

1999 DRAFTING REQUEST

Bill

Received: **09/8/98**

Received By: **yacketa**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Geisler**

This file may be shown to any legislator: **NO**

Drafter: **yacketa**

May Contact:

Alt. Drafters:

Subject: **Health - long-term care**
Health - miscellaneous

Extra Copies: **DHFS, DAK**

Topic:

DOA:.....Geisler - Civil money penalties for nursing homes

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	yacketa 09/8/98	ygeller 09/8/98		_____			S&L
/1			ismith 09/8/98	_____	gretski 09/8/98		
			ismith 09/8/98	_____	lrb_docadmin 09/9/98		

FE Sent For:

<END>

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/?	yacketa	1-9-8-98 JLG	IS 9/8	IS/JF 9/8			

FE Sent For:

<END>

1997 DRAFTING REQUEST

Bill

Received: 07/22/98

Received By: yacketa

Wanted: As time permits

Identical to LRB:

For: Administration-Budget

By/Representing: Geisler

This file may be shown to any legislator: NO

Drafter: yacketa

May Contact:

Alt. Drafters:

Subject: Health - miscellaneous
Health - long-term care

Extra Copies: DAK, DHFS

Topic:

DOA:.....Geisler - Civil money penalties for nursing homes

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See Attached

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<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
1?	yacketa	PI-7/24/98 kong	IS 7/24	IS/SH 7/24	<i>please submit</i>		S&L

FE Sent For:

<END>

DHFS

Department of Health and Family Services
1999-2001 Biennial Budget Statutory Language Request
May 8, 1998

Title: Civil Money Penalties for Nursing Homes

Current Language

Federal regulations require the Bureau of Quality Assurance to assess civil money penalties against federally certified nursing homes for certain violations of federal quality standards. Under s. 49.499, Stats., the Department may use revenues generated by the penalties to help ameliorate the effects of a nursing home's violations on its residents.

Proposed Change

Amend s. 49.499 to allow civil money penalty revenues to be used for projects that proactively promote the quality of life and quality of care for nursing home residents. Increase the PRO appropriation under s. 20.435(6)(g) to \$150,000.

Effect of the Change

Federal Health Care Financing Administration regulations and policy permit the Department to use penalty revenues for a broader range of purposes than the state law does. This proposal would provide the Department with the flexibility to allocate the funds to efforts to prevent violations and to proactively protect resident health and property. In addition, it would allow the Department to spend funds from the PRO appropriation in which civil money penalty revenues are deposited, which currently has no spending authority.

Background and Rationale for the Change

1. S. 49.499 was enacted to codify in state law federal rules governing use of penalty revenues. Currently, it permits DHFS to use the funds for payment of 1) the cost of relocating a resident to another nursing home, 2) maintenance of operation of a nursing facility pending correction of deficiencies or its closure, and 3) reimbursement of personal funds misappropriated by nursing home staff.

2. While s. 49.499 limits use of penalty revenues to three specific purposes, the relevant federal regulation is more general. It requires states to apply the funds to the protection of the health or property of residents of facilities that the State or HCFA finds deficient including the three purposes identified in s. 49.499. Furthermore, HCFA has verbally given states broad

discretion in spending the funds for quality improvement and resident protection activities. Other states have used the funds for proactive measures like those envisioned by BQA.

3. If a statutory change were made, BQA plans to allocate 50 percent of civil money penalty revenues to fund projects that proactively protect the health or property of nursing home residents, with each project receiving a maximum of \$1,500. BQA may for example award funds for a project to train nursing home staff in best practice techniques for resident care. The remaining funds would be reserved for DHFS costs of monitoring or operating a facility in the event of closure or termination.

4. In the past year, there has been strong legislative and public interest in improving the quality of care for nursing home residents, as evidenced by a number of legislative initiatives in this area (such as background check legislation and nursing home minimum staffing legislation). This proposed statutory change is consistent with and furthers legislative objectives in this area.

5. BQA began levying civil money penalties in July 1995. DHFS collected revenues of \$12,000 in SFY 97 and \$96,000 in the first nine months of FY 98. No revenue has been expended to date.

Desired Effective Date: Upon passage
Agency: DHFS
Agency Contact: Andy Forsaith
Phone: 266-7684



State of Wisconsin
1997 - 1998 LEGISLATURE

LRB-5287/P1

TAY:.....

kmq

DOA:.....Geisler - Civil money penalties for nursing homes

FOR 1997-99 BUDGET - NOT READY FOR INTRODUCTION

1

AN ACT ...; relating to: use of penalty assessment revenues

Don't generate

(Handwritten mark)

Analysis by the Legislative Reference Bureau
HEALTH AND HUMAN SERVICES

HEALTH

Under current law, the department of health and family services (DHFS) is required to contribute to the payment of ~~the~~ certain costs that are associated with violations of requirements for skilled nursing facilities. DHFS must contribute to the cost of relocating a resident to another nursing facility, if necessary, of reimbursing a resident whose property has been misappropriated, and of maintenance of operations of a nursing facility pending correction of deficiencies or closure of the nursing facility. Currently, these costs are paid for from revenues received from the penalty assessment surcharges and interest ~~which are imposed on a person upon whom a forfeiture for violation of the skilled nursing facility requirements has also been imposed.~~

HHS

This bill permits DHFS to use a portion of the penalty assessment surcharge and interest revenues for projects that aim to protect resident health and property. The bill limits the expenditure for each project to \$1,500 annually.

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

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

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-5287/P1dn

TAY:.....
img

\$1,500

*ap. 6/10.
Debate - ap. 6/10.
and add color. ap. 6/10.
to the original.*

Under this draft, DHFS would have authority to spend up to 50% of the penalty assessment surcharge and interest amounts collected under s. 49.498 (16) (c) and (d) for projects designed to protect the health and property (but not more than ~~\$1500~~ per project). DHFS correctly points out that it currently has no authority to expend funds from the PR appropriation in which forfeiture assessment and interest payments are deposited because that appropriation is an annual appropriation with no money appropriated to it. This is a dilemma since the department is required under s. 49.499 to "contribute [from the appropriation under s. 20.435 (6) (g)] to the payment of all of the following, as needed by a resident in a nursing facility . . . that is in violation of s. 49.498." *the*

- (1) The cost of relocating the resident from the nursing facility to another nursing facility.
- (2) Maintenance of operation of a nursing facility pending correction of deficiencies or closure of the nursing facility.
- (3) Reimbursement of the resident for any personal funds of the resident that were misappropriated by the nursing facility staff or other persons holding an interest in the nursing facility."

It is not clear to me how the department is resolving this dilemma. It would probably be a good idea either to appropriate money to that account or to convert the appropriation into a continuing appropriation so that the department has authority to expend the revenues received from the penalty assessment and interest payments. Since DHFS has indicated that it intends to allocate 50% of the revenues to "proactive" projects, it appears that DHFS may actually want a continuing appropriation that limits expenditures for the "proactive" projects. If you decide to do that, please let me know so that I may amend the text of s. 20.435 (6) (g) appropriately.

If you have any questions about this draft, or if any part of it does not effect your intent, please let me know.

Tina A. Yacker
Legislative Attorney
261-6927

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-5287/P1dn

TAY:kmg:ijs

Friday, July 24, 1998

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- (1) The cost of relocating the resident from the nursing facility to another nursing facility.
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(1) The cost of relocating the resident from the nursing facility to another nursing facility.

(2) Maintenance of operation of a nursing facility pending correction of deficiencies or closure of the nursing facility.

(3) Reimbursement of the resident for any personal funds of the resident that were misappropriated by the nursing facility staff or other persons holding an interest in the nursing facility."

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Tina A. Yacker
Legislative Attorney
261-6927

① - NOTE

WJH Redraft not min

DOA:.....Geisler – Civil money penalties for nursing homes

FOR ¹⁹⁹⁹⁻⁰¹~~1997-99~~ BUDGET — NOT READY FOR INTRODUCTION

1 ^{do not gen} AN ACT ...; relating to: use of penalty assessment revenues. ^{and making an appropriation}

Analysis by the Legislative Reference Bureau
HEALTH AND HUMAN SERVICES

HEALTH

Under current law, the department of health and family services (DHFS) is required to contribute to the payment of certain costs that are associated with violations of requirements for skilled nursing facilities. DHFS must contribute to the cost of relocating a resident to another nursing facility, if necessary; of reimbursing a resident whose property has been misappropriated; and of maintenance of operations of a nursing facility pending correction of deficiencies or closure of the nursing facility. Currently, these costs are paid from revenues received from the penalty assessment surcharges and interest which are imposed on a person upon whom a forfeiture for violation of the skilled nursing facility requirements has also been imposed.

This bill permits DHFS to use a portion of the penalty assessment surcharge and interest revenues for ^{innovative} projects that aim to protect resident health and property. ~~The bill limits the expenditure for each project to \$1,500 annually.~~

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

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

Section #. 20.435 (6) (g) ^X of the statutes is amended to read:

20.435 (6) (g) *Nursing facility resident protection.* ~~The amounts in the schedule to finance nursing facility resident protection under s. 49.499.~~ All moneys received from the penalty assessment surcharges on forfeitures that are levied by the department under s. 49.498 (16) (c) 1., 2. and 3. and the interest under s. 49.498 (16) (d) ~~shall be credited to this appropriation.~~ ^{to finance nursing facility resident protection under s. 49.499}

~~History: 1971 c. 125 ss. 138 to 155, 522 (1); 1971 c. 211, 215, 302, 307, 322; 1973 c. 90, 198, 243; 1973 c. 284 s. 32; 1973 c. 308, 321, 322, 333, 336; 1975 c. 39 ss. 153 to 173, 732 (1), (2); 1975 c. 41 s. 52; 1975 c. 82, 224, 292; 1975 c. 413 s. 18; 1975 c. 422, 423; 1975 c. 430 ss. 1, 2, 80; 1977 c. 29 ss. 236 to 273, 1657 (18); 1977 c. 112; 1977 c. 203 s. 106; 1977 c. 213, 233, 327; 1977 c. 354 s. 101; 1977 c. 359; 1977 c. 418 ss. 129 to 137, 924 (18) (d), 929 (55); 1977 c. 428 s. 115; 1977 c. 447; 1979 c. 32 s. 92 (11); 1979 c. 34, 48; 1979 c. 102 s. 237; 1979 c. 111, 175, 177; 1979 c. 221 ss. 118g to 133, 2202 (20); 1979 c. 238, 300, 331, 361; 1981 c. 20 ss. 301 to 356b, 2202 (20) (b), (d), (g); 1981 c. 93 ss. 3 to 8, 186; 1981 c. 298, 314, 317, 359, 390; 1983 a. 27 ss. 318 to 410, 2202 (20); 1983 a. 192, 199, 245; 1983 a. 333 s. 6; 1983 a. 363, 398, 410, 427; 1983 a. 435 ss. 2, 3, 7; 1983 a. 538; 1985 a. 24, 29, 56, 73, 120, 154, 176, 255, 281, 285, 332; 1987 a. 27, 339, 368, 398, 399, 402; 1987 a. 403 ss. 25, 256; 1987 a. 413; 1989 a. 31, 53; 1989 a. 56 ss. 13, 259; 1989 a. 102; 1989 a. 107 ss. 11, 13, 17 to 37; 1989 a. 120, 122, 173, 199, 202, 318, 336, 359; 1991 a. 6, 39, 189, 269, 275, 290, 315, 322; 1993 a. 16, 27, 76, 98, 99, 168, 183, 377, 437, 445, 446, 450, 469, 479, 490, 491; 1995 a. 27 ss. 806 to 961r, 9126 (19); 1995 a. 77, 98; 1995 a. 216 ss. 26, 27; 1995 a. 266, 276, 289, 303, 404, 417, 440, 448, 464, 468; 1997 a. 27 ss. 211, 214, 216, 217, 527 to 609; 1997 a. 35, 105, 231, 237, 280, 293.~~

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0033/1dn

TAY...¹.....

1/9

This draft replaces 1997 LRB-5287. Per Andy Forsaith's telephone instructions on September 8, this draft deletes the \$1,500 cap on annual expenditures and the draft modifies the appropriation under s. 20.435 (6) (g) to make it a continuing, rather than annual, appropriation. ~~Finally, the draft also allows the expenditure of the funds for innovative projects, not for average, run-of-the-mill projects.~~

If you have any questions, please do not hesitate to call me.

Tina A. Yacker
Legislative Attorney
261-6927

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0033/1dn
TAY:jlg:ijs

September 8, 1998

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Legislative Attorney
261-6927



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-0033/1
TAY:jlg:ijs

DOA:.....Geisler – Civil money penalties for nursing homes

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: use of penalty assessment revenues and making an
2 appropriation.

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

HEALTH

Under current law, the department of health and family services (DHFS) is required to contribute to the payment of certain costs that are associated with violations of requirements for skilled nursing facilities. DHFS must contribute to the cost of relocating a resident to another nursing facility, if necessary; of reimbursing a resident whose property has been misappropriated; and of maintenance of operations of a nursing facility pending correction of deficiencies or closure of the nursing facility. Currently, these costs are paid from revenues received from the penalty assessment surcharges and interest which are imposed on a person upon whom a forfeiture for violation of the skilled nursing facility requirements has also been imposed.

This bill permits DHFS to use a portion of the penalty assessment surcharge and interest revenues for innovative projects that aim to protect resident health and property.

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

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

1 **SECTION 1.** 20.435 (6) (g) of the statutes is amended to read:

2 20.435 (6) (g) *Nursing facility resident protection.* ~~The amounts in the schedule~~
3 ~~to finance nursing facility resident protection under s. 49.499.~~ All moneys received
4 from the penalty assessment surcharges on forfeitures that are levied by the
5 department under s. 49.498 (16) (c) 1., 2. and 3. and the interest under s. 49.498 (16)
6 (d) ~~shall be credited to this appropriation to finance nursing facility resident~~
7 ~~protection under s. 49.499.~~

8 **SECTION 2.** 49.499 (intro.) of the statutes, as affected by 1997 Wisconsin Act 27,
9 is renumbered 49.499 (1) (intro.).

10 **SECTION 3.** 49.499 (1) to (3) of the statutes are renumbered 49.499 (1) (a) to (c).

11 **SECTION 4.** 49.499 (2m) of the statutes is created to read:

12 49.499 (2m) From the appropriation under s. 20.435 (6) (g), the department
13 may distribute funds for innovative projects designed to protect the health and
14 property of a resident in a nursing facility, as defined in s. 49.498 (1) (i).

15 **(END)**