



2005 SENATE BILL 565

February 3, 2006 - Introduced by Senators ROESSLER and OLSEN, cosponsored by Representatives STRACHOTA, GIELOW, VOS, LOEFFELHOLZ, KAUFERT, HUNDERTMARK, NISCHKE, F. LASEE, MUSSER, JESKEWITZ, AINSWORTH, BALLWEG and TOWNS. Referred to Committee on Health, Children, Families, Aging and Long Term Care.

1 **AN ACT relating to:** waiver of certain divestment requirements under Medical
2 Assistance.

Analysis by the Legislative Reference Bureau

Under current law, generally, a person is ineligible for Medical Assistance (MA) for payment of nursing home services and other long-term care for a period of time if the person or his or her spouse transfers assets for less than fair market value (divests assets) within a certain time before the person applies for MA. The MA ineligibility rules related to this divestment are based on federal law.

This bill requires the Department of Health and Family Services (DHFS) to request a waiver from the secretary of the federal Department of Health and Human Services that would allow DHFS to implement certain changes in the rules related to divestment and ineligibility for MA and to submit proposed legislation that implements the changes if the waiver is granted. Those changes include the following:

1. Increasing to 72 months the time before application for MA that divesting assets would result in ineligibility for MA. Currently that time, called the look-back period, is 36 months.

2. Changing the time for when the person's ineligibility begins to the first day of the month in which the person applies for MA or the first day of the month in which the county department becomes aware of the divestment, whichever is later. Currently the ineligibility period begins on the first day of the first month beginning after the person divests the assets.

SENATE BILL 565

3. Except for undue hardship, eliminating the exemptions for certain divestments, such as divestment of homestead property or if it can be shown that a divestment was not made with the intent of receiving MA.

4. Making a person ineligible for the specified time after divestment for all MA services. Currently a person is ineligible for MA for only nursing home and other long-term care services.

5. Changing the way in which the length of the ineligibility period is determined by using the average monthly amount paid for nursing facility services in this state on behalf of a person receiving MA. Currently the length of the ineligibility period is determined by dividing the divested amount by the average monthly amount paid for private pay nursing facility services.

6. Eliminating the exemption for interspousal transfers of assets for less than fair market value. The exemption would be eliminated, however, only for amounts that exceed the asset amount that may be transferred by an institutionalized spouse receiving MA to a noninstitutionalized spouse under the spousal impoverishment provisions of the law.

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

1 **SECTION 1. Nonstatutory provisions.**

2 (1) WAIVER OF DIVESTMENT REQUIREMENTS.

3 (a) The department of health and family services, within 6 months after the
4 effective date of this paragraph, shall request a waiver from the secretary of the
5 federal department of health and human services, under 42 USC 1315 (a), that would
6 permit the department of health and family services to implement the following
7 changes with respect to asset divestment and ineligibility for medical assistance:

8 1. Increasing the look-back period for all divestments to 72 months.

9 2. Changing the time at which an individual's period of ineligibility for medical
10 assistance for long-term care begins on account of transferring assets for less than
11 fair market value to the first day of the month in which the individual applies for
12 medical assistance or in which the county department becomes aware of the transfer
13 of assets for less than fair market value, whichever is later.

