

February 22, 2005

VIA U.S. MAIL AND E-MAIL

Ms. Mary Matthias
Wisconsin Legislative Council
P.O. Box 2536
Madison, WI 53701-2536

Re: Working Group Proposals

Dear Ms. Matthias:

Representative Gottlieb's proposal, WLC: 0116(1) amending 0086(1), offered at our working group meeting on Thursday, February 10, 2005, we believe, offered some good language on mandatory PILOT's. As mentioned at our meeting, however, we still need to think about other aspects of that proposal, as well as other proposals that were put on the table.

The foregoing notwithstanding, would you please draft an amendment to the Gottlieb proposal that adds the words "a special charge in" at line 10 after the word "pay."

Some of our lingering concerns deal with the proposed exemption for RCAC's, CBRF's, and Adult-Family Homes. We really have not heard much about those type facilities. Because they are exempted in many of the proposals being offered, we should learn a bit more about them.

Heretofore, we have had many speakers from the non-profit camp. But, we have not heard from *the other side*. No *for-profit* operator has presented or been before our Committee.

Could we please have Beth Anderson from the Laureate Group (a for-profit operator) make an appearance at each of our next working group meeting on February 28, 2005 at 1:00 P.M. and at our next meeting of the whole. Ms. Anderson attended and presented at meetings of the Benevolent Retirement Home for the Aged Legislative Taskforce in the past, and she would be a good voice to hear from. She could tell us more about RCAC's, CBRF's, and Adult-Family Homes, in addition to elderly housing in general. And, she could tell us the typical or average amount per resident that the Laureate Group pays in property taxes. Such an average per

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resident, or average per unit, payment, or simply a per unit payment in and of itself, may be something for our Committee to at least discuss regarding mandatory PILOT's and be a possible alternative to other calculations relying on standards like homestead-income limits or unit value.

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Depending on what we learn from Ms. Anderson, as the Legislative Council Staff recommended, it may be good to also hear from a DHFS representative regarding RCAC's, CBRF's, and Adult-Family Homes. For example, are there nonprofit operators of those type facilities that are in direct competition with private for-profit operators serving mid to high income residents.

By regular mail, I will enclose a copy of the following article that appeared in the *Milwaukee Business Journal* on January 21, 2005, "A taxing situation," that reaffirms what we have been saying – there is great reluctance on the part of nonprofits to make *voluntary* PILOT's. Thus, while some of the Committee members may support a voluntary arrangement, we believe that our Committee, in thinking realistically about PILOT's, should be discussing mandatory payments. For example, think what would happen if the federal government made federal-income-tax payment voluntary.

Below is the proposal that the "Government-5" members of the 1999-2000 Benevolent Retirement Home for the Aged Legislative Taskforce (created by 1997 Act 27) came up with. While we are not asking that it be drafted as a proposal at this point, we do think that it should at least be brought to the Committee's attention. It requires residents to be elderly (65 and older) and needy (using homestead as a reference) to qualify for exemption.

GOVERNMENT-5's PROPOSAL FOR LEGISLATION (1999-2000 TASKFORCE)

The Government-5 proposal for 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 out-right. 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 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. Part 1: 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. Part 2: 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. Part 3: 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.

Thank you. We look forward to our next meeting.

Very truly yours,

GREGG C. HAGOPIAN
Assistant City Attorney

GCH/ms

c: (via email):

Mary Reavey
Pete Weissenfluh
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