February 25, 2000
ILR 2000-A

Representative Bill Wright
Utah House of Representatives
318 State Capitol Building
Salt Lake City, UT 84114

Subject: Nursing Facilities Restricted Account

Representative Wright:

In accordance with your audit request, our office has conducted a limited review of the Nursing Facilities Restricted Account. Specifically, we found that:

- Although the account was established with the intent to help increase salaries of nursing assistants in the nursing care industry, there is no apparent guarantee that such intent was, or can be carried out because of federal Medicaid rules that require any health-care related tax to be broad based.

- Despite there being no mechanism to periodically track whether appropriations from the restricted fund were having an impact on nursing assistants wages, two comparisons suggest the fund did positively affect wages.

- Revenues are being collected by the fund and are being appropriated, but a sizeable balance of approximately $2.8 million does exist.

Currently, within the nursing care industry, there is a desire to cap the nursing facility account assessment at the existing level of $1.83 per patient day, as is shown in Senate

Bill 94 of the 2000 General Session. At this level, the nursing facility assessment would yield approximately $4.2 million per year.

Restricted Account Appears to Have Met Intent

In the early 1990s, the Legislature authorized the restricted nursing facilities account with the intent to help raise the wage base for nursing assistants and to provide further funding for the federal Medicaid matching program. The Legislature did not provide a mechanism in the law which would track whether the assessment account was helping raise wages. However, we were able to find some indicators that show there may be positive correlation between the nursing facility assessment and increases in nursing assistant wages.

Restricted Account Intended to Increase Wage Base for Nursing Assistants

The Nursing Facilities Restricted Account was authorized by the 1992 Legislature under the Nursing Facilities Assessment Act, which is now **Utah Code** 26-35-101 to 106. The act stated that "an assessment is imposed upon each nursing facility in the amount of $1.00 per patient day." Later, in the 1994 General Session, House Bill 498 changed the assessment to $1.50 per patient day. The rate is currently set at $1.83 due to annual inflation index adjustments over several years. Senate Bill 94, which passed in the 2000 General Session, will keep the assessment set at $1.83.

In 1992, the Legislature's intent for the assessment was to "improve the quality of care given to the elderly, physically disabled and developmentally disabled in long-term care nursing facilities, and intermediate care facilities for the mentally retarded." It was believed that to do so, the nursing assistants that provide most of the direct care must have an increased wage base. Funds from the restricted nursing facilities account were intended to address these wage deficiencies by increasing the Medicaid base funding. Currently, this affects a total of 109 facilities: 84 traditional nursing homes, 12 transitional care units, and 13 intermediate care facilities for the mentally retarded (ICFMRs).

Federal Medicaid match rules disallow revenues from an assessment being directly earmarked for specific purposes—such as increasing nursing assistant wages. However, it was intended that revenues from the assessment would increase the Medicaid base funding by allowing more federal dollars to be received. Because of this, it was hoped that nursing facilities could increase wages of nursing assistants with a surety that increased expenses could be covered with an increase in the overall Medicaid reimbursement rate. This is how the Legislature, in 1992, seemingly approached the intent to increase nursing assistant wages.

The per-patient day charge, going to the fund, is more of an assessment than a tax because the nursing facilities get back all of the assessment through the Medicaid expense reimbursement process. Plus, applying the restricted account as state match funding allows the state to receive additional federal Medicaid matching funds. Currently, for every $1.00 the state provides, the federal government will match with about $3.00 through the Medicaid reimbursement process. So, the assessment is not meant to tax the nursing care patients; rather, it is a means to obtain more federal matching funds.

Recent information shows that 62 percent of all nursing care patients are using Medicaid to fund their care. Some concerns have been raised that the remaining 38 percent of the patients who do not use Medicaid funds may be unfairly paying the nursing facility assessment. There is merit to this concern. However, the Department of Health says that since Medicaid funding contributes to the overhead expenses of the nursing facilities, all nursing care patients—regardless of how their care is funded—receive a benefit from the nursing facility assessment in the form of nursing care improvements funded through an increase in the expense reimbursement rate.

The law also provided for an annual inflation adjustment so the assessment would keep current with today's dollar. The 1992 Nursing Facility Assessment Act read:

> *The amount of the assessment shall be adjusted annually as determined by rule by the department. The adjustment shall be based on the same percent change as the percent change in the Utah nursing facility inflation index.*

The rate per day for each fiscal year since the inception of the law, as adjusted by the nursing facility inflation index, is shown in Figure 1.

Figure 1. The Rate Per Patient Day Has Increased Slightly Each Year Except in 1995 When the Base of the Rate was Significantly Raised. Effective in fiscal year 1995, the Legislature altered the law to allow for a base of $1.50 per patient day rather than $1.00 per patient day.

Fiscal Year	Percent Change Per Year*	Rate Per Patient Day**
1993	---	$ 1.0000
1994	3.56%	1.0356
1995***	n/a	1.5000***
1995	4.69	1.5704
1996	3.56	1.6263
1997	2.30	1.6637
1998	0.95	1.6795
1999	4.79	1.7600
2000	3.98	1.8300

* *The percent change per year is determined by the nursing facilities inflation index.*

** *These rates include the annual adjustment based on the nursing facilities inflation index, except for the fiscal year 1995 base rate increase from $1.00 to $1.50 authorized by House Bill 498 in the 1994 General Session.*

*** *Change in the base rate from $1.00 to 1.50, beginning fiscal year 1995.*

Legislative Intent Could Not Be Guaranteed

Although House Bill 401, from the 1992 General Session, explicitly listed the intent of the assessment to help raise the wage base for nursing assistants, agency staff showed us how federal rules on Medicaid-related taxes made it so the intent could not be a guarantee. Under **Code of Federal Regulations** 42 §433.68, health-care related taxes, such as the nursing facility assessment, are only permissible if they are broad-based, and uniformly imposed. So, while the Legislature could hope to increase the payments to nursing facilities by increasing the Medicaid base through the assessment, there could be no formal designation of the assessment directly for nursing assistant wages. Still, legislative intent clearly demonstrates an expectation that nursing facility administrators would raise nursing assistant wages based on the assurance that the nursing facility assessment would provide more federal dollars for overall reimbursement.

We researched the original bill file for HB 401 in 1992 and found evidence that the federal government made several changes to the Medicaid matching rules for health care financing. One such change, that was detailed above, was that any assessments in health care were only allowable if they were broad-based. The bill file also contained a 1991 assessment act from the state of Colorado which was most likely used as a reference when the 1992 HB 401 was drafted in Utah. However, the bill file did not contain any evidence or discussion pertaining to the need for a mechanism to track legislative intent.

No Mechanism Was Provided to Track Assessment But Indicators Show Correlation

The 1992 Nursing Facility Assessment Act did not include any mechanism to track and assure that the restricted account would positively impact nursing assistant wages. Our research of the original bill file did not show tracking of nursing assistant wages to be a discussion item. Nonetheless, there are indicators which show there may be a positive correlation between increases in nursing assistant wages and the nursing facility assessment.

At the time the original bill was drafted in 1992, nursing assistant wages were reportedly close to minimum wage, $4.75 to $5.00 per hour. Currently, nursing assistant wages are between approximately $7.50 and $8.00 per hour. Two indicators detailed in the following paragraphs suggest that this increase is above the natural increase of the market function. Wages could have been positively influenced by the nursing facility assessment over the years.

Wage Costs for Nursing Facilities Rose Faster Than the Overall Rate. In 1993, nursing facilities spent an average of $26.08 on nursing wages, per patient day. By 1998, this cost rose to $41.11, an increase of 58 percent. This rate of increase is more than twice the increase in the average reimbursement rate for the same time period, which rose only 23 percent. In 1993, the average nursing facility in Utah was reimbursed $67.53 per patient day. By 1998, the average was $83.11. Because wage costs rose significantly faster than overall costs, it may be an indicator that the nursing facility assessment was being used to help increase wages. This data is summarized in the upper-half of Figure 2.

Nursing Home Wages Grew Faster Than Industry-wide Wages and Other Health Care Wages. Data from the Utah Department of Workforce Services shows that wages in nursing homes grew over 20 percent faster from 1991 to 1998 than all other industries and other health care categories grew in the same time period throughout Utah. From 1991 to 1998, wages in nursing homes grew 51 percent, compared to wages in all industries which grew 29 percent, and wages in all of health care which grew 30 percent. This data is summarized in the lower-half of Figure 2.

Figure 2. Wage Cost Data and Wage Comparison Data May Indicate a Positive Correlation Between Rising Nursing Wages and the Nursing Facility Assessment. This figure contains two separate state-wide indicators to show that nursing wages in Utah increased significantly in the 1990s. Indicator One shows that wage costs at nursing facilities rose much faster than overall costs. Indicator Two shows that average monthly wages, for nursing facility employees, rose much faster than all other industries and all of the health care industry.

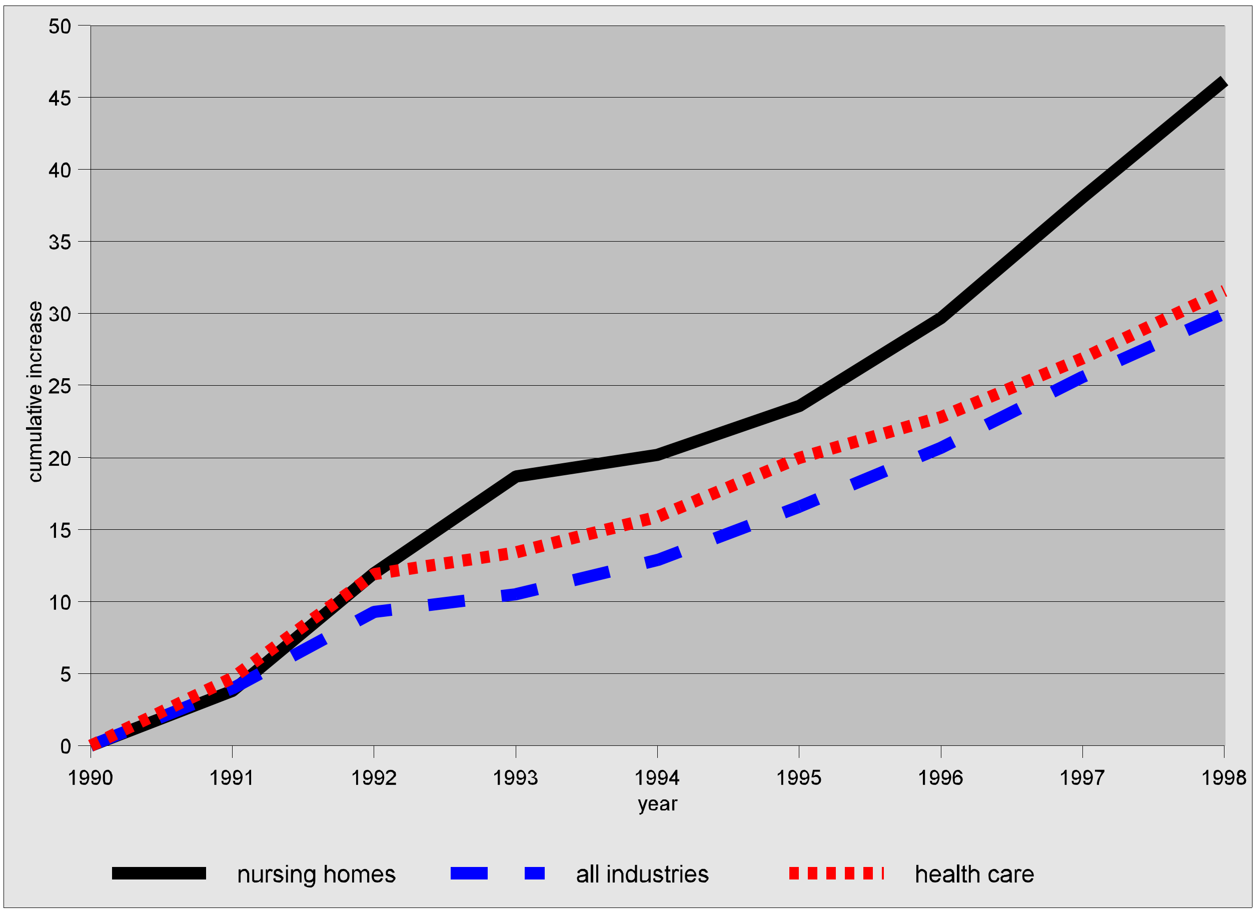
Indicator One*		
Year	**Average Nursing Wage Cost to Nursing Facilities Per Patient Day**	**Average Total Rate of Reimbursement to Nursing Facilities Per Patient Day**
1993	$26.08	$67.53
1998	41.11	83.11
5-year increase	58%	23%

Indicator Two**			
Year	**Average Monthly Wage—Nursing Facilities**	**Average Monthly Wage—All Health Care**	**Average Monthly Wage—All Industries Total**
1991	$ 906	$1,915	$1,710
1998	1,365	2,490	2,207
7-year increase	51%	30%	29%

* *Source: Utah Department of Health, Division of Health Care Finance.*
** *Source: Utah Department of Workforce Services, Workforce Information.*

Next, Figure 3 serves to illustrate the cumulative growth from 1991 to 1998 of each year's percent increase in the wage categories of all Utah industries, all health care, and all nursing facilities, using 1990 as a baseline of zero.

Figure 3. Growth of Nursing Wages Has Outpaced Average Growth of All Industries. This figure shows that nursing wages, benchmarked at zero in 1990, have outpaced the growth of all industries at the same benchmark figure. This suggests that the nursing assessment may have positively affected wages.



Clearly, nursing wages in nursing facilities have recently increased faster than wages of other industries. While there is no way of telling exactly what forces caused the greater increase in wages, it is obvious that the restricted nursing facilities account would have been used to pay for the increased pay rates. It is reasonable to conclude that the nursing facilities assessment revenues did have a positive impact on increasing nursing assistant wages by increasing the Medicaid base funding for overall expense reimbursement as explained earlier.

Restricted Account Revenues Are Being Appropriated but Balance Has Grown

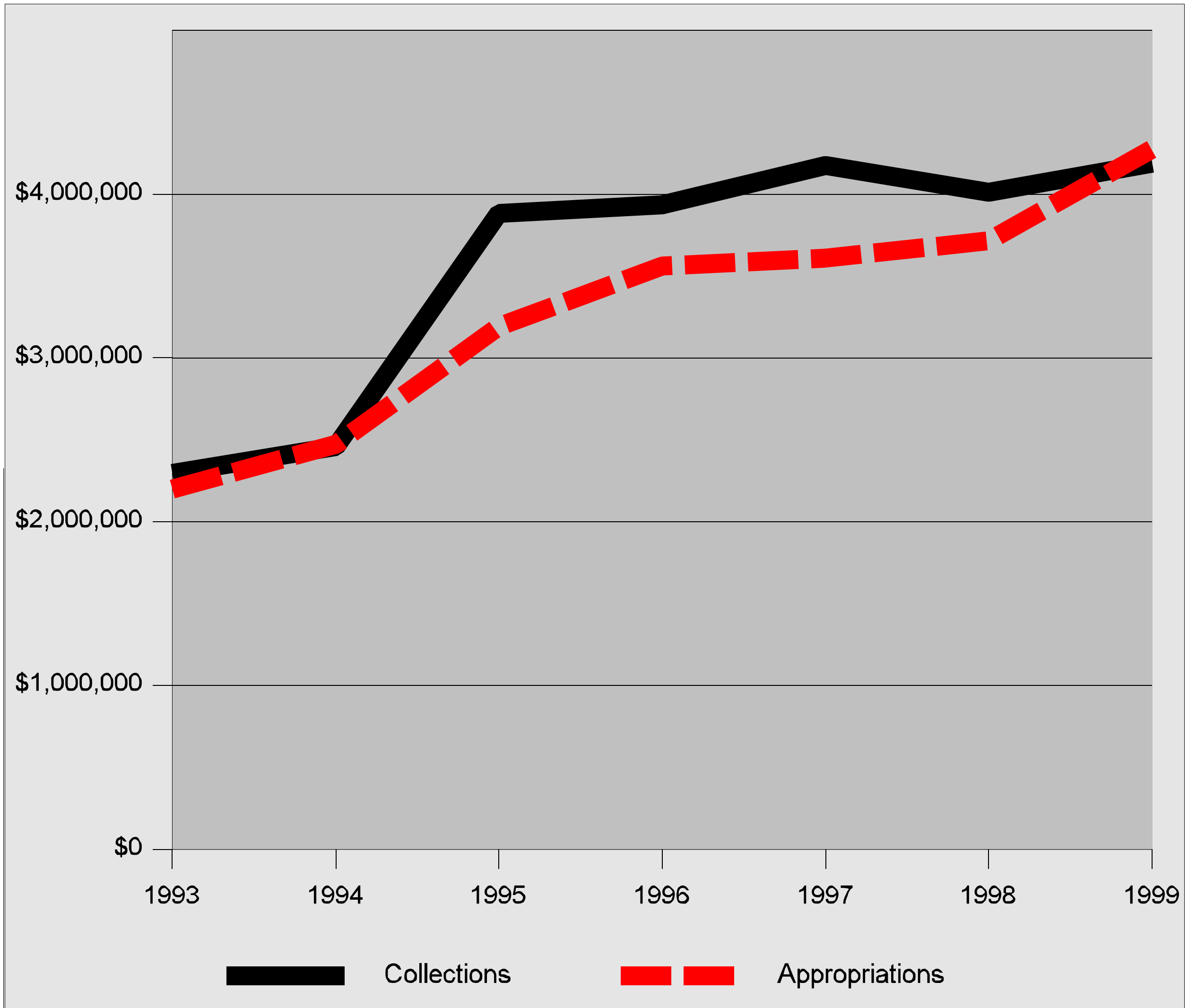
Our limited review of the collections of the assessment and the subsequent transfer appropriations to the general fund did not reveal any significant concern. However, the assessment fund has a current balance of $2.8 million, which is the accumulation of carry-overs from previous years. The agency reports that a large portion (approximately $1 million) of the balance exists because of a coding error of other Medicaid funds which were erroneously placed in the restricted fund. The remainder of the balance exists because appropriations have consistently been less than collections, over the years. The Legislature could use the balance (in addition to the current proposed appropriation), but it would be one-time money. If the Legislature did decide to spend the ending-balance, current legislation states that it must be used for Medicaid funding.

Department of Health officials also attribute a portion of the fund balance to the 50 percent increase in the assessment in fiscal year 1995, when the Legislature raised the assessment from $1.00 per patient day to $1.50 per patient day. (Refer to Figure 4 for a graphical representation of this increase.) This, along with the money erroneously placed in the fund due to a coding error in the same fiscal year, created a sizeable increase in the balance of the nursing facilities restricted fund. The actual amounts appropriated by the Legislature since this time have generally been less than the amounts the Department of Health suggests. The Department of Health stated that there is no real correlation between the amount of the assessment collected in a given year and the amount subsequently appropriated in the following legislative session.

Collections from Nursing Facilities Are Appropriated

In fiscal year 1999, the Department of Health collected approximately $4.1 million in nursing facility assessments from a total of 111 nursing facilities across the state. Documentation from the state Division of Finance and the 1999 Appropriations Act later shows that $4.2 million was transferred for fiscal year 2000 appropriations to be placed in the Medicaid base fund for federal matching. The Legislature appropriated more than was collected for fiscal year 1999, but a $2.9 million balance previously existed in the fund. $2.8 million currently exists in the nursing facility restricted account. Figure 4 shows the trend for collections from the nursing facility assessment and the subsequent amounts appropriated in the following legislative general session since fiscal year 1993.

Figure 4. Collections and Appropriations — Nursing Facility Restricted Account. Collections increased sharply in 1995 because the base rate was raised 50 percent. However, because appropriations were consistently less than collections over the years, a sizeable fund balance exists.



	1993	1994	1995	1996	1997	1998	1999
Collections	$2,294,209	$2,458,812	$3,884,111	$3,934,524	$4,174,044	$4,013,862	$4,189,634
Appropriations	$2,200,000	$2,471,800	$3,194,800	$3,563,200	$3,611,100	$3,713,600	$4,276,700

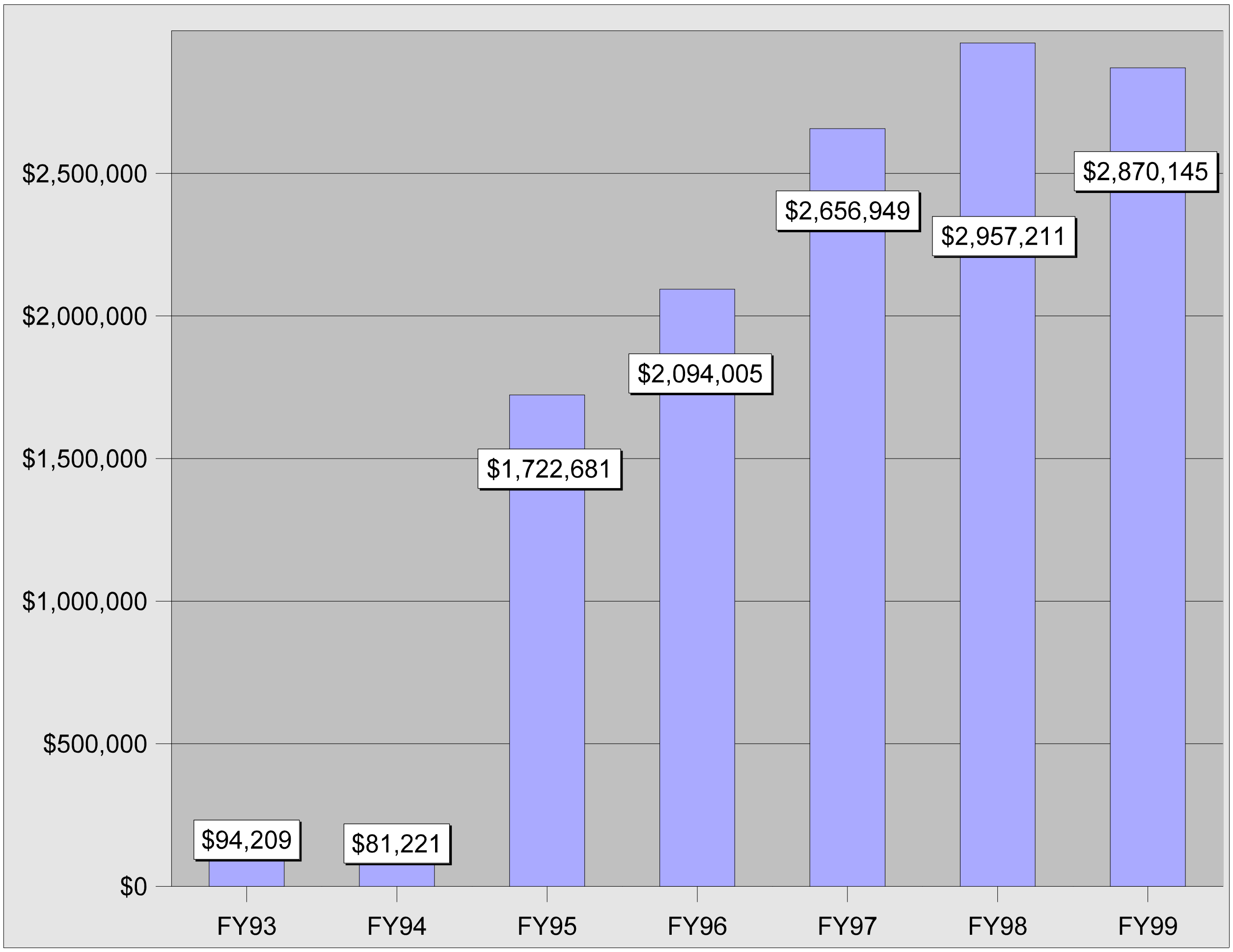
Funds Were Erroneously Coded to Restricted Fund. As shown in the data table portion of Figure 4, assessments in the amount of $3,884,111 were collected for the restricted nursing facilities account. However, the fund balance history at the Division of Finance shows revenues of $4,836,260 posted to the restricted fund, which the agency reports is due to the $1 million of erroneously coded funds which were meant for the hospital provider assessment fund. They also reported that since these erroneously coded funds were intended to be used for Medicaid purposes, there was not a need to reverse the error. Although we believe this information to be verifiable, we were unable to do so at the time this report was released because documentation from the Department of Health was still in process. Still, this $1 million would be available for the Legislature to appropriate in the Medicaid match, as well as the remaining $1.8 million balance not yet appropriated in the restricted nursing facilities account.

Ending Balance Could Be Utilized

The nursing facilities restricted fund had a ending balance of $2,870,145, as of January 2000, which could be utilized in a future appropriation for the Medicaid base. As mentioned, approximately $1 million of the balance is traceable to the coding error. Agency officials said they have submitted suggested appropriation levels which would utilize this money, but they were not reflected in the recommendations prepared by staff in the Governor's Office of Planning and Budget.

The remaining portion of the balance, approximately $1.8 million, exists because less money has been annually appropriated over the life of the restricted fund than has been collected. In fiscal year 1993, which was the end of the first fiscal year of the fund, there was an ending balance of $94,209. Over the past six fiscal years, the ending balance of the fund has increased by $2,775,936, which includes the $1 million which was erroneously coded to the restricted fund. Figure 5 shows the growth of the fund's ending balance, which peaked in fiscal year 1998.

Figure 5. Nursing Facilities Restricted Account Balance Has Grown Each Year. Since its inception in fiscal year 1993, the ending balance of the restricted account has grown to almost $3 million.



As mentioned, agency staff told us that there appears to be no correlation between each year's collected amount to the nursing facilities restricted fund and the amount which is subsequently appropriated out of the fund for the following fiscal year. The legislative fiscal analyst over the Department of Health's budget says that the Legislature appropriates only what is needed out of the fund to cover increases in nursing facility programs in the Medicaid base. The appropriation amount is not based on past collections. In short, the amount used out of the fund is at the discretion of the Legislature, as long as there is a positive balance after the appropriation. The restricted account is only one of several funding sources for Medicaid. Still, we believe the Legislature could utilize more information about current year collections to the fund, the existing balance of the fund, and relevant trends when making appropriation decisions.

The balance of the fund, as it now stands, could be used for appropriations in the Medicaid base. Agency officials are not aware of any limitations on the federal match program if this additional money were used for additional Medicaid funding. Legislators could consider spending what has now grown to be a balance of almost $3 million in the nursing facility assessment account. The legislative fiscal analyst said that if the existing balance was to be used, it should be spent-down slowly and spread out over time so that the Medicaid program is not reliant on one-time dollars. The fiscal analyst also said it would be advisable that a reasonable balance remain in the restricted account to cover any future shortfalls, such as an unforseen drop in assessment collections.

Recommendations:

1. We recommend that if the Legislature wants to track whether the nursing facilities assessment is positively impacting the wage base of nursing assistants, it should direct the Department of Health to provide it with periodic, low-cost indicators developed as part of the department's normal oversight of nursing facilities.

2. We recommend that the Legislature consider yearly collection amounts and the existing balance when setting each year's appropriation from the nursing facilities restricted account. We further recommend that the Legislature decide whether the sizeable ending balance of the nursing facilities restricted account, which now exists, should be spent-down over time.

We hope this report has answered the questions you had about the Nursing Facilities Restricted Account. If you have further questions concerning this report, please call Legislative Audit Supervisor, Darin R. Underwood at 538-1033 extension 121.

Sincerely,

Wayne L. Welsh, CPA
Auditor General

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