

**BENEVOLENT RETIREMENT
HOME FOR THE AGED
LEGISLATIVE TASK FORCE
GOVERNMENT-5 REPORT**

Dated as of July, 15, 2000

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EXECUTIVE SUMMARY OF GOV'T-5 REPORT

Per the 1997 Act 27, the legislature created the "Benevolent Retirement Home for the Aged" task force to investigate the §70.11(4) property-tax exemption for "benevolent retirement homes for the aged" ("BRHA") and all problems associated with that exemption.

What are the problems associated with that exemption?

1. Two co-existing and conflicting lines of Wisconsin Supreme Court cases defining "benevolent." The St. Joe's Line defines "benevolent" as requiring charity – i.e. admitting and providing service without regard to ability to pay. The Milw. Protestant Line, however, defines "benevolent" broadly (i.e. contrary to common sense, Wis. Stat. § 70.109, and property tax exemption law requiring exemptions to be defined narrowly) to mean providing service on a "fee-for-service" basis to only those with money enough to pay.
2. Under the Milw. Protestant Line definition of "benevolent", a corporation can get property-tax exemption as a "benevolent" "retirement home" for the "aged" even though: (a) it screens applicants for health and wealth; (b) it admits only those who can pay for the service they get (i.e. poor and moderate-income people aren't welcome and need not apply); (c) it charges large endowment and monthly fees that moderate and low-income people can't afford; (d) it doesn't provide any medical or nursing services; (e) it caters to non-retired persons age 55 (with spouses much younger than 55); and (f) it competes directly with for-profit senior housing operators.
3. Under the Milw. Protestant Line definition, exemptions are going to organizations that require full payment for services and where residents are thus using their own money to benefit themselves.
4. Under the Milw. Protestant Line definition, the very people the legislature intended to help – the elderly amongst us who don't have the money to pay for care – are getting hurt. The irony is, the elderly person who can't afford, and so who is thus not welcome at, the "exempt" facility, and "stuck" in his own home struggling to make ends meet, has to pay an even larger property tax bill to cover the exempt facility's share of taxes. That makes it even harder for elderly needy to stay in their own homes, and that, in turn, runs contrary to the policy behind the state's Family Care Program.
5. Under the Milw. Protestant Line definition, unfair competition exists between for-profit and non-profit senior-housing operators. Each: screens applicants; only admits those able to pay; charges competitive rates; and competes for the same "customer." And, while the for-profit property and non-profit property are each

receiving the same governmental services, and being put to the same use, only the for-profit pays property tax.

6. The conflicting Supreme Court definitions of "benevolent" mean local assessors lack the clarity and guidance needed to make good exemption decisions.
7. Given the conflicting Supreme Court definitions, some assessors avoid the law and allow improper exemptions.
8. Under the Milw. Protestant Line definition, the law is currently being used as a loophole to allow the wealthy to get a property-tax exemption for long-term care insurance.
9. Floodgates. Exemption under the Milw. Protestant Line definition, coupled with the evolution of the senior housing industry, opens the door to erosion of the tax base and more and more parcels improperly coming off the tax rolls as "exempt."

Since the late 1980's there have been efforts to get the legislature to change the BRHA exemption, and to narrow the nonsensical Milw. Protestant Line definition of "benevolent" in favor of the St. Joe's Line definition that requires admission and servicing of elderly without regard to ability to pay. Heretofore, those efforts have been unsuccessful.

The legislature can no longer wait. Due to our rapidly aging society, and the corresponding growth in the senior housing industry, **THE LEGISLATURE MUST ACT NOW** to correct the problems under current law. It must ensure that relief goes where it is needed – to society's less fortunate.

Task force members Hagopian, Huebsch, Murphy, Weiss, and Weissenfluh (the "Gov't-5" members of the task force who come from the government sector and the for-profit senior housing sector), after analysis of the law, the demographics, and the senior-housing industry, offer proposed legislation, that solves the problems, stops abuse, and is good public policy. Under the Govt-5 Proposal: (a) non-profit, licensed nursing homes that accept Medicaid would be exempt, and (b) non-profit senior housing facilities, and non-Medicaid nursing homes, would be exempt to the same extent they serve the elderly (65 and older) who are needy (those earning at or below the Homestead Credit limit). For example, plain and simple, if a non-profit senior housing operator had 10 of its 40 independent living units occupied by residents 65 or older with incomes at or below the Homestead Credit limit (\$20,290 for year 2000), the independent living facility would be entitled to a 25% exemption ($10 \div 40 = 25\%$).

The other proposals offered by the other task force members (the "Nonprofit-5") are unacceptable because, distilled to their essence, they are attempts to merely preserve the unacceptable and problematic status quo.

The Nonprofit-5 task force members are particularly concerned about protecting the "long-term care insurance" element of continuing care retirement communities ("CCRC's"). A CCRC is a senior housing complex that typically contains, on one campus (i.e. on one parcel of property): (1) independent living units for residents who can care for themselves; (2) assisted living units for residents needing up to 28 hours of supportive, personal, and nursing services per week; and (3) nursing home units for residents needing up to round-the-clock care. CCRC's typically charge large endowment fees (e.g. often \$100,000 or more) and large monthly fees (e.g. often \$2,000/mo. or more).

A person wishing to be admitted to a CCRC is akin to a person buying long-term care insurance because, once admitted to the CCRC (after being screened for health and ability to pay the CCRC's fees), that person will be cared for for the rest of his life. He'll start in the independent living unit and, as the years progress and his health deteriorates, he will be moved to assisted living. And then, as more time passes and his health deteriorates further, he'll be moved into the nursing home part of the CCRC. That person, by entering the CCRC, thus buys into a long-term care insurance plan that will see him through the rest of his life whereby, by moving into the one facility, he'll be entitled to the full "continuum of care" as his needs demand.

The Nonprofit-5 argue, with respect to CCRC's and other type senior housing facilities currently exempt under the Milw. Protestant Line definition of "benevolent", that: (1) the owners must charge the large fees to cover the high costs of providing service to the elderly; (2) if the owners are forced to pay property tax, that will increase their expenses, and make it harder for them to provide services; and (3) the money the owners now save by not paying property tax allows the owners to pay better salaries than for-profit operators. The for-profit operators, however, argue unfair competition and abuse of the state tax exemption laws.

From a public policy perspective, however, the legislature must understand that, under the Milw. Protestant Line definition of "benevolent": (a) the elderly in need, who can't afford CCRC's, or other "nonprofit" senior housing facilities, are not welcome there and are left to fend for themselves; (b) public monies (in the form of exemption) are being spent to subsidize "nonprofit" facilities that compete directly with "for-profits" and that deliberately screen-out and do not serve the elderly in need.

The Gov't-5 task force members respectfully urge the legislature to adopt our proposal for new legislation (attached hereto as Exhibit A) that (i) exempts, across-the-board, licensed, non-profit Medicaid nursing homes, and (ii) exempts non-profit, non-nursing

home senior housing facilities and non-Medicaid nursing homes only to the extent they actually serve the elderly (65 or older) in need (at or below the Homestead Credit limit). Doing so will fix the problems and restore good public policy.

Full explanation of the problems with current law, the merits of our proposal, and the unacceptableness of the Sauer and Kittleson-Zielski Proposals is in our Full Report. And, attached hereto as **Exhibit B** is a "Side-by-Side Comparison" that shows different property uses under different factual scenarios and how those property uses would or wouldn't be taxed under each of: the current 70.11(4) BRHA law; our Gov't-5 Proposal; the Sauer Proposal; and the Kittleson-Zielski Proposal.

We thank you for creating the BRHA task force.

We urge you to adopt the Gov't-5 legislative proposal.

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EXHIBIT A TO EXECUTIVE SUMMARY OF GOV'T-5 REPORT

GOVERNMENT-5's PROPOSAL FOR NEW LEGISLATION

The Government-5 proposal for new legislation to fix the problems with the BRHA standard is a 3-part one, to wit:

PART 1: Amend §70.11(4) to eliminate reference to the "benevolent retirement home for the aged" standard ("BRHA") and to close the door on "backdoor assessment challenges."

PART 2: Create new law, §70.11(4b) (residential service facilities for the elderly). This new law does not contain the word "benevolent" or the BRHA standard. It is in-line with modern times and the elderly-housing industry. It harmonizes with other state statutes regarding elderly housing and care. It is sufficiently clear so that, unlike current law, owners and assessors alike will be able to apply it with sufficient clarity. And, it gets at the problems with the BRHA standard, and the court cases interpreting that standard, just as the legislature requested. That is, it will wipe the slate clean so that the competing St. Joe's Line and Milw. Protestant Line will no longer be an issue. It exempts non-profit, licensed nursing homes that accept Medicaid outright. And, for non-profit, non-nursing-home old age residences, and non-profit, non-Medicaid nursing homes, it allows exemption to the same extent those facilities serve the elderly (residents 65 or older) who are in financial need (incomes at or below the Homestead Credit Limit).

PART 3: Create new law, §70.11(4c) (HUD §202 low-income elderly housing). Sec. 70.11(4c) is needed to not take away the legitimate exemption for §202 HUD-elderly projects, which exemption would, absent §70.11(4c), be eliminated due to our amendment to §70.11(4) and our creation of §70.11(4b).

A. Amending §70.11(4)

Amend 70.11(4) by deleting reference to "*including benevolent nursing homes and retirement homes for the aged*". Also, add to 70.11(4), to the "but not including" list, the following: "*an organization whose predominant purpose is providing residential services to persons who are retired or elderly.*"

B. Creation of §70.11(4b)

Create a separate exemption, §70.11(4b), as follows:

70.11(4b) RESIDENTIAL SERVICE FACILITIES FOR THE ELDERLY.

(a) DEFINITIONS. In this subsection:

1. "Activities of daily living" means: bathing; continence; dressing; eating; toileting; and transferring into or out of bed, chair, or wheelchair.
2. "Department" means department of revenue.
3. "Elderly" means a resident of a building at the property who is 65 years of age or older as of January 1 of the exemption year at issue.
4. "Exempt percent" means the quotient obtained by dividing the numerator, the total units occupied by residents who are both elderly and needy, by the denominator, the total number of units at the property as of January 1 of the exemption year at issue.
5. "Gross income" means "adjusted gross income" for federal income tax reporting purposes.
6. "Household" has the same meaning as in s. 71.52(4).
7. "Independent living facility" means a residential facility of 5 or more units for the dwelling of elderly persons and their spouses, who are able to care for themselves and live independently, and to which residents the facility-owner does not currently provide on-site medical services as defined in s. 647.01(6), on-site nursing services as defined in s. 647.01(7), or assistance with the activities of daily living. An independent living facility may be part of a larger facility or campus, the other parts of which do include such on-site medical services or nursing services, or assistance with the activities of daily living.
8. "Maximum homestead income" means the maximum income allowed for claiming the homestead credit under subch. VIII of Ch. 71.
9. "Medicaid nursing home" means a nursing home as defined in s. 50.01(3) and licensed under ch. 50 that accepts Medicaid residents.
10. "Needy" means an elderly resident who had individual, or household, gross income, for the year preceding the exemption year at issue, that did not exceed the maximum homestead income, as that maximum was calculated by the department for the year preceding the exemption year at issue.

11. "Non-Medicaid nursing home" means a nursing home as defined in s. 50.01(3) and licensed under ch. 50 that does not accept Medicaid residents.
 12. "Taxable percent" means one minus the exempt percent.
- (b) Up to ten acres of land necessary for location and convenience of buildings, to the extent of the exempt percent, where all of the following requirements are fulfilled:
1. The land and buildings are owned and used exclusively by a nonprofit organization for one or more of the following purposes:
 - A. a community-based residential facility as defined in s.50.01 (1g) and licensed under ch. 50 ; or
 - B. a residential care apartment complex as defined in s.50.01 (1d) and certified or registered under ch. 50; or
 - C. an adult family home as defined in 50.01(1)(b) and certified or licensed under ch. 50; or
 - D. a hospice as defined in s.50.90(1) and licensed under ch.50; or
 - E. an independent living facility; or
 - F. a non-Medicaid nursing home.
 2. The organization has residents who are both elderly and needy.
 3. The organization timely files a summary report form under sub (d).
- (c) Each resident shall, on or before January 15th of each year, provide to the organization a statement, on a form prescribed by the department, in which the resident shall provide his or her name and address and indicate whether the resident was elderly and needy. Upon request, the organization shall make available to the local assessor copies of these statements.

- (d) The organization shall file with the local assessor on or before March 1 of each year a summary report, in the form prescribed by the department, that summarizes data the organization receives from the resident statements under sub (c), and that indicates as of January 1 of the year in which they must be filed:
1. each applicable sub (b) 1A-F purpose for which the land and buildings at the property were used, and whether the land and buildings were being used for a Medicaid nursing home.
 2. the total number of units that existed at the property, including a breakdown showing the number of units within each separate sub(b) 1A-F purpose and the number of units within any Medicaid nursing home.
 3. for each separate sub(b) 1A-F purpose, the total number of units occupied by at least one resident that was both needy and elderly.
- (e) The organization's property shall be assessed for taxation at its fair market value times the taxable percent.
- (f) SPECIAL RULES FOR MEDICAID NURSING HOMES AND MULTI-PURPOSE FACILITIES THAT INCLUDE MEDICAID NURSING HOMES. If the land and buildings are owned and used exclusively by a non-profit organization for a Medicaid nursing home or for a Medicaid nursing home and one or more of the purposes in sub (b) 1 A-E, then that Medicaid nursing home shall be entitled to exemption to the same extent as if the nursing home were a non-Medicaid one under sub(b) 1.F. except, that, no resident of the Medicaid nursing home shall be required to provide statements under sub. (c), and so long as the Medicaid nursing home was actually occupied as of January 1, for purposes of calculating exempt percent, all units in the Medicaid nursing home as of January 1 shall be deemed as a matter of law to be occupied by elderly and needy. An organization that owns and uses an occupied Medicaid nursing home shall file with the local assessor on or before March 1 a summary report under sub (d) as a prerequisite to exemption.

C. Creation of §70.11(4c)

Create a separate exemption, §70.11(4c), as follows:

4(c) FEDERAL HOUSING PROJECTS FOR THE ELDERLY

Up to ten acres of land necessary for the location and

convenience of buildings where the land and buildings are owned and used exclusively by a non-profit organization that provides housing to low-income, elderly persons, where that housing was financed through, and operates under, the federal government's department of housing and urban development's section 202 program.

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EXHIBIT B TO EXECUTIVE SUMMARY OF GOV'T-5 REPORT

SIDE-BY-SIDE COMPARISON

The following three scenarios are hypothetical examples illustrating how things are currently taxed, and how they would be taxed under each of the: Sauer Proposal; Kittleson-Zielski Proposal; and Gov't-5 Proposal. We think you will agree that the Gov't-5 Proposal reflects the best public policy.

1. **FACTS:** BIRCH MANOR. Nonprofit, 501(c)(3) corporation. No private inurement. Owns and operates independent living facility. 40 individual, luxury townhouse apartments. Endowment fee: \$150,000. Monthly fees: \$2,500. Most residents are age 60-80. Almost all have annual income of \$50,000 and up. Only 5 of the 40 units are occupied by a resident 65 or older with income less than \$20,290.

PROPERTY TAX STATUS	CURRENT LAW	SAUER PROPOSAL	KITTLESON-ZIELSKI PROPOSAL	GOVT-5 PROPOSAL
EXEMPT	100% exempt	100% exempt	100% exempt	5÷40=13% exempt
TAXED				87% taxed

2. **FACTS:** HIGHLAND OAKS. Nonprofit, 501(c)(3) corporation. Endowment fee: \$200,000. Monthly fee: \$2,100. No private inurement. CCRC (Continuing Care Retirement Community). Residents enter contract under Wis. Stat. Ch. 647 for life-long care. Highland Oaks CCRC has 3 components: (1) independent living, with 30 individual, luxury townhouse apartments. Most of independent living units are occupied by residents age 60-80, and most have income of \$65,000 and up. But, 4 of 30 independent living units are occupied by residents 65 or older and with income of \$20,290 or less. (2) assisted living. Ten of the 20 assisted living units are occupied by residents age 65 or older with incomes of \$40,000 and up. But 10 of the 20 assisted living units are occupied by residents 65 or older with income of \$20,290 or less. (3) nursing home. Most of the 20 nursing home units are occupied by residents age 75 and older. Eighteen of the 20 units are occupied by residents 65 or older with income of \$20,290 or less.

- A. Scenario One Non-Medicaid Nursing Home: Highland Oaks Nursing Home Does Not Accept Medicaid.

PROPERTY TAX STATUS	CURRENT LAW	SAUER PROPOSAL	KITTLESON-ZIELSKI PROPOSAL	GOVT-5 PROPOSAL
EXEMPT	100% EXEMPT	100% EXEMPT	100% EXEMPT	46% EXEMPT (4/30+10/20+18/20)
TAXED				54% TAXED

B. Scenario Two Medicaid Nursing Home: Highland Oaks Nursing Home Does Accept Medicaid.

PROPERTY TAX STATUS	CURRENT LAW	SAUER PROPOSAL	KITTLESON-ZIELSKI PROPOSAL	GOVT-5 PROPOSAL
EXEMPT	100% EXEMPT	100% EXEMPT	100% EXEMPT	49% EXEMPT (4/30+10/20+20/20)
TAXED				51% TAXED

3. RETIRED

JANITOR FACTS.

Fred Jefferson , a retired janitor, and widower, 76 years old. He lives on a fixed income of \$15,000 per year in Milwaukee's inner-city. Owns his own home, assessed at \$32,000. The home is mortgaged. He has trouble walking and trouble cooking meals for himself. He applied to each of Birch Manor and Highland Oaks, but each – after screening Fred for health and wealth – rejected him as being too poor and too dependent on care to admit. That is, he was rejected because he didn't have money and because he needs help taking care of himself. He scrapes to pay his own way and to pay all his bills (e.g. annual property tax bill; prescription drugs; utilities; food; water; etc.).

CURRENT LAW	SAUER PROPOSAL	KITTLESON-ZIELSKI PROPOSAL	GOV'T-5 PROPOSAL
Fred is forced to pick up his share of the 100% exemption given to each of Birch Manor <u>and</u> Highland Oaks.	Fred is forced to pick up his share of the 100% exemption given to each of Birch Manor <u>and</u> Highland Oaks.	Fred is forced to pick up his share of the 100% exemption given to each of Birch Manor <u>and</u> Highland Oaks.	Fred only has to pick up as extra, his share of: the 13% exemption given to Birch Manor and the 46% exemption given to Highland Oaks under Scenario One of Fact Situation 2. Under Scenario Two, the 46% figure above would change to 49%.

* * * * *

In fact scenarios 1 and 2 above, under each of current law, the Sauer Proposal, and the Kittleson-Zielski Proposal, 100% Exemptions are handed out when, as a matter of common sense and good public policy, that makes no sense. The Govt-5 Proposal, however, strikes a common-sense compromise by tying exemptions for non-nursing home, senior living facilities and non-Medicaid nursing homes directly to an easily identifiable standard (i.e. over 65 and under the Homestead Credit Limit). Medicaid nursing homes get full exemption.

By looking at fact scenario 3 and how Fred Jefferson is affected, you understand the "compromise." Even though Fred only makes \$15,000 per year (less than the Homestead Credit Limit), even though Fred needs assistance with daily living, and even though Fred can't afford to get into typical, "nonprofit", property tax-exempt, senior housing facilities, Fred has to pay property taxes. Only the Gov't-5 Proposal recognizes the inequity of this and provides relief (albeit not full relief) to Fred.

Given the demographic data on the aging of our society, tomorrow, there'll be lots of Fred Jeffersons in Wisconsin, and lots of "nonprofit", senior housing facilities that cater only to those with money. Our proposal (the Gov't-5 one) recognizes that, and provides relief. For non-profit, non-Medicaid nursing home, senior facilities, they'll get an exemption – but only to the extent they actually serve the aged (65 or older) in financial need (incomes at or below the Homestead Credit Limit). That, in turn, encourages true "benevolence" while, at the same time, helping those in need who live on their own (Fred Jefferson-types).

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