



WAHSA Legislative Issue Brief

Issue: Nursing Home Forfeiture Surcharge/Assisted Living Forfeitures

- The Governor's budget proposal would fund an additional forfeiture specialist in the DHFS Bureau of Quality Assurance through the imposition of a 6% surcharge on nursing home forfeiture assessments. In addition, the maximum forfeiture assessment for CBRFs would be increased from \$1,000/day to \$10,000/day for each violation.
- According to an internal DHFS analysis conducted late last year, 192 nursing homes out of the 379 facilities analyzed by the DHFS are at "financial risk:" 138 facilities were operating at a net loss, 111 facilities were operating with negative working capital, and 57 facilities were operating both at a net loss and with negative working capital. Now certainly is not the time to ask this financially-strapped industry to pay out additional dollars for a FTE position whose need is questionable. If the state believes there is an undeniable need to fill this position, the state should fund the position.
- There is no empirical evidence to show that the imposition of monetary penalties serves as a deterrent to the provision of poor care. Indeed, the DHFS left the forfeiture specialists' positions vacant in 2000-01: If the assessment and collection of forfeitures is so needed to deter nursing home and CBRF noncompliance, why were these positions left vacant?
- Nursing home and CBRF forfeitures, as well as all other state forfeitures, are deposited in the State Common School Fund, which is used to make loans to local governments and to fund the purchase of instructional materials and library books by school districts. They cannot be used by providers to improve care or to rectify the problems that caused their assessment.
- 49% of the 1,361 CBRFs in Wisconsin are between 5-8 beds; 87.1% are 20 beds or under. It's safe to say that a \$10,000 forfeiture assessed to one of these small operations could close down that operation. It seems odd for a department which historically has sought to institute policies which preserve and expand the number of smaller providers to push a provision which could drive many of those providers out of business.
- If 87.1% of the CBRFs in Wisconsin are 20-bed-and-under "mom and pop" operations, where is the proliferation of these "large corporations" that is causing the DHFS such great concern?
- The BQA has a variety of intermediate sanctions it can impose on noncompliant CBRFs other than forfeitures. Those sanctions include directed plans of correction, the suspension of new admissions, conditional licenses, license suspensions or revocations, state monitoring, receivership and state criminal charges. Simply stated, the forfeiture is not the only CBRF enforcement tool and it may not be the most effective.
- The imposition of forfeitures is strictly a punitive measure with no direct benefit to long-term care residents. While federal and state laws limit or outright prohibit the collaboration and sharing of technical assistance between nursing home providers and state surveyors, no such prohibition restricts such a working relationship in CBRFs. WAHSA members believe working together to better serve residents is a much more effective way to ensure quality and improve care than the imposition of purely punitive forfeiture assessments.
- **WAHSA Position:** Oppose both the imposition of a 6% nursing home forfeiture surcharge and the 10-fold increase in the maximum forfeiture for CBRFs.

The Wisconsin Association of Homes and Services for the Aging (WAHSA) is a statewide membership organization of 198 not-for-profit corporations principally serving elderly and disabled persons through programs ranging from nursing home care to assisted living to hospice and homecare. For more information, please contact the WAHSA staff at (608) 257060: John Sauer, Executive Director (jsauer@wahsa.org); Tom Ramsey, Director of Government Relations (ramsey@wahsa.org); or Brian Schoeneck, Financial Services Director (bschoeneck@wahsa.org).