AB 497 repeals the current right of providers to pay the assessed forfeiture only after exhaustion of all appeal rights. Instead, the forfeiture must be paid within 10 days of the notice of assessment. **WAHSA members strongly oppose this provision because it places nearly 100% discretion for issuance of NOV's and assessment of forfeitures in the hands of a bureaucracy whose interpretations are beyond the challenge of the provider.**

Ironically, once a provider is allowed to challenge those interpretations, at the appeals hearing, the end result under AB 497 may continue to be a reduced forfeiture assessment.

3) **The forfeiture system neither is an effective tool to improve quality care nor an effective deterrent to the provision of poor care.**

Frankly, this goes more to the anticipated findings of the LAB audit on nursing home regulations than specifically to AB 497. But the inference of AB 497 is the increased imposition of forfeitures will increase quality of care in nursing homes and serve as a deterrent to poor care. That simply is not the case.

Forfeitures assessed to nursing homes go to the State's school fund; they do not go to improve resident care. How is resident care improved if dollars that otherwise could be utilized to increase staff, pay better wages or provide better training instead go to the school fund. Indeed, the DHFS has been criticized for not imposing maximum forfeitures and collecting those forfeitures. Rather, the Department has invoked various methods to force facilities to utilize those resources internally, to the benefit of the resident, rather than to merely extract their "pound of flesh." Which approach improves quality of care and is in the best interest of those residing in our nursing homes?

There also appears to be a misperception that the assessment of a forfeiture will rectify the problem for which an NOV was issued. That also is not the case. A forfeiture may be assessed 6-12 months after an NOV has been issued. Obviously, that forfeiture assessment plays no role in rectifying the alleged problem. Rather, it is the directed plan of correction, which must be developed and implemented by the facility immediately upon receipt of an NOV, which protects the health, safety, and welfare of the nursing home resident.

Ironically, imposition of a maximum forfeiture on a bad operator may be the lesser of two evils for that operator and could even be of financial benefit to them. If your goal is to save/ make money by cutting corners, paying a \$10,000 forfeiture instead of expending the \$50,000 necessary to staff adequately and improve the quality of that staff is to your benefit. On the other hand, for the operator making "good faith" efforts to comply with the law, this unwise reliance on the forfeiture as an enforcement tool forces that operator to expend scarce resources in an area outside of resident care. Once again, the Department's strategy to keep those dollars in the facility clearly seems to be in the best interest of our nursing home residents. And shouldn't the ultimate improvement in the quality of their lives be the goal of our enforcement system?

The Wisconsin Association of Homes and Services for the Aging (WAHSA) is a statewide membership organization of not-for-profit corporations principally serving the elderly and disabled. Membership is comprised of 186 religious, fraternal, private and governmental organizations which own, operate and/or sponsor 147 not-for-profit and 49 county-operated nursing homes, 28 facilities for the developmentally disabled (FDD), 62 community-based residential facilities (CBRF), 10 licensed home health agencies, 13 residential care apartment complexes, 99 senior housing complexes, 40 adult day care programs and over 300 community service agencies which provide programs ranging from Alzheimer's support, child day care, hospice and homecare to Meals on Wheels.

Coalition of Wisconsin Aging Groups**TESTIMONY BEFORE THE ASSEMBLY COMMITTEE ON GOVERNMENT OPERATIONS
IN SUPPORT OF 1997 ASSEMBLY BILL 479****Presented by: Betsy Abramson -- October 8, 1997**

The Coalition of Wisconsin Aging Groups strongly supports AB 479, which would strengthen Wisconsin statutes relating to forfeitures imposed on nursing homes. Co-sponsored by 30 members of the legislature, this bill was also introduced at the request of five organizations representing the elderly and people with disabilities, including the Coalition of Wisconsin Aging Groups, and a major union with members working in nursing homes.

This bill helps strengthen nursing home forfeiture laws to ensure quality care and provides the state with better statutory tools to penalize nursing homes that provide substandard care to some of our state's most frail and vulnerable citizens. The bill is in direct response to the excellent series of investigative articles run in the *Milwaukee Journal-Sentinel* in March of this year which painfully documented the amount of abuse in Wisconsin nursing homes. The Budget bill addressed a major problem cited in that series: the problems with the nurse aide registry including lack of uniformity among long-term care providers in terms of their obligation to report abuse, check the registry, conduct criminal background checks, etc.

This bill addresses at least three of the other problems highlighted in those articles: (1) the Bureau of Quality Assurance's view of their role as being "in partnership with the [nursing home] industry"; (2) forfeiture assessments that are negotiated *down* to relatively minor amounts; (3) delays and appeals in the assessment system that result in further reduced penalties and/or delays in correcting cited problems.

The Department recently provided Rep. Krusick, other legislative staff and advocacy representatives with a sample of nursing home forfeitures during 1995 and 1996. This sample demonstrates the critical need for this bill.

EXAMPLE #1 - In *DHFS/BQA Statement of Deficiency #612476*, a resident who was known to be a wanderer, fell down the stairs and as a result, suffered a neck fracture. The facility was given a Class B citation. Within the previous 24 months, this same facility had been cited for a resident fall during bathing which had resulted in *fatal head injuries*, a feeding tube being set too high in a resident, *which also resulted in death*, and a resident fall from a toilet, *which resulted in a "slight" head injury*. Despite these three prior violations of the same code cite in 24 months, the Department did not exercise its discretion and assess a triple forfeiture against the facility for the wandering resident who suffered a neck fracture. In addition, because the current law provides maximums, rather than minimums, for violations, the final amount assessed against the nursing home for the Class B violation for this latest incident was only \$800.

EXAMPLE #2 - In *DHFS/BQA Statement of Deficiency #612250*, a facility had provided insufficient assistance in transferring the resident. The resident fell and as a result broke his/her leg. The

Department gave a Class B violation. Within the past 24 months, this same facility had been cited for insufficient care for an eye infection, which was ultimately "settled" by the Department for \$0. This same facility had also had previous violations for resident abuse and water temperatures. Again, however, the Department did not triple the forfeitures and ultimately assessed only an \$800 fine.

EXAMPLE #3 - In *DHFS/BQA Statement of Deficiency #612615*, a facility was given a Class A citation after a resident who was prescribed a pureed diet died instead given solid food and choked, resulting in the resident developing aspiration pneumonia. This same facility, within the past 24 months, had failed to provide adequate transfer assistance to one resident and also had been cited for a Class B violation when an identified wanderer left their facility. Again, the Department chose not to triple the forfeiture, despite this recent history of violation of the same code.

EXAMPLE #4 - In *DHFS/BQA Statement of Deficiency #610387*, a facility was given a Class B citation after a resident fell from bed due to the facility's failure to raise side rails on the bed, as directed by the care plan. Within the past 24 months, this same facility had been cited for a resident fall resulting from an improper Hoyer lift technique and another case where a resident fell after being left unattended on the toilet. The facility was ultimately assessed a fine of only \$550 for the recent fall from the bed, and the Department declined to order triple fines.

Under AB 479, the Department would be required to triple all of these fines since all of these examples were violations of the same statute or rule that had been violated within the last three years. In the DHFS sample of 26 cases, although 19 cases were eligible for tripling under the BQA test (a violation of the same code subsection within the past 24 months) the Department assessed a tripling in only 8 cases -- less than half.

This bill would address the problems demonstrated by the DHFS-provided examples above. The bill would *require* a tripling of the assessed forfeitures whenever there was a violation of the same code cite for which the facility had been previously cited within the past three years. The annual surveys are scheduled every 9 to 15 months and may not be scheduled for the same day every subsequent survey cycle. During a two-year period, therefore, a nursing home may only have one inspection and would therefore nullify the Department's ability to assess triple forfeitures. The above-cited examples clearly indicate that DHFS, more often than not, does not exercise its current discretion to assess triple fines. Therefore, the legislature should amend the forfeiture laws to make this tripling mandatory.

The bill would also make the violations subject to *minimum* levels. Making mandatory minimums means that there would be no reductions (e.g., "plea bargains") for Class A and Class B violations. The life-threatening nature of these violations cries out for mandatory minimum forfeitures. However, we believe the bill should be amended to significantly increase the minimum amounts.

Finally, the bill would also require that forfeitures be paid immediately and held in an interest-bearing escrow account until the appeal is determined. This negates the facility's incentives for frivolous appeals, or to attempt to get the state to settle the case for a reduced forfeiture. The nursing homes are also protected because if the appeal is won, the money is returned to the facility with interest.

The need for these improvements to Wisconsin's nursing home forfeiture law has been well-documented, including by information provided by the Department itself. They are long overdue and critically needed to protect our very vulnerable nursing home residents. We urge your support.



Wisconsin Health Care Association

TO: Representative John Dobyms, Chair, and Members of the Assembly Government Operations Committee

FROM: Jim McGinn, Wisconsin Health Care Association
Brian Purtell, Wisconsin Health Care Association

DATE: October 8, 1997

RE: Opposition to AB 479

The Wisconsin Health Care Association (WHCA) is a statewide organization which represents the interests of 240 proprietary, non-profit, and municipal nursing homes. Its members employ over 27,000 dedicated individuals who provide care to approximately 26,000 frail elderly and disabled residents.

WHCA recognizes the Legislature's concerns with providing our state's frail elderly and disabled the highest quality of life and care in nursing homes. Our members share your concerns with appropriate oversight of the care delivered to our residents. However, our membership is strongly opposed to AB 479, which is purportedly designed to ensure quality care.

Briefly, WHCA does not believe the Legislature should enact AB 479 for the following reasons:

1). In April of this year, the Joint Legislative Audit Committee unanimously approved an audit of the Department of Health and Family Services' regulation of nursing homes (see attached April 4, 1997, memo from State Auditor Cattanaach). The audit, requested by Representative Peggy Krusick and many other Legislators, directed the Audit Bureau to review several issues of concern, including:

- an assessment of the changes over time in the amount and type of nursing-home violations cited and penalties imposed as a result of inspections;
- an examination of the frequency with which financial penalties have not been collected over the past several years, and the reasons why some are not collected;
- an examination of the frequency with which the Department has found repeat violations of state statutes and rules, and the frequency and the types of situations in which triple forfeitures are imposed.

Section 1 of AB 479, however, makes a number of changes to statutory provisions regarding forfeitures on nursing homes for violations of state regulations without the benefit of reviewing the Audit Bureau's report, scheduled to be completed this year. It is WHCA's opinion that the Legislature should review the findings of the Audit Bureau's requested report on nursing home

regulations to determine if statutory changes are needed in Chapter 50, the laws regulating nursing homes.

2). Section 1 of the bill establishes mandatory minimum forfeitures for facilities receiving violations, and requires triple forfeitures for repeat violations in a three year period.

WHCA is troubled by the intent of this provision, which appears to assure that state surveyors dedicate their enforcement activities to collecting forfeitures, and ignore fostering improvement in patient care. The Legislature has already spoken as to what factors are to be considered in determining forfeitures. Section 50.04(5)(b) *Factors in assessment of forfeitures* states that the department, in determining whether and how much a forfeiture is to be assessed, the following factors are to be considered:

- The gravity of the violation;
- "Good faith" exercised by the facility;
- Any previous violations committed by the facility; and
- The financial benefit to the facility of committing or continuing the violation.

To dictate mandatory minimums circumvents the previously stated intentions of the legislature, and prevents any consideration of mitigating factors that the facility may be able to demonstrate. Additionally, emphasis on forfeitures and mandatory minimums runs contrary to current measures aimed at compliance and quality of care. The comprehensive federal regulations and regulatory scheme place emphasis on correction of violations and then penalties for those facilities that fail to correct. Mandatory minimum fines serve only a punitive purpose and remove any flexibility from the department as to how compliance and quality care can be achieved.

WHCA is not certain how mandatory forfeitures promotes quality care, we would be supportive, however, of working with the author of AB 479 and DHFS to develop initiatives for achieving regulatory compliance and delivering the best possible care to our residents.

3). Section 2 of the bill requires payment of forfeitures assessed to be paid to DHFS within 10 days, and placed in an interest-bearing account until an appeal is resolved.

Again, WHCA is not certain how this provision relates to improving care in nursing homes.

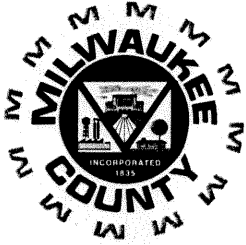
It is the facility's best interest to demonstrate to the consumer that the facility provides quality care in order to compete with other facilities and other providers of long-term care. One important benchmark of quality care is the results of surveys of facilities. Nursing homes appeal violations and forfeitures not to seek delay in payment of money, but rather they do so out of the belief that a particular violation is unwarranted, and out of the goal to achieve as close to a deficiency-free survey as possible. Since the results of all surveys are public record and available from DHFS and must be conspicuously posted in the nursing home, facilities have significant incentive to resolve and clear those violations that they feel are unwarranted.

In addition to implicating possible due process concerns, it is ludicrous to require forfeiture money

to be placed as "bond" at a time where the facility is attempting to establish that the underlying violation did not even exist. If surveyors were 100% infallible and their citations were always correct and supportable, posting of forfeiture in advance of appeal might make sense. However, surveyors are not always correct and that is the very reason that an appeal process exists. The entire survey process already is premised on a "guilty until proven innocent" presumption. Even though a facility might vehemently dispute the existence of a violation, they still must "correct" the problem despite the belief that none exists. To now attempt to require that money be put up pending the outcome of an appeal serves no purpose other than to remove funds from facilities that could otherwise be better used towards resident care.

For all of the above reasons, WHCA is opposed to AB 479, which we believe is unnecessary. Adoption of this measure would not contribute to the quality of care provided Wisconsin nursing home residents.

WHCA respectfully requests your opposition to AB 479



INTERGOVERNMENTAL RELATIONS

Office of the County Executive

TO: State Representative John Dobyms, Chair &
Honorable Members of the Assembly Government Operations Committee

FROM: Milwaukee County Intergovernmental Relations

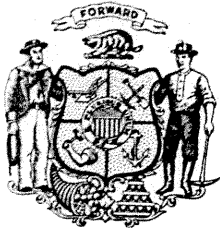
DATE: October 8, 1997

SUBJECT: Assembly Bill 479 - Forfeitures that are Imposed on Nursing Homes and
Providing a Penalty

While the Milwaukee County Board of Supervisors has not yet had an opportunity to take a formal position on Assembly Bill 479, the Milwaukee County's Mental Health Division, which operates the County's nursing homes, has expressed concerns and is recommending that Milwaukee County oppose passage as drafted. For your information, please find below a list of concerns outlined by the Mental Health Division.

- The proposed legislation would appear to violate the due process principle by assuming a facility is guilty and must pay a fine until later proven innocent.
- By imposing a minimum fine, the ability to negotiate down the fine is compromised.
- The ten day time frame for issuing payment is unreasonably short. It is difficult, if not impossible, to get a check cut in such a short period of time.
- The cost of cutting a check for \$10 (the most common class "C" violation) will be considerably more than the cost of the fine.
- Expanding the repeat violation time frame from two to three years and tripling the fine is a significant increase in financial exposure for facilities.
- Certain conditions in the Mental Health Division require code waivers, e.g. locking doors, locking alarm pull stations, locking windows, locking hose cabinets, etc. Typically, such conditions are "cited" during the annual survey then later "waived" as the facility's Plan of Correction is submitted and reviewed by DHFS. The proposed legislation is silent on whether such "citations" would warrant the forfeiture or would be "waived" as part of the waiver process. Cutting a check for each of these citations only to have it refunded later does not appear to be prudent.

If you have any questions with regard to these comments, please contact our office. Thank you for your consideration.



STATE OF WISCONSIN
BOARD ON AGING AND LONG TERM CARE

214 North Hamilton Street
Madison, Wi 53703-2118
(608 266-8944) 1-800-242-1060

George F. Potaracke
Executive Director

FAX 608 261-6570

MEMORANDUM

TO: Rep. Dobyms; Members of the Assembly Committee on
Governmental Operations; Rep. Krusick
FROM: William P. Donaldson; Counsel to the Board
SUBJECT: Amended AB 479
DATE: 5 Jan 98

We have reviewed the changes as proposed in LRB 0369/1, the draft substitute amendment to AB479. The Board on Aging and Long Term Care remains in support of this proposal.

As discussed earlier, we are comfortable with the change of the "triple forfeitures" to a "nursing home improvement surcharge." The language clarifications included in this draft of the substitute make it a more understandable document which will, we believe, be easier for facilities to live with.

Although the Board on Aging and Long Term Care would have liked to see the provision requiring "up front" collection of penalties remain a part of AB479, we appreciate the necessity for dropping that section at this time.

Late last year, our agency forwarded a report to your offices relating to this issue. This academic study of real situations in New York State was completed to exacting standards and using recognized investigative techniques. The report was highly critical of the enforcement system in that state and it examined several related concerns including the effect of penalties on facilities with repeated deficiencies in performance. In that report, the authors found that there is strong evidence to demonstrate that the severity and certainty of imposition of penalties does have a positive effect on the quality of care delivered in nursing homes. Assembly Bill 479 builds on that principle and will further this state's goal of assuring that residents of Wisconsin nursing homes receive high quality care regardless of the location of the facility, the nature of their illness or condition, or the manner in which their care is paid for.

The Board on Aging and Long Term Care urges you to take swift action on this measure and to give it your Committee's approval.

Advocate for the long term care consumer



TO: Representative John Dobyms, Chair, and Members of the Assembly Government Operations Committee

FROM: Jim McGinn, Wisconsin Health Care Association
Tom Ramsey, Wisconsin Association of Homes and Services for the Aging

DATE: January 7, 1998

RE: Opposition to Assembly Substitute Amendment, to AB 479

The Wisconsin Association of Homes and Services for the Aging (WAHSA) and the Wisconsin Health Care Association (WHCA) are statewide organizations which represent the interests of virtually every proprietary, non-profit, municipal, and county nursing home in Wisconsin. Our members employ over 50,000 dedicated individuals who provide care to approximately 48,000 frail elderly and disabled residents.

Our associations recognize the Legislature's concerns with providing our state's elderly and disabled the highest quality of life and care in nursing homes. Our members share your concerns with appropriate oversight of the care delivered to our residents.

While our members are appreciative of the efforts made by Representatives Dobyms and Krusick to improve AB 479, and they indeed have produced a substitute amendment which addresses several of our initial concerns, members of WHCA and WAHSA remain opposed to the bill.

In our October 8, 1997 testimony, both associations requested the Assembly Committee on Government Operations to take no further action on AB 479 until the Legislative Audit Bureau issues its findings from the audit it is currently conducting on the regulation of nursing homes by the Department of Health and Family Services (DHFS). The LAB has not concluded its audit and, therefore, our request of the Committee to withhold further action on AB 479 remains.

Notwithstanding that request, our associations would suggest the following changes in the substitute amendment:

1. On page 2, line 11, delete "shall" and insert "may". Under the proposed substitute amendment, the Department would be provided no flexibility to determine whether a multiple violation of the same statute or rule has occurred.

Attached you will find a copy of a Legislative Fiscal Bureau review of violations cited by DHFS which the Department identified for possible triple forfeitures. You will note that 19 of the 26

violations cited were cited under HFS 132.60(1), which reads as follows: “ (1) INDIVIDUAL CARE. Unless it is in conflict with the plan of care, each resident shall receive care based upon individual needs.” The LFB review clearly indicates that HFS 132.60 (1) is a “catch-all” citation, with such diverse violations as lack of assessment of restraint usage, insufficient care for eye infection, and causing burns from spilled coffee falling under this same section of the administrative code.

The purpose of the triple forfeiture section of current law and the forfeitures/surcharge section of the proposed substitute amendment to AB 479 is to punish facilities for repeat violations. WHCA and WAHSA strongly support the purpose of this section. However, our members believe that problems with the assessment of restraint usage and insufficient care for eye infections are not similar violations by nature, although both arguably are in violation of HFS 132.60 (1). The training required to rectify problems with restraint usage assessment and proper eye care would be provided by different health care professionals, on entirely different subject matters, to entirely different staff. Our members would consider it to be a stretch of the imagination to consider these unrelated violations to be repeat violations, as they would be under the proposed substitute amendment to AB 479. Therefore, we suggest the above language change to provide the Department with the needed flexibility to interpret repeat violations for the purposes of the imposition of forfeitures/ surcharges.

Indeed, our preference would be to modify section 50.04 (5) (a) 5 to more clearly define what is a repeat violation. That definition should recognize the distinct differences between lack of assessment of restraint usage and insufficient care for eye infection that are not recognized under HFS 132.60(1).

2. Amend sections 50.04 (5) (d), (dm), (e), and (f) to include nursing home improvement surcharges as part of the forfeiture appeal process. This provision would simply apply to surcharges the same appeal process the bill currently provides for forfeitures.

Thank you for your consideration of our concerns.

Facility	SOD #	Facts	Class	Rule Section	Days of Violation	Days Assessed	Violations for previous offenses of same code in past 24 months	Violations for previous offenses of any code	Triple Eligible?	Tripled?	Appealed?	Forfeiture Applied?	Federal (415)?	Fund Amount
		Adm failed to fasten safety belt on resident mechanical lift while bathing. Fractured rib	B	60(1)	1	1	1) Arm fracture from improper Hoyer lift transfer 2) Buities from toilet fall	Failure to notice rash	yes	yes	no	no	no	\$ 200
		Resident wanderer fell down stairs. Neck fracture	B	60(1)	1	1	1) Fall during bathing. Fall head injuries 2) Feeding tube set too high. Resident died 3) Fall from toilet. Slight head injury.	Failure to notify doctor of change in condition	yes	no	no	yes	yes	\$ 200
		Fall from tub chair. Fractured nose. Spores lacerations	B	60(1)	1	1	Violation for two falls, one which resulted in a death.		yes	yes	yes	yes	no	\$ 500
		Chemicals left unattended in common areas	B	72(2)(a)	1	1	Housekeeping carts and beauty shops left unattended	Failure to maintain hot water temps.	yes	yes	no	yes	yes	\$ 200
		Chemicals left unattended in common areas	B	60(1)	1	1	Lack of assessment of restraint usage	1) Housekeeping services 2) Abuse of residents	yes	no	no	no	no	\$ 1,000
		Insufficient assistance in transferring	B	60(1)	1	1	Insufficient care for eye infection. Settled at \$0	1) Resident abuse 2) Water temperatures	yes	no	no	yes	no	\$ 200
		Resident left unattended. Fall from toilet resulting in fractured hip	B	60(1)	1	1	1) Failure to deal with resident who was abusive to other residents 2) Resident tipped over in wheel chair		yes	no	no	yes	unknown	\$ 800
		Failed to monitor and intervene when nutritional status declined. Admitted to hospital for dehydration and infection	B	60(1)	2	2	Failed to assess resident's reaction to psychologic medication	Failure to contact doctor for change in condition	yes	no	yes	no	yes	\$ 500
		Supply closet with dangerous chemicals unattended and unattended	B	72(2)(a)	1	1	2 Class B's for unattended chemicals		yes	yes	no	yes	unknown	\$ 1,500
		Failed to apply safety belt. Resident left in barber cut head eventually died	A	60(1)	1	1		1) Abusive resident 2) Change in condition 3) Unattended chemicals and water temperatures	no	no	no	no	yes	\$ 5,000
		Resident who was prescribed a pureed diet. Was given solid food and choked	A	60(1)	1	1			no	no	no	no	yes	\$ 3,000
		Resident developed aspiration pneumonia	A	60(1)	1	1	1) Failed to provide adequate transfer assistance 2) Class B identified wanderer left facility	Class B	yes	no	unknown	yes	yes	\$ 3,000

HSS 132.60
Resident CARE

Facility	SOO #	Facts	Class	Section	Rule	Days of Violation	Days Assessed	Violations of same code in past 24 months	Violations for previous	Violations for previous violations of any code	Triple Eligible?	Triple? (Tripled?)	SOO Appeared?	Facility Appeared?	Facility (re #10?)	Facility Amount
		Failed to provide adequate safeguards against falls for resident with history of falls during	B	60(1)	1	1	1	1) Failure to provide functioning motion detector	1) Failure to provide functioning motion detector	1) 2 Class B's for weight loss 2) Class B for failure to provide emergency care 3) Class B related to wandering	yes	yes	yes	yes	unknown	\$ 3,000
		Staff did not follow MD orders for type and amount of food/beverages for resident	B	60(5)	2	0	0			Class B applied restraint without physician's order	no	no	yes	no	yes	\$
		Failed to provide appropriate care when transferring resident	B	60(1)	1	1	1	1) Class B Toilet fail 2) Class B Bed position during tube feeding 3) Class B Wandering	1) Class B Toilet fail 2) Class B Bed position during tube feeding 3) Class B Wandering	Class B applied restraint without physician's order	no	no	yes	no	no	\$ 500
		Two residents wandered outside the facility	B	60(1)	2	2	2	1) Class B for failing to prevent resident from sitting or pushing other residents 2) Class B for failing to provide care to prevent residents from leaving building 3) Class B for failing to use ordered wheel chair belt	1) Class B for failing to prevent resident from sitting or pushing other residents 2) Class B for failing to provide care to prevent residents from leaving building 3) Class B for failing to use ordered wheel chair belt	Class B and 1 Class C Class B for failure to assist in a proper transfer	yes	yes	no	yes	yes	unknown \$ 1,200
		Failed to prevent inappropriate behaviors by resident toward other residents	B	51(2)	4	4	4			Class B for failure to assist in a proper transfer	yes	yes	yes	yes	yes	\$ 800
		Failed to provide social services support for brain injury resident	B	60(1)	6	6	6			Class C	yes	no	yes	yes	yes	unknown \$
		Transferred without Hoyer lift, resulting in fractured leg	B	60(1)	1	0	0	1) Class B for improper transfer technique 2) Class B for failing to protect against abusive resident 3) Resident left alone during toileting	1) Class B for improper transfer technique 2) Class B for failing to protect against abusive resident 3) Resident left alone during toileting	Several including 1 Class A and 1 Class B for resident care and a Class B for resident abuse	yes	no	no	no	no	unknown \$
		Failed to administer cardiac medication	B	60(5)	13	13	13				no	no	no	no	yes	\$ 650
		Failed to secure chemicals in beauty shop	B	72(2)	1	1	1	3 Class B's for leaving chemicals unattended	3 Class B's for leaving chemicals unattended		yes	yes	unknown	yes	unknown	\$ 900
		Failed to provide nutritional care	B	60(1)	9	9	9	1) Class B for causing burns from spilled coffee 2) Class B regarding a wanderer	1) Class B for causing burns from spilled coffee 2) Class B regarding a wanderer		yes	no	yes	yes	yes	\$ 1,800

Order #	SOO #	Facts	Class	Rule Section	Days of Violation	Days Assessed	Forfeitures for previous violations of same code in past 24 months	Forfeitures for previous violations of any code	Triple	Tripled?	SOO Appeared?	Forfeiture Appeared?	Forfeiture (for #10)?	Final Amount
23	61153	Failed to have two persons assist in transferring fractured leg	A	60(1)	1	1	Class B related to wandering (793)		no	no	yes	yes	no	\$ 1,000
24	61153	Failed to provide care to mandarin residents dignity and quality of life	B	60(1)	3	3		3 Class C's for resident care 1 Class C for design	no	no	no	yes	yes	\$ 1,200
25	61153	Failed to secure hazardous chemicals	B	72(2)	2	1		1 Class B for resident care 1) Class B and Class C for housekeeping 2) Class A for resident care	no	no	yes	yes	yes	\$ 300
26	60125	Improperly applied restraints	B	60(1)	7	1	Class B for failing to adequately supervise residents who were prone to falling or aggressive.		yes	no	no	no	no	\$ 1,000



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701-2536
Telephone (608) 266-1304
Fax (608) 266-3830

DATE: February 18, 1998
TO: REPRESENTATIVE PEGGY KRUSICK
FROM: Richard Sweet, Senior Staff Attorney
SUBJECT: LRBs0505/1 (Nursing Home Violations)

This memorandum describes LRBs0505/1. The draft is a substitute amendment to 1997 Assembly Bill 479 and relates to violations of statutes and rules by nursing homes.

The following are the major components of the draft:

1. The draft requires the Department of Health and Family Services (DHFS) to suspend new admissions to a nursing home if the nursing home has received notices of violation for a Class "A" violation or three or more Class "B" violations during both of the following periods: (a) the previous 12 months; and (b) any 12-month period during the three years preceding the previous 12 months. Violations that are found to be unjustified after a hearing may not be considered. The suspension of new admissions begins on the earlier of the following: (a) 90 days after a nursing home received its last notice for a Class "A" or Class "B" violation; or (b) the time of a return visit by DHFS during which DHFS determines that there is an uncorrected Class "A" or Class "B" violation. The suspension of new admissions remains in effect until all Class "A" and Class "B" violations have been corrected.

2. The draft increases the amounts that may be assessed as forfeitures against nursing homes for different classes of violations. Under current law, a Class "A" violation may be subject to a forfeiture of not more than \$5,000; under the draft, such a violation is subject to a forfeiture of not less than \$5,000 nor more than \$10,000. Under current law, a Class "B" violation may be subject to a forfeiture of not more than \$1,000; under the draft, such a violation may be subject to a forfeiture of not more than \$5,000. Under current law, a Class "C" violation may be subject to a forfeiture of not more than \$100; under the draft, such a violation may be subject to a forfeiture of not more than \$500. Similar changes are made in the statute that provides for a separate forfeiture for a Class "A" or Class "B" violation if the licensee fails to correct the violation within a specified time period.

3. The draft modifies the statute that currently allows a nursing home that violates a statute or rule and that has received a notice of violation of the same statute or rule on one or more prior occasions within the prior two-year period to be subject to a forfeiture that is three times the amount authorized for the class of violation involved. The draft modifies this to use a three-year period, rather than a two-year period, for the purpose of determining repeat violators. In addition, the draft makes changes with regard to the discretionary nature of tripling and with regard to the nature of the repeat violation and its relationship to the prior violation. The following table shows the circumstances in which a triple forfeiture may or must be assessed:

PRIOR VIOLATION	CURRENT VIOLATION	TRIPLE FORFEITURE
Class "A"	Class "A" or "B" (same or different statute or rule)	Mandatory
Class "B"	Class "A" (same or different statute or rule)	Mandatory
Class "B"	Class "B" (same statute or rule)	Mandatory
Class "B"	Class "B" (different statute or rule)	Discretionary

4. The draft provides that if a nursing home does not contest a notice of violation and does not contest an assessment of forfeiture for a Class "A" or Class "B" violation and pays the forfeiture to DHFS within 10 days of receipt of the notice of assessment, DHFS must reduce the amount of the assessment by 35%.

5. The draft modifies the current statute that allows the Nursing Home Administrator Examining Board to take disciplinary action (e.g., revoking or suspending a license) against a nursing home administrator under specified circumstances. The draft allows the board also to do so if proof is submitted that while the licensee was the administrator of a nursing home, that nursing home engaged in conduct that constituted a pattern of serious violations of federal or state statutes, rules or regulations.

6. The draft provides that if DHFS suspends new admissions as described in item 1. of this memorandum, DHFS must publish a Class 1 notice in a newspaper likely to give notice in the area where the nursing home is located.

Feel free to contact me if I can be of further assistance.

RNS:ksm:wu:kjf;kjf;wu;rv



Wisconsin Council of Senior Citizens, Inc.

2611 W. Oklahoma Ave.
Milwaukee, Wisconsin 53215
(414) 385-9779 • Fax (414) 385-9807

February 19, 1998

**Assembly Government Relations Committee
Wisconsin State Assembly
State Capitol
Madison, WI 53708**

Dear Committee Members:

I am writing this letter to urge you to support Representative Peggy Krusick's Substitute Amendment to Assembly Bill 479 (Nursing Home Forfeitures Bill.)

This bill will correct the serious violations of nursing home regulations that have been mandated by the state.

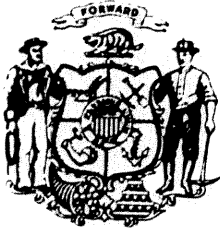
The Wisconsin Council of Senior Citizens wholehearted supports Representative Krusick's amendment.

Sincerely,

A handwritten signature in cursive script that reads "Gerald Martin". The signature is written in black ink and is positioned above the printed name and title.

**Gerald Martin,
President**

GM/cef



**STATE OF WISCONSIN
BOARD ON AGING AND LONG TERM CARE**

214 North Hamilton Street
Madison, Wi 53703-2118
(608 266-8944) 1-800-242-1060



George F. Potaracke
Executive Director

FAX 608 261-6570

23 Feb 98

Rep. John Dobyns
Chair, Assembly Government Operations Committee
10 West; State Capitol
Madison, Wi. 53708

Dear Rep. Dobyns,

I am writing to urge you, in the strongest possible terms, to support AB 479 and to act to insure quick passage of this much-needed bill.

The Legislative Audit Bureau's report (No. 98-2) on their evaluation of the Department of Health and Family Services' nursing home enforcement process highlights a number of problems which have been obvious to consumers of nursing home services and advocates for some time. The audit report identified questions relating to the "consistency and clarity of the Department's policy" on imposition of sanctions and collection of forfeitures. This policy has left individual consumers underrepresented and has given individual providers the impression that the industry takes precedence over the consumer. The Board on Aging and Long Term Care believes this to be the reverse of the original intent of the Legislature in establishing the nursing home regulation and licensing system. The Department has publicly stated that their opposition to AB 479 is based on a desire to continue using "incentives" rather than "punishment" to achieve compliance with nursing home law. The Department's approach has been in place for a number of years and was at the heart of the problems identified in the Audit Bureau's report. AB 479, when passed, will begin to correct this misdirected emphasis.

Taking her cues from the Audit Report and the structure of the federal nursing home laws, Rep. Krusick has crafted a bill which will substantially impact nursing home providers who consistently and repeatedly violate regulations governing the operation of facilities. Violators will be subject to sanctions which have a real impact in terms of today's economy. Repeated serious infractions will be subject to mandatory triple forfeitures and other, procedure-based, penalties will be available as well. The purpose of AB 479 is to convince nursing home operators that Wisconsin will not permit facilities to ignore regulations established for the benefit of vulnerable residents. The quality of life and the quality of care given to vulnerable residents must and will again become the primary focus of nursing home inspections.

Wisconsin nursing homes that do not provide care which meets or exceeds the minimum standard of quality must be subject to corrective action. Sanctions must be fairly applied and reasonably related to the infraction. These sanctions must, however, be imposed in such a way as to assure that the providers will "get the message" and come to the understanding that it is neither culturally acceptable nor economically advantageous to continue to operate in violation of the law.

When AB 479 is considered in Executive Session, the Board on Aging and Long Term Care asks you to remember who is (and should be) the object of the State's protective laws. The industry is far more robust and able to care for itself than are the vulnerable residents of nursing homes. Wisconsin needs to hold nursing homes to a standard which will permit the industry to remain viable without compromising the residents' quality of care and quality of life. The standards are in place. The state now needs to assure that the standards are met. AB 479 will begin this process.

Thank you for your kind attention to this letter. If you have further questions, you may feel free to contact myself; Claudia Stine, Ombudsman Supervisor; or William Donaldson, Counsel to the Board at the Madison office listed above.

Sincerely,

George F. Potaracke
Executive Director

Advocate for the long term care consumer



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

JAMES E. DOYLE
ATTORNEY GENERAL

Burneatta L. Bridge
Deputy Attorney General

February 24, 1998

114 East, State Capitol
P.O. Box 7857
Madison, WI 53707-7857
608/266-1221
V/TTY 608/267-8902

Representative John Dobyms
Chairman, Assembly Committee on Government Operations
10 West, State Capitol
Madison, WI 53702

Re: Assembly Bill 479

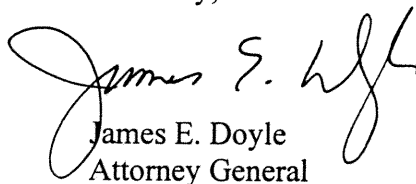
Dear Representative Dobyms:

I am writing to urge the passage of Assembly Bill 479, as amended by Assembly Substitute Amendment 1. As you know, this bill addresses penalties to be levied against nursing homes that violate state regulations. The Department of Justice supports this important legislation aimed to improve the protection and quality of care of Wisconsin's vulnerable nursing home residents.

The Department of Health and Family Services is charged with overseeing the regulation of nursing homes. Assembly Bill 479 strengthens the Department's ability to enforce these crucial regulations, which concern important quality of care measures, such as infection control, staffing levels, and overall patient safety and comfort. The legislation establishes minimum penalties for certain violations and sets standards for imposition of enhanced fines for facilities that repeatedly flout regulations. It also provides an incentive for nursing homes to pay their fines promptly and move on to their essential business of providing care to our citizens.

The Department of Justice prosecutes cases of abuse and neglect of nursing home residents. We work in close partnership with the Department in this area and look forward to doing everything we can to see that AB 479, when law, will be enforced effectively and swiftly. To do any less would be to abandon Wisconsin's most vulnerable citizens.

Sincerely,


James E. Doyle
Attorney General



SERVICE EMPLOYEES
INTERNATIONAL UNION
AFL-CIO, CLC

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414.463.3550

Fax: 414.463.3274

8101 1000

February 24, 1998

Representative John Dobyms
Room 10 West, State Capitol
P.O. Box 8952
Madison, WI 53708

Dear Chairman Dobyms:

The Service Employees International Union, Wisconsin State Council, represents over 13,000 workers across Wisconsin. A vast majority of these workers are employed in nursing homes. On behalf of these members, I am writing today to express our full support for Representative Peggy Krusick's substitute amendment to AB 479 relating to nursing home forfeitures.

As you well know, a recent audit found that Wisconsin's nursing home regulations are outdated, and the state reduces or drops fines for violations in two-thirds of contested cases. This bill gives the state better statutory tools to penalize nursing homes that provide substandard care.

The residents of these nursing homes are the most vulnerable members of our community. It is imperative that we make every effort to ensure their safety and well being. This is a step in that direction.

Therefore, I once again urge you to vote for Rep. Krusick's substitute amendment to AB 479. The vulnerable residents of these homes seldom are able to speak for themselves. I implore that you be their voice and protect them from harm.

Sincerely,


(Patrick J. Farley)

Local 150 (Statewide)

Local 21, School District
of La Crosse

Local 180, La Crosse
City Employees Union

Local 152, Racine
Unified School District

Local 168, Kenosha
Unified School District

Local 1199WI, United
Professionals (Statewide)

The logo for the Coalition of Wisconsin Aging Groups (CWAG) is a black square with the letters "CWAG" in white, bold, sans-serif font.

Elder Law Center

Coalition of Wisconsin Aging Groups

February 24, 1998

TO: Members of the Assembly Committee on Government Operations

FROM: Betsy Abramson and Tom Frazier

RE: Support for AB 479 - Nursing home forfeitures bill

The Coalition of Wisconsin Aging Groups strongly supports AB 479, which would strengthen Wisconsin statutes relating to forfeitures imposed on nursing homes. Co-sponsored by 30 members of the legislature, this bill was also introduced at the request of five organizations representing the elderly and people with disabilities, including the Coalition of Wisconsin Aging Groups, and a major union with members working in nursing homes.

This bill helps strengthen nursing home forfeitures laws to ensure quality care and provides the state with better statutory tools to penalize nursing homes that provide substandard care to some of our state's most frail and vulnerable citizens. The bill is in direct response to the excellent series of investigative articles run in the *Milwaukee Journal-Sentinel* in March, 1997, which painfully documented the amount of abuse in Wisconsin nursing homes. This problem was also directly addressed in the February 2-released audit of the Department of Health and Family Services' regulation of nursing homes. The Budget bill, passed this Fall, address a major problem cited in that series dealing with the nursing aide registry, including lack of uniformity among long-term care providers, their obligation to report abuse, check the registry and conduct criminal background checks. This bill addresses two other important areas:

(1) Mandatory minimum forfeitures for serious violations - The bill makes a fine mandatory. In other words, there will be no reductions (e.g., "plea bargains") for Class A and Class B violations. No reductions should be allowed for serious violations. The life-threatening nature of these violations cries out for mandatory minimum forfeitures.

(2) Mandatory triple forfeitures against nursing homes that violate the same statute or rule two or more times within a three-year period. Currently, triple forfeitures may, but are not required to, be assessed against a nursing home that violates the same rule or statute within a two year period. The annual surveys are scheduled every nine to fifteen months and may not be scheduled for the same day every subsequent survey cycle. During a two year period, therefore a nursing home may only go through one inspection. This may nullify the Department's ability to assess triple forfeitures. This bill will rectify this problem.

In sum, AB 479 addresses two important areas that were squarely addressed by the recent Legislative Audit Bureau report which recommended such changes to improve the quality of care in Wisconsin nursing homes. We urge you to approve this bill and send it to the full Assembly.



WISCONSIN STATE LEGISLATIVE COMMITTEE

CHAIR
Henry G. Hendrickson
State Legislative Committee
347 S. Lincoln Avenue
Viroqua, WI 54665
(608) 637-7633

VICE CHAIR
Gwen Daluge
State Legislative Committee
3719 S. County Road G
Janesville, WI 53590
(608) 752-6608

RECORDING SECRETARY
Irene Captain
2731 1st St. S.
Wisconsin Rapids, WI 54494-0718
(715) 423-6082

COORDINATOR
David B. Slautterback
Capital City Task Force
2609 Arboretum Drive
Madison, WI 53713-1009
(608) 255-3469

February 24, 1998

Members of the Government Operations Committee.

On behalf of the Wisconsin State Legislative Committee of the American Association of Retired Persons and as Chair of the Subcommittee on Health and Long Term Care, I am anxious to remind you of our very strong support for the Assembly Substitute Amendment to Assembly Bill 479 authored by Representative Margaret Krusick.

We in Wisconsin have many fine nursing homes, especially since the enactment of the statutes and rules that regulate the industry. I know some of them well and would be proud to show them to anyone. The evidence is clear that most nursing homes move with reasonable speed to correct violations. But this bill is needed to insure that those persistent violators will recognize the necessity to bring their homes up to high standards and keep them there. The mandatory minimum fine for Class A violations is an especially important part of this legislation. Also important in assuring quick resolution of problems that could be life threatening is the denial of admissions until serious violations are corrected. And the reduction of fines by 35% for those who pay the fines immediately is a useful inducement to quick action. We believe the recently completed audit confirmed the necessity of these updates to the statutes.

I feel these matters personally with my mother-in-law in a nursing home and my own mother before her. Besides, like others my age, I am aware that a nursing home may be in my future.

We urge you to pass AB 479 with a strong majority.


David B. Slautterback



**WISCONSIN
COALITION
FOR ADVOCACY***Advocacy for citizens with disabilities*

February 24, 1998

To: Members of Assembly Government Operations Committee

From: Dianne Greenley, Managing Attorney, Mental Health Advocacy

Re: Substitute Amendment to Assembly Bill 479

The Wisconsin Coalition for Advocacy strongly supports the Substitute Amendment to A.B. 479 that Representative Krusick plans to introduce. We believe that the penalty amounts for serious nursing home code violations need to be increased. As the Legislative Audit Bureau report pointed out there has been no increase since 1977. We also believe that there should be more consistency in the assessment of forfeitures for repeat violations. By making triple forfeitures mandatory in certain cases this will be accomplished. Finally, we support the suspension of admissions in homes where there have been numerous serious violations.

In the past we have been appalled when nursing homes have been able to continue to operate with little or no apparent consequences after they have been cited for serious injuries to residents, neglect of residents and resident deaths. We believe that the measures outlined in the Substitute Amendment will put more teeth into nursing home enforcement and hopefully make it more consistent and effective.



PEGGY KRUSICK
STATE REPRESENTATIVE

Nursing Home Forfeitures Bill
Substitute Amendment to Assembly Bill 479
by Rep. Peggy Krusick

A recent audit concluded that Wisconsin's nursing home regulations are outdated, and the state reduces or drops fines for violations in two-thirds of contested cases. This bill gives the state better statutory tools to penalize nursing homes that provide substandard care.

MAXIMUM FORFEITURES

- Raises the maximum fines for Class A violations from \$5,000 to \$10,000; Class B, from \$1,000 to \$5,000; and Class C, from \$100 to \$500.
- Whereas federal penalties are intended to promote corrective action without issuing forfeitures, state penalties are meant to penalize violators.
- DHFS carries out inspection and enforcement activities on behalf of the state and federal government. This bill combines the dual penalty systems to allow for more vigorous enforcement of regulations.
- The Legislative Audit Bureau determined that state fines, which haven't been increased in 20 years, are too small to get nursing homes to remain in compliance with regulations.

MINIMUM FORFEITURES

- Establishes a mandatory minimum fine of \$5,000 for Class A violations.
- The life-threatening nature of some violations call for mandatory minimum fines.

TRIPLE FORFEITURES

- Mandatory tripled fines for repeat Class A and B violations in a three-year period.
- Current law allows the state to triple the fines for repeat violations. However, auditors found that DHFS narrowly applies the triple forfeiture statute.

OTHER REMEDIES

- Denial of admissions when serious violations are not corrected upon surveyor revisit.
 - Require the publication of notices when admissions are suspended for uncorrected violations.
 - Modifies statutes allowing for the suspension of nursing home administrators' licenses based on a pattern of serious violations.
 - Reduce forfeitures by 35 percent for homes that immediately pay, in an effort to reduce lengthy appeals.
-

February 24, 1998



State of Wisconsin
Department of Health and Family Services

Tommy G. Thompson, Governor
Joe Leean, Secretary

February 24, 1998

The Honorable Peggy Krusick
State Representative
P. O. Box 8952
Madison, WI 53708-8952

The Honorable John Dobyms
State Representative
P. O. Box 8952
Madison, WI 53708-8952

Dear Representative Krusick and Representative Dobyms:

Thank you for your leadership and commitment to improve services and regulatory oversight in Wisconsin nursing homes. I commend you for the extensive amount of time and thorough understanding of the complicated details that AB 479 and consequent substitute amendments represent. I also very much appreciate your willingness to meet with my staff to learn about concerns that the Department of Health and Family Services has regarding the bill.

We fully agree with you that we want Wisconsin nursing homes to provide high quality care to their residents. However, we continue to have concerns about many specifics of AB 479, as we strongly believe in developing incentives for nursing homes to correct their violations while giving the Department flexibility in providing these incentives.

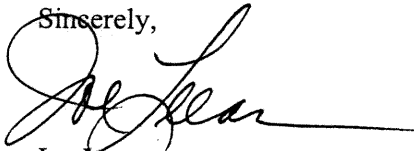
After receiving the Substitute Amendment to Assembly Bill 479 (LRB 505/1), we have the following comments:

- We are pleased to see the revisions to the **suspension of admission** language. The amendment now gives the facility an incentive to correct serious violations. The Department supports this provision, but seeks the following clarifications to the language.
 1. Page 1 line 7 says **all** of the following. Please clarify if this means that suspension requires both conditions "a" and "b" to be met? That is how it currently reads.
 2. On page 1 lines 11-12 we find the following language confusing and request clarification: "in any 12 month period during the 3 years immediately preceding the period specified in subd. 1. a.[in the previous 12 months]". Are we looking back three years or four years?

- We are also pleased and support the changes made relative to **publishing a public notice**. This revision has addressed our concerns and now restricts the notice to suspension of admissions. There will be a cost associated with this requirement that has been addressed in the Department's fiscal estimate.
- The Department supports the proposed **maximum forfeiture amounts**. We also agree that the maximum amount for each classification of violation needs to increase. The Department does not support a **\$5,000** minimum for a Class A violation. This does not allow the Department, in applying the four factors in statute that determine the amount of the forfeiture, to recognize that while a Class A violation occurred, "no forfeiture" may be appropriate (e.g., when an employee acts against a facility's direction). Our preference is not to set a minimum amount. The Department needs flexibility to reflect the mitigating factors recognized in the statute in determining the size of the forfeiture for all classifications of violations.
- The Department supports the **three year period** for tripling of forfeitures. The Department does not support the **mandatory tripling**. The Department supports discretion in tripling. Because the tripling is to occur after all appeals have been exhausted, and because the suspension of admissions is linked to the history of compliance, we envision needing additional legal staff to process the appeals timely. The cost of the additional staff is also reflected in the fiscal estimate.
- We support the modification to the definition of "'excessive' number of violations." The Department is prepared to report all administrators of a facility during a period with serious violations.

We appreciate the changes proposed but feel that the key concerns about lack of flexibility are not sufficiently addressed. For this reason, the Department of Health and Family Services plans to oppose the bill as it is currently drafted. We have, however, made progress towards common ground and trust that we can continue collaborating on revisions to make this bill mutually agreeable.

Sincerely,



Joe Leean
Secretary



**STATE OF WISCONSIN
BOARD ON AGING AND LONG TERM CARE**

214 North Hamilton Street
Madison, Wi 53703-2118
(608 266-8944) 1-800-242-1060

George F. Potaracke
Executive Director

FAX 608 261-6570

**Testimony of
the Wisconsin
Board on Aging and Long Term Care
in support of AB 479**

Chairman Dobyms, members of the Committee, good morning. I am William P. Donaldson, Counsel to the Board on Aging and Long Term Care. George Potaracke, our Executive Director, has asked me to convey his regret at being unable to testify this morning. I am here today to express the Board's wholehearted support for AB479.

The Board on Aging and Long Term Care operates the long term care Ombudsman program in Wisconsin. In this capacity, our agency is acutely aware of the need for strengthened enforcement procedures for nursing homes which operate in violation of the state statutes and administrative code. It is disheartening, indeed, for our regional Ombudsmen to see facilities which have recently been cited for serious violations correct the conduct which caused the original citation and then continue on as if the citation did not have the intended effect of improving the overall standard of care. The process of surveying facilities and imposing sanctions for conduct which violates the statute and rules is intended as discipline in the classic sense of the word. That is, the process is intended to identify improper activities and

to motivate the facility to correct and take steps to prevent other similar improper conduct from occurring in the future. Ineffective or minimal sanctions apparently have not had the desired effect in that some facilities are repeatedly found out of compliance and the sanctions imposed on these facilities do not seem to achieve the desired result of lasting improvement in quality of care.

AB479 would address these issues by making four changes to the existing law.

First, the bill would mandate imposition of forfeitures under certain circumstances. Currently, the department has the option to impose money sanctions or some other penalty. It is true that the department has other remedies available which may be as onerous as a forfeiture, but these remedies seem to be imposed even less frequently than forfeitures. Under the terms of AB479, a finding which meets the criteria set forth in the statute would necessarily result in the imposition of a forfeiture. Certainty of consequences for conduct which is in violation of the standards should be expected by a licensed provider of long term care in this state.

Second, AB479 would establish a "floor" to the penalty scheme. Currently, a Class A violation could, in theory, result in a penalty of \$0.00. In a recently provided random sampling of 26 cited cases, three Class B violations resulted in no money penalty at all. Class B violations represent serious, although not the most serious, deviations from the prescribed

standards under the law. AB479 would prevent the use of forfeitures that are so low that they are considered no more than minor irritants by the facility.

Third, AB479 would strengthen the enforcement for repeat violations. Currently, a facility which is given a repeat cite for a violation of a code section within two years of the prior violation may be required to forfeit three times the original sanction. The bill would require the facility to maintain itself free from repeat violations for an extra year, that is, for three years instead of two. It is hoped that this extra year during which the facility must pay extra attention to avoid a repeat citation for the same violation would serve to ingrain the behavior required under the law into the routine of the home.

Finally, AB479 would require a facility cited by the department to pay the specified forfeiture within ten days. If the facility chooses to appeal, the forfeiture would be held and returned, with interest, if the facility prevails on its appeal. It is apparent that, under the current system, facilities see the appeal process as not only a way to vindicate a perceived unjust citation, but also as a means to delay payment of a civil money penalty. If forfeitures are required to be paid immediately, it is expected that the number of appeals, particularly frivolous and dilatory appeals, would drop noticeably. This reduction in frivolous appeals would have an ancillary effect of improving the efficiency of the department appeals process.

On behalf of the Board on Aging and Long Term Care, our staff, and most particularly, our clients, the residents of nursing facilities throughout the state, I wish to thank Rep. Krusick and all the cosigners of AB479 for introducing this measure. Furthermore, I strongly urge the Committee to act quickly to support passage of AB479.

Thank you.



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AARP WISCONSIN STATE OFFICE
3 S. Pinckney, Suite 801
Madison, WI 53703
(608) 251-2277
(608) 251-7612 Fax

Testimony before the Assembly Government Operations Committee in support of AB 479

I am David Slautterback. I'm here to represent the American Association of Retired Persons as Chairman of our State Legislative Committee's Subcommittee on Health and Long Term Care and as Coordinator of Wisconsin AARP Capital City Task Force

As you know, Representative Krusick has authored legislation during this session which is supported by legislators of both political parties and several advocacy groups that is of vital concern to the most vulnerable population of our citizens. The question of statute and rule violation is one that affects the lives of our mothers, fathers, siblings, and other friends and relatives. I feel these matters personally with my mother-in-law in a nursing home and my own mother before her.

Our Wisconsin committees have studied this bill carefully as well as the reasons for it and have voted unanimously to support it. We believe that our parents deserve nothing less than "no violations" but that violations occur is probably inevitable. But when violations occur it is imperative that they be resolved as quickly as possible. We are especially strong in our support of the triple forfeiture with payment before appeal and the money held in escrow until resolution of the appeal. We have been concerned by the revelation that the imposition of penalties has too often been delayed for unreasonable amounts of time and negotiated to lower and lower amounts even down to zero. We also agree that the three-year time period better serves both the provider and the resident. Further the mandatory minimum forfeiture would insure quick resolution of problems that could be life threatening.

I would not like to leave this subject on what some may perceive as a negative note about nursing homes. We in Wisconsin have many fine nursing homes, especially since the enactment of the statutes and rules that regulate the industry. I know some of them well and would be proud to show them to anyone. But things sometimes go wrong and this bill is needed to correct the wrongs.



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OUR OPINION

Tighten screws on troubled nursing homes

The hourglass should have run out a long time ago for nursing homes that aren't doing the job. It's time they had their knuckles rapped with stiff fines. Legislators in both parties seem more than willing to do the right thing, but state regulators are inexcusably digging in their heels.

Their 11th-hour opposition to a bill that would get tough with problem nursing homes has left key Democratic and Republican sponsors feeling betrayed and could spell trouble for the measure, which is scheduled for a committee hearing today. That would be a shame because the bill, sponsored mainly by Milwaukee Democrat Peggy Krusick, would sensibly follow the recommendations of state auditors.

The audit, which was undertaken after a Journal Sentinel series last spring on nursing

home problems, found that in two-thirds of contested cases, state regulators either dropped or reduced fines levied against nursing homes. Auditors also found that regulators failed to impose even tougher penalties against nursing homes with the poorest records — what Republican Rep. John Dohy of Fond du Lac accurately described as "bad actors."

Among other things, Krusick's bill would mandate minimum fines of \$5,000 for certain violations, triple fines for repeat violations and authorize the state to deny new admissions to nursing homes with serious problems.

Not surprisingly, lobbyists for the nursing home industry oppose the bill, contending it would be punitive. But how to explain opposition from the state Department of Health and Family Services, which should be the watchdog over the industry?

"The department wants to move toward an incentive system to get compliance," a department official said. "We want to get violations corrected rather than punished."

The problem with that argument is that many violations, especially by the worst offenders, are not being corrected promptly. Nor are the homes really being punished — certainly not when 67% of the fines are ultimately cut or dropped. What's to deter these homes from again letting things slide?

Legislators properly want mandatory fines because regulators are cutting some nursing homes too much slack. Regulators can argue that they need flexibility to do their job. But the public can argue, even more compellingly, that the real job of nursing home regulators is to protect nursing home patients.