



State of Wisconsin  
2007 - 2008 LEGISLATURE

LRB-0266/P2

PJK:kjf:rw

*nmis*

DOA:.....Milioto, Steve, BB0026 - Medicaid asset transfers

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

*Note*  
*do not generate*

- 1 AN ACT ...; relating to: changes in asset transfer rules for Medical Assistance
- 2 eligibility.

*Analysis by the Legislative Reference Bureau*

**HEALTH AND HUMAN SERVICES**

**MEDICAL ASSISTANCE**

Under current law, DHFS administers the Medical Assistance (MA) program, which provides federal and state moneys to pay for health care and long-term care services, including care in a nursing home, provided to MA recipients, who are, generally, low-income, elderly, or disabled persons who meet other specific eligibility requirements. To be eligible for MA for long-term care services, an individual must meet certain very low income and resource requirements, and may have to "spend down" his or her income and resources by paying for his or her own long-term care until the eligibility requirements are met.

Current law provides rules, based on federal law, concerning divestment, which refers to the transferring of one's assets for less than fair market value for the purpose of reducing one's income and resources to become eligible for MA for long-term care services. If a person divests assets on or after the person's look-back date (generally, the date that is three years before the person applies for MA for long-term care services), the person may be ineligible for MA for a specific time period (penalty period). The federal Deficit Reduction Act, which became effective on February 8, 2006, made a number of changes in the divestment rules. To conform

Wisconsin law to the federal law, this bill makes a number of changes with respect to divestment, including, among other things:

1. Changes the look-back date to five years for transfers that occur on or after February 8, 2006.

2. Changes the beginning date for the penalty period from the date on which assets were transferred to the later of the date on which assets were transferred or the date on which the person applies and is eligible for MA.

3. Provides that the purchase of a loan, promissory note, mortgage, or life estate after February 8, 2006, is a divestment and specifies the requirements for when such a purchase is not to be considered a divestment.

4. Provides that as a condition of receiving MA for long-term care services an applicant (when applying) or recipient (when being recertified) must disclose any interest he or she or his or her spouse has in an annuity that was purchased on or after February 8, 2006, or with respect to which a transaction occurred on or after February 8, 2006. A transaction is defined as any action that changes the course of payments to be made or the treatment of income or principal.

5. Specifies the conditions under which the purchase of an annuity on or after February 8, 2006, or a transaction with respect to an annuity on or after February 8, 2006, is not to be considered a divestment, including designating DHFS as a remainder beneficiary under the annuity in the first position.

6. Requires DHFS to establish a hardship waiver process, with certain criteria, under which the divestment rules would not apply to a person because it would result in undue hardship for the person and allows DHFS to pay the full nursing facility payment rate for up to 30 days to hold a bed in the facility for a person involved in a pending undue hardship determination.

7. Provides, generally, that a person is ineligible for MA for long-term care services if the equity in their home exceeds \$750,000 unless their spouse or minor or disabled child is living in the home. Under current law, a person's home, regardless of the value, is not counted when the person's income and resources for MA eligibility are determined.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1           **SECTION 1.** 49.45 (6m) (m) of the statutes is created to read:  
2           49.45 **(6m)** (m) To hold a bed in a facility, the department may pay the full  
3 payment rate under this subsection for up to 30 days for services provided to a person  
4 during the pendency of an undue hardship determination, as provided in s. 49.453  
5 (8) (b) 3.

1           **SECTION 2.** 49.453 (1) (a) of the statutes is amended to read:

2           49.453 (1) (a) "Assets" has the meaning given in 42 USC 1396p (e) (h) (1).

3           **SECTION 3.** 49.453 (1) (ar) of the statutes is created to read:

4           49.453 (1) (ar) "Community spouse" has the meaning given in s. 49.455 (1) (a).

5           **SECTION 4.** 49.453 (1) (d) of the statutes is amended to read:

6           49.453 (1) (d) "Income" has the meaning given in 42 USC 1396p (e) (h) (2).

7           **SECTION 5.** 49.453 (1) (e) of the statutes is amended to read:

8           49.453 (1) (e) "Institutionalized individual" has the meaning given in 42 USC  
9           1396p (e) (h) (3).

10          **SECTION 6.** 49.453 (1) (f) (intro.) of the statutes is amended to read:

11          49.453 (1) (f) (intro.) "Look-back date" means ~~for a covered individual,~~ either  
12          of the following:

13          1m. For transfers made before February 8, 2006, the date that is 36 months  
14          before, or with respect to payments from a trust or portions of a trust that are treated  
15          as assets transferred by the covered individual under s. 49.454 (2) (c) or (3) (b) the  
16          date that is 60 months before:

17          **SECTION 7.** 49.453 (1) (f) 1. of the statutes is renumbered 49.453 (1) (f) 1m. a.

18          **SECTION 8.** 49.453 (1) (f) 2. of the statutes is renumbered 49.453 (1) (f) 1m. b.

19          **SECTION 9.** 49.453 (1) (f) 2m. of the statutes is created to read:

20          49.453 (1) (f) 2m. For all transfers made on or after February 8, 2006, the date  
21          that is 60 months before the dates specified in subd. 1m. a. and b.

22          **SECTION 10.** 49.453 (1) (fm) of the statutes is amended to read:

23          49.453 (1) (fm) "Noninstitutionalized individual" has the meaning given in 42  
24          USC 1396p (e) (h) (4).

25          **SECTION 11.** 49.453 (1) (i) of the statutes is amended to read:

1 49.453 (1) (i) "Resources" has the meaning given in 42 USC 1396p (e) (h) (5).

2 SECTION 12. 49.453 (3) (a) of the statutes is renumbered 49.453 (3) (a) (intro.)  
3 and amended to read:

4 49.453 (3) (a) (intro.) The period of ineligibility under this subsection begins  
5 on either of the following:

6 1. In the case of a transfer of assets made before February 8, 2006, the first day  
7 of the first month beginning on or after the look-back date during or after which  
8 assets have been transferred for less than fair market value and that does not occur  
9 in any other periods of ineligibility under this subsection.

10 SECTION 13. 49.453 (3) (a) 2. of the statutes is created to read:

11 49.453 (3) (a) 2. In the case of a transfer of assets made on or after February  
12 8, 2006, the first day of a month beginning on or after the look-back date during or  
13 after which assets have been transferred for less than fair market value, or the date  
14 on which the individual is eligible for medical assistance and would otherwise be  
15 receiving institutional level care described in sub. (2) (a) 1. to 3. based on an approved  
16 application for the care but for the application of the penalty period, whichever is  
17 later, and that does not occur during any other period of ineligibility under this  
18 subsection.

\*\*\*\*NOTE: This is the language from the federal law, except that I have excluded  
"under the state plan" after "eligible for medical assistance" and I have included  
"beginning on or after the look-back date" to parallel s. 49.453 (3) (a) in current law, which  
is renumbered in this draft to s. 49.453 (3) (a) 1. Okay?

19 SECTION 14. 49.453 (3) (b) (intro.) of the statutes is amended to read:

20 49.453 (3) (b) (intro.) The Subject to par. (bc), the department shall determine  
21 the number of months of ineligibility as follows:

22 SECTION 15. 49.453 (3) (bc) of the statutes is created to read:

1           49.453 (3) (bc) In determining the number of months of ineligibility under par.  
2 (b), with respect to asset transfers that occur after February 8, 2006, the department  
3 may not round down the quotient, or otherwise disregard any fraction of a month,  
4 obtained in the division under par. (b) 3.

5           **SECTION 16.** 49.453 (4) (a) of the statutes is renumbered 49.453 (4) (ag).

6           **SECTION 17.** 49.453 (4) (ac) of the statutes is created to read:

7           49.453 (4) (ac) In this subsection, "transaction" means any action taken by an  
8 individual that changes the course of payments to be made under an annuity or the  
9 treatment of the income or principal of an annuity, including all of the following:

10           a. An addition of principal.

11           b. An elective withdrawal.

12           c. A request to change the distribution of the annuity.

13           d. An election to annuitize the contract.

14           **SECTION 18.** 49.453 (4) (am) of the statutes is amended to read:

15           49.453 (4) (am) Paragraph (a) (ag) 1. does not apply to a variable annuity that  
16 is tied to a mutual fund that is registered with the federal securities and exchange  
17 commission.

18           **SECTION 19.** 49.453 (4) (b) of the statutes is amended to read:

19           49.453 (4) (b) The amount of assets that is transferred for less than fair market  
20 value under par. (a) (ag) is the amount by which the transferred amount exceeds the  
21 expected value of the benefit.

22           **SECTION 20.** 49.453 (4) (c) of the statutes is amended to read:

23           49.453 (4) (c) The department shall promulgate rules specifying the method to  
24 be used in calculating the expected value of the benefit, based on 26 CFR 1.72-1 to  
25 1.72-18, and specifying the criteria for adjusting the expected value of the benefit

1 based on a medical condition diagnosed by a physician before the assets were  
2 transferred to the annuity, or transferred by promissory note or similar instrument.  
3 In calculating the amount of the divestment when a transfer to an annuity, or a  
4 transfer by promissory note or similar instrument, is made, payments made to the  
5 transferor in any year subsequent to the year in which the transfer was made shall  
6 be discounted to the year in which the transfer was made by the applicable federal  
7 rate specified under par. (a) (ag) on the date of the transfer.

8 **SECTION 21.** 49.453 (4) (cm) of the statutes is created to read:

9 49.453 (4) (cm) Paragraphs (ag) to (c) apply to annuities purchased before  
10 February 8, 2006, for which no transaction has occurred on or after February 8, 2006.

11 **SECTION 22.** 49.453 (4) (d) of the statutes is created to read:

12 49.453 (4) (d) 1. As a condition of receiving medical assistance for long-term  
13 care services described in sub. (2) (a), an applicant for or recipient of the long-term  
14 care services shall disclose on the application or recertification form a description of  
15 any interest the individual or his or her community spouse has in an annuity,  
16 regardless of whether the annuity is irrevocable or is treated as an asset. The  
17 application or recertification form shall include a statement that the state becomes  
18 a remainder beneficiary under any annuity in which the individual or his or her  
19 spouse has an interest by virtue of the provision of the medical assistance.

20 2. The department shall notify the issuer of an annuity disclosed under subd.  
21 1. of the state's right as a remainder beneficiary and shall request that the issuer  
22 notify the department of any changes to or payments made under the annuity  
23 contract.

24 3. For purposes of sub. (2), the purchase of an annuity, or a transaction with  
25 respect to an annuity, by an institutionalized individual or his or her community

1 spouse shall be treated as a transfer of assets for less than fair market value unless  
2 either of the following applies:

3 a. The state is designated as the remainder beneficiary in the first position for  
4 at least the total amount of medical assistance paid on behalf of the institutionalized  
5 individual.

6 b. The state is named as a beneficiary in the 2nd position after the community  
7 spouse or a minor or disabled child and is named in the first position if the community  
8 spouse or a representative of the minor or disabled child disposes of any remainder  
9 for less than fair market value.

10 **SECTION 23.** 49.453 (4) (e) of the statutes is created to read:

11 49.453 (4) (e) For purposes of sub. (2), the purchase of an annuity, or a  
12 transaction with respect to an annuity, by or on behalf of an annuitant who has  
13 applied for medical assistance for nursing facility services or other long-term care  
14 services described in sub. (2) is a transfer of assets for less than fair market value  
15 unless all of the following apply:

16 1. The annuity is either an annuity described in section 408 (b) or (q) of the  
17 Internal Revenue Code of 1986 or purchased with proceeds from any of the following:

18 a. An account or trust described in section 408 (a), (c), or (p) of the Internal  
19 Revenue Code of 1986.

20 b. A simplified employee pension, within the meaning of section 408 (k) of the  
21 Internal Revenue Code of 1986.

22 c. A Roth IRA described in section 408A of the Internal Revenue Code of 1986.

23 2. The annuity is irrevocable and nonassignable.

24 3. The annuity is actuarially sound, as determined in accordance with actuarial  
25 publications of the office of the chief actuary of the social security administration.

1           4. The annuity provides for payments in equal amounts during the term of the  
2 annuity, with no deferral and no balloon payments made.

3           **SECTION 24.** 49.453 (4) (em) of the statutes is created to read:

4           49.453 (4) (em) Paragraphs (d) and (e) apply to all of the following:

- 5           1. Annuities purchased on or after February 8, 2006.  
6           2. Annuities purchased before February 8, 2006, for which a transaction has  
7 occurred on or after February 8, 2006.

8           **SECTION 25.** 49.453 (4c) of the statutes is created to read:

9           49.453 (4c) PURCHASE OF NOTE, LOAN, OR MORTGAGE. (a) For purposes of sub. (2),  
10 the purchase by an individual or his or her spouse of a promissory note, loan, or  
11 mortgage after February 8, 2006, is a transfer of assets for less than fair market  
12 value unless all of the following apply with respect to the note, loan, or mortgage:

- 13           1. The repayment term is actuarially sound.  
14           2. The payments are to be made in equal amounts during the term of the loan,  
15 with no deferral and no balloon payment.  
16           3. Cancellation of the balance upon the death of the lender is prohibited.

17           (b) The value of a promissory note, loan, or mortgage that does not satisfy the  
18 requirements under par. (a) 1. to 3. is the outstanding balance due on the date that  
19 the individual applies for medical assistance for nursing facility services or other  
20 long-term care services described in sub. (2).

21           **SECTION 26.** 49.453 (4m) of the statutes is created to read:

22           49.453 (4m) PURCHASE OF LIFE ESTATE. For purposes of sub. (2), the purchase  
23 by an individual or his or her spouse of a life estate in another individual's home after  
24 February 8, 2006, is a transfer of assets for less than fair market value unless the  
25 purchaser resides in the home for at least one year after the date of the purchase.

1           **SECTION 27.** 49.453 (8) of the statutes is renumbered 49.453 (8) (a) (intro.) and  
2 amended to read:

3           49.453 (8) (a) (intro.) Subsections (2) and (3) do not apply to transfers of assets  
4 if ~~the~~ any of the following applies:

5           1. The assets are exempt under 42 USC 1396p (c) (2) ~~or if the (A), (B), or (C).~~

6           2. The department determines under the process under par. (b) that application  
7 of this section would work an undue hardship. ~~The department shall promulgate~~  
8 ~~rules concerning the transfer of assets exempt under 42 USC 1396p (c) (2).~~

9           **SECTION 28.** 49.453 (8) (b) of the statutes is created to read:

10           49.453 (8) (b) The department shall establish a hardship waiver process that  
11 includes all of the following:

12           1. The department determines that undue hardship exists if the application of  
13 subs. (2) and (3) would deprive the individual who has transferred assets of medical  
14 care to the extent that the individual's health or life would be endangered, or would  
15 deprive the individual of food, clothing, shelter, or other necessities of life.

16           2. A facility in which an institutionalized individual who has transferred assets  
17 resides is permitted to file an application for undue hardship on behalf of the  
18 individual with the consent of the individual or the individual's authorized  
19 representative.

20           3. The department may, during the pendency of an undue hardship  
21 determination, pay the full payment rate under s. 49.45 (6m) for nursing facility  
22 services for up to 30 days for the individual who transferred assets, to hold a bed in  
23 the facility in which the individual resides.

24           **SECTION 29.** 49.47 (4) (a) (intro.) of the statutes is amended to read:

1           49.47 (4) (a) (intro.) Any individual who meets the limitations on income and  
2 resources under pars. (b) and to (c) and who complies with par. (cm) shall be eligible  
3 for medical assistance under this section if such individual is:

4           **SECTION 30.** 49.47 (4) (b) 1. of the statutes is amended to read:

5           49.47 (4) (b) 1. ~~A Subject to par. (bc), a~~ home and the land used and operated  
6 in connection therewith or in lieu thereof a mobile home if the home or mobile home  
7 is used as the person's or his or her family's place of abode.

8           **SECTION 31.** 49.47 (4) (bc) of the statutes is created to read:

9           49.47 (4) (bc) 1. Subject to subd. 2., a person shall be ineligible under this  
10 section for medical assistance for nursing facility services or other long-term care  
11 services described in s. 49.453 (2) if the equity in his or her home and the land used  
12 and operated in connection with the home exceeds \$750,000. This subdivision does  
13 not apply if any of the following persons lawfully resides in the home:

14           a. The person's spouse.

15           b. The person's child who is under age 21 or who is disabled, as defined in s.  
16 49.468 (1) (a) 1.

17           2. Subdivision 1. applies to all of the following:

18           a. At the time of application, to a person who applies for medical assistance for  
19 nursing facility services or other long-term care services described in s. 49.453 (2)  
20 after the effective date of this subdivision .... [revisor inserts date].

21           b. At the time of the person's first recertification after the effective date of this  
22 subdivision .... [revisor inserts date], to a person not specified in subd. 2. a. who  
23 applied for medical assistance for nursing facility services or other long-term care  
24 services described in s. 49.453 (2) on or after January 1, 2006, and who was eligible

1 for medical assistance for those services on the effective date of this subdivision ....  
2 [revisor inserts date].

3 **SECTION 32.** 49.47 (4) (bm) of the statutes is created to read:

4 49.47 (4) (bm) For purposes of determining eligibility or benefits amount for  
5 a person described in par. (a) 3. or 4. who resides in a continuing care retirement  
6 community or a life care community, any entrance fee paid on admission to the  
7 community shall be considered a resource available to the person to the extent that  
8 all of the following apply:

9 1. The person has the ability to use the entrance fee, or the contract provides  
10 that the entrance fee may be used, to pay for care if the person's other resources or  
11 income are insufficient to pay for the care.

12 2. The person is eligible for a refund of any remaining entrance fee when the  
13 person dies or terminates the continuing care retirement community or life care  
14 community contract and leaves the community.

15 3. The entrance fee does not confer an ownership interest in the continuing care  
16 retirement community or life care community.

17 **SECTION 33.** 632.48 (3) of the statutes is created to read:

18 632.48 (3) NOTICE OF CHANGES. An insurer that receives a request from the  
19 department of health and family services under s. 49.453 (4) (d) 2. for notification  
20 shall comply with the request and notify the department of any changes to or  
21 payments made under the annuity contract to which the request for notification  
22 relates.

23 **SECTION 34.** 647.02 (2) (g) of the statutes is amended to read:

24 647.02 (2) (g) The figure to be used by the provider as the actual or projected  
25 length of a resident's stay in the facility in the formula in the contract provision

1 required under s. 647.05 (9) (1m) (i) and supporting information showing how the  
2 figure was determined.

3 **SECTION 35.** 647.04 (5) of the statutes is amended to read:

4 647.04 (5) Inform the commissioner of any change in the figure used by the  
5 provider as the actual or projected length of a resident's stay in the facility in the  
6 formula in the contract provision required under s. 647.05 (9) (1m) (i) within 30 days  
7 after the change is made and submit supporting information showing how the  
8 change was determined.

9 **SECTION 36.** 647.05 of the statutes is renumbered 647.05 (1m), and 647.05 (1m)  
10 (g), as renumbered, is amended to read:

11 647.05 (1m) (g) Provides that if a resident dies or the continuing care contract  
12 is terminated after the first 30 days of occupancy, but within the first 90 days of  
13 occupancy, the provider will refund at least 90% of the amount computed under sub-  
14 (6) par. (f).

15 **SECTION 37.** 647.05 (2m) of the statutes is created to read:

16 647.05 (2m) Subject to s. 49.455, a continuing care contract may require that,  
17 before a resident applies for medical assistance, the resident must spend on his or  
18 her care the resources declared for purposes of admission to the facility.

19 **SECTION 9321. Initial applicability; Health and Family Services.**

20 (1) MEDICAL ASSISTANCE ASSET TRANSFER CHANGES.

21 (a) *Entrance fees.* The treatment of section 49.47 (4) (bm) of the statutes first  
22 applies to individuals who apply or are recertified for medical assistance for nursing  
23 facility services or other long-term care services on the effective date of this  
24 paragraph.

1 (b) *Divestment changes.* The treatment of section 49.453 (1) (f) (intro.), 1., 2.,  
2 and 2m. and (fm), (3) (b) (intro.) and (bc), (4) (a), (ac), (am), (b), (c), (cm), (d), (e), and  
3 (em), (4c), and (4m) of the statutes, the renumbering and amendment of section  
4 49.453 (3) (a) and (8) of the statutes, the creation of section 49.453 (3) (a) 2. and (8)  
5 (b) of the statutes first apply to individuals who apply or are recertified for medical  
6 assistance for nursing facility services or other long-term care services on the  
7 effective date of this paragraph.

8 (c) *Continuing care contracts.* The treatment of section 647.05 (2m) of the  
9 statutes first applies to contracts entered into on the effective date of this paragraph.

10 **SECTION 9421. Effective dates; Health and Family Services.**

11 (1) **MEDICAL ASSISTANCE ASSET TRANSFER CHANGES.** The treatment of sections  
12 49.45 (6m) (m), 49.453 (1) (a), (ar), (d), (e), (f) (intro.), 1., 2., and 2m., (fm), and (i), (3)  
13 (b) (intro.) and (bc), (4) (a), (ac), (am), (b), (c), (cm), (d), (e), and (em), (4c), and (4m),  
14 49.47 (4) (a) (intro.), (b) 1., (bc), and (bm), 632.48 (3), 647.02 (2) (g), and 647.04 (5) of  
15 the statutes, the renumbering and amendment of section 49.453 (3) (a) and (8) and  
16 647.05 of the statutes, the creation of section 49.453 (3) (a) 2. and (8) (b) and 647.05  
17 (2m) of the statutes, and SECTION 9321 (1) (a), (b), and (c) of this act take effect on  
18 October 1, 2007, or on the first day of the 4th month beginning after publication,  
19 whichever is later.

20 (END)

D-note Date LRB-0266/1dn  
PSK:kjf  
This redraft removes an embedded  
note.  
PJK

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0266/1dn  
PJK:kjf:pg

January 29, 2007

This redraft removes an embedded note.

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COMMENTS / INSTRUCTIONS

**BEM Response to 2<sup>nd</sup> LRB Draft of Statutes for DRA Asset Divestment Provisions**  
January 12, 2007

**Analysis Section**

Please make the following change to item 2. on page 2 of the analysis:

2. Changes the beginning date for the penalty period from the date on which assets were transferred to the later of the date on which assets were transferred or the date on which the person applies and is eligible for MA long-term care services.

Pg. 5, Section 17: Please add to the list under (4c) (ac), "changes in ownership". In addition, it looks like the list should be numbered instead of lettered.

**Page 6, Section 22**

We believe it would be more appropriate for (4) (d) 1. & 2. to be located in 49.47 (4) since these requirements affect eligibility for LTC services and are not part of a divestment determination. In addition, we want to be clear that the applicant or recipient must take any action required by an annuity issuer to make the state the beneficiary within 30 days of receiving the application or recertification form.

Under the DRA, only the purchase of the annuity is considered the divestment upon which the penalty period, etc. are based. Subsequent transactions which occur on or after 2/8/06 merely trigger whether we are to treat the annuity under the new DRA provisions and are mentioned in (em). In addition, we are concerned that mentioning transactions in 3. could be interpreted as limiting what is considered to be the divestment. We want to make clear that the purchase of the annuity is the divestment if the annuity does not meet the criteria in 3..a or b.

In addition, we want to clarify that for annuities that are not considered to be a divestment under (4) (e), (e.g., an annuity purchased with funds from an IRA) recipients do not have to make the state a beneficiary to avoid the divestment penalty in (4) (d) 3.. Please make the following changes to 49.453(4) (d) 3.:

3. For purposes of sub. (2), the purchase of an annuity, ~~or a transaction with respect to an annuity,~~ by an institutionalized individual or his or her community spouse or anyone acting on their behalf, shall be treated as a transfer of assets for less than fair market value unless either any of the following applies:

...

c. The annuity is one described in (e) which meets the criteria in either (e) 1. or 2.

**Page 7, Section 23**

Under the DRA, only the purchase of the annuity is considered the divestment upon which the penalty period, etc. are based. Subsequent transactions which occur on or after 2/8/06 merely

trigger whether we are to treat the annuity under the new DRA provisions and are mentioned in (em). In addition, we are concerned that mentioning transactions in (e) could be interpreted as limiting what is considered to be the divestment. We want to make clear that the purchase of the annuity is the divestment, if the annuity does not meet the criteria in (e) 1. or 2. In addition, under the DRA, an annuity is not automatically treated as a divestment if any of the conditions under (e) 1. apply or if all the conditions under (e) 2. apply. Please make the following changes to 49.453(4)(e):

(e) For purposes of sub. (2), the purchase of an annuity, ~~or a transaction with respect to an annuity,~~ by or on behalf of an annuitant who has applied for medical assistance for nursing facility services or other long-term care services described in sub. (2) is a transfer of assets for less than fair market value unless ~~all of the following~~ either 1. or 2. apply:

And make changes to 49.453(4) (e) 2. similar to the following:

2. The annuity is:

- a. Irrevocable and nonassignable,
- b. Actuarially sound, as determined in accordance with actuarial publications of the office of the chief actuary of the social security administration, and
- c. Provides for payments in equal amounts during the term of the annuity, with no deferral and no balloon payments made.

**Page 9, Section 28:** We want to be clear that we are focused on whether the institutionalized person has a hardship, not the community spouse. In (8) (b) 1. on Line 13 of the draft, please delete the words, "who has transferred assets".

**Page 12, Section 9321:**

The new asset definition in 49.47 (4) (bm) applies to all Medicaid eligibility determinations for the elderly and disabled, not just for persons receiving long-term care services. Please make the following changes to (1) (a):

(a) Entrance fees. The treatment of section 49.47 (4) (bm) of the statutes first applies to individuals who apply or are recertified for medical assistance ~~for nursing facility services or other long-term care services~~ on the effective date of this paragraph.

Divestment policies are to be applied to all recipients when the statutes become effective and not delayed until their next review. The exceptions such as annuities assignments are specified in the statute language. Please make the following changes to (1) (b):

(b) Divestment changes. The treatment of section 49.453 (1) (f) (intro.), 1., 2., and 2m. and (fm), (3) (b) (Intro.) and (bc), (4) (a), (ac), (am), (b), (c), (cm), (d), (e), and (em), (4c), and (4m) of the statutes, the renumbering and amendment of section 49.453 (3) (a) and (8) of the statutes, the creation of section 49.453 (3) (a) 2. and (8) (b) of the statutes first apply to individuals who apply for or are recertified for receiving medical assistance for

nursing facility services or other long-term care services on the effective date of this paragraph.



State of Wisconsin  
2007 - 2008 LEGISLATURE

LRB-0266/2

PJK:kjf:pg

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DOA:.....Milioto, Steve, BB0026 - Medicaid asset transfers

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

Tues am  
8:00

do not  
generate

1 AN ACT ...; relating to: changes in asset transfer rules for Medical Assistance  
2 eligibility.

*Analysis by the Legislative Reference Bureau*

**HEALTH AND HUMAN SERVICES**

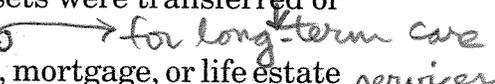
**MEDICAL ASSISTANCE**

Under current law, DHFS administers the Medical Assistance (MA) program, which provides federal and state moneys to pay for health care and long-term care services, including care in a nursing home, provided to MA recipients, who are, generally, low-income, elderly, or disabled persons who meet other specific eligibility requirements. To be eligible for MA for long-term care services, an individual must meet certain very low income and resource requirements, and may have to "spend down" his or her income and resources by paying for his or her own long-term care until the eligibility requirements are met.

Current law provides rules, based on federal law, concerning divestment, which refers to the transferring of one's assets for less than fair market value for the purpose of reducing one's income and resources to become eligible for MA for long-term care services. If a person divests assets on or after the person's look-back date (generally, the date that is three years before the person applies for MA for long-term care services), the person may be ineligible for MA for a specific time period (penalty period). The federal Deficit Reduction Act, which became effective on February 8, 2006, made a number of changes in the divestment rules. To conform

Wisconsin law to the federal law, this bill makes a number of changes with respect to divestment, including, among other things:

1. Changes the look-back date to five years for transfers that occur on or after February 8, 2006.

2. Changes the beginning date for the penalty period from the date on which assets were transferred to the later of the date on which assets were transferred or the date on which the person applies and is eligible for MA 

3. Provides that the purchase of a loan, promissory note, mortgage, or life estate after February 8, 2006, is a divestment and specifies the requirements for when such a purchase is not to be considered a divestment.

4. Provides that as a condition of receiving MA for long-term care services an applicant (when applying) or recipient (when being recertified) must disclose any interest he or she or his or her spouse has in an annuity that was purchased on or after February 8, 2006, or with respect to which a transaction occurred on or after February 8, 2006. A transaction is defined as any action that changes the course of payments to be made or the treatment of income or principal.

5. Specifies the conditions under which the purchase of an annuity on or after February 8, 2006, or a transaction with respect to an annuity on or after February 8, 2006, is not to be considered a divestment, including designating DHFS as a remainder beneficiary under the annuity in the first position.

6. Requires DHFS to establish a hardship waiver process, with certain criteria, under which the divestment rules would not apply to a person because it would result in undue hardship for the person and allows DHFS to pay the full nursing facility payment rate for up to 30 days to hold a bed in the facility for a person involved in a pending undue hardship determination.

7. Provides, generally, that a person is ineligible for MA for long-term care services if the equity in their home exceeds \$750,000 unless their spouse or minor or disabled child is living in the home. Under current law, a person's home, regardless of the value, is not counted when the person's income and resources for MA eligibility are determined.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

- 1           **SECTION 1.** 49.45 (6m) (m) of the statutes is created to read:
- 2           49.45 (**6m**) (m) To hold a bed in a facility, the department may pay the full
- 3 payment rate under this subsection for up to 30 days for services provided to a person
- 4 during the pendency of an undue hardship determination, as provided in s. 49.453
- 5 (8) (b) 3.

1           **SECTION 2.** 49.453 (1) (a) of the statutes is amended to read:

2           49.453 (1) (a) "Assets" has the meaning given in 42 USC 1396p (e) (h) (1).

3           **SECTION 3.** 49.453 (1) (ar) of the statutes is created to read:

4           49.453 (1) (ar) "Community spouse" has the meaning given in s. 49.455 (1) (a).

5           **SECTION 4.** 49.453 (1) (d) of the statutes is amended to read:

6           49.453 (1) (d) "Income" has the meaning given in 42 USC 1396p (e) (h) (2).

7           **SECTION 5.** 49.453 (1) (e) of the statutes is amended to read:

8           49.453 (1) (e) "Institutionalized individual" has the meaning given in 42 USC  
9           1396p (e) (h) (3).

10          **SECTION 6.** 49.453 (1) (f) (intro.) of the statutes is amended to read:

11          49.453 (1) (f) (intro.) "Look-back date" means for a covered individual, either  
12          of the following:

13                 1m. For transfers made before February 8, 2006, the date that is 36 months  
14          before, or with respect to payments from a trust or portions of a trust that are treated  
15          as assets transferred by the covered individual under s. 49.454 (2) (c) or (3) (b) the  
16          date that is 60 months before:

17                 **SECTION 7.** 49.453 (1) (f) 1. of the statutes is renumbered 49.453 (1) (f) 1m. a.

18                 **SECTION 8.** 49.453 (1) (f) 2. of the statutes is renumbered 49.453 (1) (f) 1m. b.

19                 **SECTION 9.** 49.453 (1) (f) 2m. of the statutes is created to read:

20                 49.453 (1) (f) 2m. For all transfers made on or after February 8, 2006, the date  
21          that is 60 months before the dates specified in subd. 1m. a. and b.

22                 **SECTION 10.** 49.453 (1) (fm) of the statutes is amended to read:

23                 49.453 (1) (fm) "Noninstitutionalized individual" has the meaning given in 42  
24          USC 1396p (e) (h) (4).

25                 **SECTION 11.** 49.453 (1) (i) of the statutes is amended to read:

1           49.453 (1) (i) "Resources" has the meaning given in 42 USC 1396p (e) (h) (5).

2           **SECTION 12.** 49.453 (3) (a) of the statutes is renumbered 49.453 (3) (a) (intro.)  
3 and amended to read:

4           49.453 (3) (a) (intro.) The period of ineligibility under this subsection begins  
5 on either of the following:

6           1. In the case of a transfer of assets made before February 8, 2006, the first day  
7 of the first month beginning on or after the look-back date during or after which  
8 assets have been transferred for less than fair market value and that does not occur  
9 in any other periods of ineligibility under this subsection.

10           **SECTION 13.** 49.453 (3) (a) 2. of the statutes is created to read:

11           49.453 (3) (a) 2. In the case of a transfer of assets made on or after February  
12 8, 2006, the first day of a month beginning on or after the look-back date during or  
13 after which assets have been transferred for less than fair market value, or the date  
14 on which the individual is eligible for medical assistance and would otherwise be  
15 receiving institutional level care described in sub. (2) (a) 1. to 3. based on an approved  
16 application for the care but for the application of the penalty period, whichever is  
17 later, and that does not occur during any other period of ineligibility under this  
18 subsection.

19           **SECTION 14.** 49.453 (3) (b) (intro.) of the statutes is amended to read:

20           49.453 (3) (b) (intro.) The Subject to par. (bc), the department shall determine  
21 the number of months of ineligibility as follows:

22           **SECTION 15.** 49.453 (3) (bc) of the statutes is created to read:

23           49.453 (3) (bc) In determining the number of months of ineligibility under par.  
24 (b), with respect to asset transfers that occur after February 8, 2006, the department

1 may not round down the quotient, or otherwise disregard any fraction of a month,  
2 obtained in the division under par. (b) 3.

3 **SECTION 16.** 49.453 (4) (a) of the statutes is renumbered 49.453 (4) (ag).

4 **SECTION 17.** 49.453 (4) (ac) of the statutes is created to read:

5 49.453 (4) (ac) In this subsection, "transaction" means any action taken by an  
6 individual that changes the course of payments to be made under an annuity or the  
7 treatment of the income or principal of an annuity, including all of the following:

8 1 ← ~~10~~ An addition of principal.

9 2 ← ~~10~~ An elective withdrawal.

10 3 ← ~~10~~ A request to change the distribution of the annuity.

11 4 ← ~~10~~ An election to annuitize the contract.

12 → 5 ← ~~10~~ a change in ownership  
**SECTION 18.** 49.453 (4) (am) of the statutes is amended to read:

13 49.453 (4) (am) Paragraph ~~(a)~~ (ag) 1. does not apply to a variable annuity that  
14 is tied to a mutual fund that is registered with the federal securities and exchange  
15 commission.

16 **SECTION 19.** 49.453 (4) (b) of the statutes is amended to read:

17 49.453 (4) (b) The amount of assets that is transferred for less than fair market  
18 value under par. ~~(a)~~ (ag) is the amount by which the transferred amount exceeds the  
19 expected value of the benefit.

20 **SECTION 20.** 49.453 (4) (c) of the statutes is amended to read:

21 49.453 (4) (c) The department shall promulgate rules specifying the method to  
22 be used in calculating the expected value of the benefit, based on 26 CFR 1.72-1 to  
23 1.72-18, and specifying the criteria for adjusting the expected value of the benefit  
24 based on a medical condition diagnosed by a physician before the assets were  
25 transferred to the annuity, or transferred by promissory note or similar instrument.

1 In calculating the amount of the divestment when a transfer to an annuity, or a  
2 transfer by promissory note or similar instrument, is made, payments made to the  
3 transferor in any year subsequent to the year in which the transfer was made shall  
4 be discounted to the year in which the transfer was made by the applicable federal  
5 rate specified under par. (a) (ag) on the date of the transfer.

6 SECTION 21. 49.453 (4) (cm) of the statutes is created to read:

7 49.453 (4) (cm) Paragraphs (ag) to (c) apply to annuities purchased before  
8 February 8, 2006, for which no transaction has occurred on or after February 8, 2006.

9 SECTION 22. 49.453 (4) (d) of the statutes is created to read:

10 49.453 (4) (d) 1. As a condition of receiving medical assistance for long-term  
11 care services described in sub. (2) (a), an applicant for or recipient of the long-term  
12 care services shall disclose on the application or recertification form a description of  
13 any interest the individual or his or her community spouse has in an annuity,  
14 regardless of whether the annuity is irrevocable or is treated as an asset. The  
15 application or recertification form shall include a statement that the state becomes  
16 a remainder beneficiary under any annuity in which the individual or his or her  
17 spouse has an interest by virtue of the provision of the medical assistance.

18 2. The department shall notify the issuer of an annuity disclosed under subd.  
19 1. of the state's right as a remainder beneficiary and shall request that the issuer  
20 notify the department of any changes to or payments made under the annuity  
21 contract.

*(this is being moved to a  
different section)*

22 3. For purposes of sub. (2), the purchase of an annuity, or a transaction with

23 respect to an annuity, by an institutionalized individual or his or her community  
24 spouse shall be treated as a transfer of assets for less than fair market value unless

25 ~~either~~ of the following applies:

*any*

1 ~~1~~ The state is designated as the remainder beneficiary in the first position for  
2 at least the total amount of medical assistance paid on behalf of the institutionalized  
3 individual.

4 ~~2~~ The state is named as a beneficiary in the 2nd position after the community  
5 spouse or a minor or disabled child and is named in the first position if the community  
6 spouse or a representative of the minor or disabled child disposes of any remainder  
7 for less than fair market value.

8 **SECTION 23.** 49.453 (4) (e) of the statutes is created to read:

9 49.453 (4) (e) For purposes of sub. (2), the purchase of an annuity, or a  
10 transaction with respect to an annuity, by or on behalf of an annuitant who has  
11 applied for medical assistance for nursing facility services or other long-term care  
12 services described in sub. (2) is a transfer of assets for less than fair market value  
13 unless <sup>either</sup> all of the following ~~apply~~ <sup>applies</sup>.

14 1. The annuity is either an annuity described in section 408 (b) or (q) of the  
15 Internal Revenue Code of 1986 or purchased with proceeds from any of the following:

16 a. An account or trust described in section 408 (a), (c), or (p) of the Internal  
17 Revenue Code of 1986.

18 b. A simplified employee pension, within the meaning of section 408 (k) of the  
19 Internal Revenue Code of 1986.

20 c. A Roth IRA described in section 408A of the Internal Revenue Code of 1986.

21 ~~a~~ The annuity is irrevocable and nonassignable.

22 ~~b~~ The annuity is actuarially sound, as determined in accordance with actuarial  
23 publications of the office of the chief actuary of the social security administration.

24 ~~c~~ The annuity provides for payments in equal amounts during the term of the  
25 annuity, with no deferral and no balloon payments made.

Insert 7-7

20 = all of the following apply with respect to the annuity.

1           **SECTION 24.** 49.453 (4) (em) of the statutes is created to read:

2           49.453 (4) (em) Paragraphs (d) and (e) apply to all of the following:

3           1. Annuities purchased on or after February 8, 2006.

4           2. Annuities purchased before February 8, 2006, for which a transaction has  
5 occurred on or after February 8, 2006.

6           **SECTION 25.** 49.453 (4c) of the statutes is created to read:

7           49.453 (4c) PURCHASE OF NOTE, LOAN, OR MORTGAGE. (a) For purposes of sub. (2),  
8 the purchase by an individual or his or her spouse of a promissory note, loan, or  
9 mortgage after February 8, 2006, is a transfer of assets for less than fair market  
10 value unless all of the following apply with respect to the note, loan, or mortgage:

11           1. The repayment term is actuarially sound.

12           2. The payments are to be made in equal amounts during the term of the loan,  
13 with no deferral and no balloon payment.

14           3. Cancellation of the balance upon the death of the lender is prohibited.

15           (b) The value of a promissory note, loan, or mortgage that does not satisfy the  
16 requirements under par. (a) 1. to 3. is the outstanding balance due on the date that  
17 the individual applies for medical assistance for nursing facility services or other  
18 long-term care services described in sub. (2).

19           **SECTION 26.** 49.453 (4m) of the statutes is created to read:

20           49.453 (4m) PURCHASE OF LIFE ESTATE. For purposes of sub. (2), the purchase  
21 by an individual or his or her spouse of a life estate in another individual's home after  
22 February 8, 2006, is a transfer of assets for less than fair market value unless the  
23 purchaser resides in the home for at least one year after the date of the purchase.

24           **SECTION 27.** 49.453 (8) of the statutes is renumbered 49.453 (8) (a) (intro.) and  
25 amended to read:

1           49.453 (8) (a) (intro.) Subsections (2) and (3) do not apply to transfers of assets  
2 if the any of the following applies:

3           1. The assets are exempt under 42 USC 1396p (c) (2) or if the (A), (B), or (C).

4           2. The department determines under the process under par. (b) that application  
5 of this section would work an undue hardship. ~~The department shall promulgate~~  
6 ~~rules concerning the transfer of assets exempt under 42 USC 1396p (e) (2).~~

7           **SECTION 28.** 49.453 (8) (b) of the statutes is created to read:

8           49.453 (8) (b) The department shall establish a hardship waiver process that  
9 includes all of the following:

10           1. The department determines that undue hardship exists if the application of  
11 subs. (2) and (3) would deprive the individual who has transferred assets of medical  
12 care to the extent that the individual's health or life would be endangered, or would  
13 deprive the individual of food, clothing, shelter, or other necessities of life.

14           2. A facility in which an institutionalized individual who has transferred assets  
15 resides is permitted to file an application for undue hardship on behalf of the  
16 individual with the consent of the individual or the individual's authorized  
17 representative.

18           3. The department may, during the pendency of an undue hardship  
19 determination, pay the full payment rate under s. 49.45 (6m) for nursing facility  
20 services for up to 30 days for the individual who transferred assets, to hold a bed in  
21 the facility in which the individual resides.

22           **SECTION 29.** 49.47 (4) (a) (intro.) of the statutes is amended to read:

23           49.47 (4) (a) (intro.) Any individual who meets the limitations on income and  
24 resources under pars. (b) and to (c) and who complies with par. (cm) shall be eligible  
25 for medical assistance under this section if such individual is:

*and (cr)*  
*para*

1           **SECTION 30.** 49.47 (4) (b) 1. of the statutes is amended to read:

2           49.47 (4) (b) 1. ~~A Subject to par. (bc), a~~ home and the land used and operated  
3 in connection therewith or in lieu thereof a mobile home if the home or mobile home  
4 is used as the person's or his or her family's place of abode.

5           **SECTION 31.** 49.47 (4) (bc) of the statutes is created to read:

6           49.47 (4) (bc) 1. Subject to subd. 2., a person shall be ineligible under this  
7 section for medical assistance for nursing facility services or other long-term care  
8 services described in s. 49. 453 (2) if the equity in his or her home and the land used  
9 and operated in connection with the home exceeds \$750,000. This subdivision does  
10 not apply if any of the following persons lawfully resides in the home:

11           a. The person's spouse.

12           b. The person's child who is under age 21 or who is disabled, as defined in s.  
13 49.468 (1) (a) 1.

14           2. Subdivision 1. applies to all of the following:

15           a. At the time of application, to a person who applies for medical assistance for  
16 nursing facility services or other long-term care services described in s. 49.453 (2)  
17 after the effective date of this <sup>subd. 2. a.</sup> ~~subdivision~~ .... [revisor inserts date].

18           b. At the time of the person's first recertification after the effective date of this  
19 <sup>subd. 2. b.</sup> ~~subdivision~~ .... [revisor inserts date], to a person not specified in subd. 2. a. who  
20 applied for medical assistance for nursing facility services or other long-term care  
21 services described in s. 49.453 (2) on or after January 1, 2006, and who was eligible  
22 for medical assistance for those services on the effective date of this <sup>subd. 2. a.</sup> ~~subdivision~~ ....  
23 [revisor inserts date].

24           **SECTION 32.** 49.47 (4) (bm) of the statutes is created to read:

1           49.47 (4) (bm) For purposes of determining eligibility or benefits amount for  
2 a person described in par. (a) 3. or 4. who resides in a continuing care retirement  
3 community or a life care community, any entrance fee paid on admission to the  
4 community shall be considered a resource available to the person to the extent that  
5 all of the following apply:

6           1. The person has the ability to use the entrance fee, or the contract provides  
7 that the entrance fee may be used, to pay for care if the person's other resources or  
8 income are insufficient to pay for the care.

9           2. The person is eligible for a refund of any remaining entrance fee when the  
10 person dies or terminates the continuing care retirement community or life care  
11 community contract and leaves the community.

12           3. The entrance fee does not confer an ownership interest in the continuing care  
13 retirement community or life care community.

14           **SECTION 33.** 632.48 (3) of the statutes is created to read:

15           632.48 (3) NOTICE OF CHANGES. An insurer that receives a request from the  
16 department of health and family services under s. ~~49.453(4)(d) 2.~~ for notification  
17 shall comply with the request and notify the department of any changes to or  
18 payments made under the annuity contract to which the request for notification  
19 relates.

20           **SECTION 34.** 647.02 (2) (g) of the statutes is amended to read:

21           647.02 (2) (g) The figure to be used by the provider as the actual or projected  
22 length of a resident's stay in the facility in the formula in the contract provision  
23 required under s. 647.05 (9) (1m) (i) and supporting information showing how the  
24 figure was determined.

25           **SECTION 35.** 647.04 (5) of the statutes is amended to read:

Insert 11-13

49.47(4)(cr)20  
Δ Δ Δ

1           647.04 (5) Inform the commissioner of any change in the figure used by the  
2 provider as the actual or projected length of a resident's stay in the facility in the  
3 formula in the contract provision required under s. 647.05 (9) (1m) (i) within 30 days  
4 after the change is made and submit supporting information showing how the  
5 change was determined.

6           **SECTION 36.** 647.05 of the statutes is renumbered 647.05 (1m), and 647.05 (1m)  
7 (g), as renumbered, is amended to read:

8           647.05 (1m) (g) Provides that if a resident dies or the continuing care contract  
9 is terminated after the first 30 days of occupancy, but within the first 90 days of  
10 occupancy, the provider will refund at least 90% of the amount computed under sub-  
11 ~~(6)~~ par. (f).

12           **SECTION 37.** 647.05 (2m) of the statutes is created to read:

13           647.05 (2m) Subject to s. 49.455, a continuing care contract may require that,  
14 before a resident applies for medical assistance, the resident must spend on his or  
15 her care the resources declared for purposes of admission to the facility.

16           **SECTION 9321. Initial applicability; Health and Family Services.**

17           (1) MEDICAL ASSISTANCE ASSET TRANSFER CHANGES.

18           Ⓢ Eligibility changes  
(a) ~~Entrance fees~~ The treatment of section 49.47 (4) (a) (intro.), and (cr) (bm) of the statutes first  
19 applies to individuals who apply or are recertified for medical assistance for nursing  
20 facility services or other long-term care services on the effective date of this  
21 paragraph.

22           (b) *Divestment changes.* The treatment of section 49.453 (1) (f) (intro.), 1., 2.,  
23 and 2m. and (fm), (3) (b) (intro.) and (bc), (4) (a), (ac), (am), (b), (c), (cm), (d), (e), and  
24 (em), (4c), and (4m) of the statutes, the renumbering and amendment of section  
25 49.453 (3) (a) and (8) of the statutes, the creation of section 49.453 (3) (a) 2. and (8)

1

(b) of the statutes first apply to individuals who apply or are recertified for medical assistance for nursing facility services or other long-term care services on the effective date of this paragraph.

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(c) *Continuing care contracts.* The treatment of section 647.05 (2m) of the statutes first applies to contracts entered into on the effective date of this paragraph.

5

6

**SECTION 9421. Effective dates; Health and Family Services.**

7

(1) MEDICAL ASSISTANCE ASSET TRANSFER CHANGES. The treatment of sections 49.45 (6m) (m), 49.453 (1) (a), (ar), (d), (e), (f) (intro.), 1., 2., and 2m., (fm), and (i), (3)

8

9

(b) (intro.) and (bc), (4) (a), (ac), (am), (b), (c), (cm), (d), (e), and (em), (4c), and (4m), 49.47 (4) (a) (intro.), (b) 1., (bc), ~~and~~ (bm), 632.48 (3), 647.02 (2) (g), and 647.04 (5) of

10

the statutes, the renumbering and amendment of section 49.453 (3) (a) and (8) and 647.05 of the statutes, the creation of section 49.453 (3) (a) 2. and (8) (b) and 647.05

12

13

(2m) of the statutes, and SECTION 9321 (1) (a), (b), and (c) of this act take effect on October 1, 2007, or on the first day of the 4th month beginning after publication,

14

15

whichever is later.

16

(END)

9  
More Recertifying

and (cr)

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LRB-0266/2ins  
PJK:kjf:pg

INSERT 7-7

1           3. The annuity satisfies the requirements under par. (e) 1. or 2. ✓

(END OF INSERT 7-7)

INSERT 11-13

2           ~~SECTION 49.47~~ 49.47 (4) (cr) of the statutes is created to read:

3           49.47 (4) (cr) 1. As a condition of receiving medical assistance for long-term  
4           care services described in s. 49.453 (2) (a), an applicant for or recipient of the  
5           long-term care services shall disclose on the application or recertification form a  
6           description of any interest the individual or his or her community spouse, as defined  
7           in s. 49.455 (1) (a), has in an annuity, regardless of whether the annuity is irrevocable  
8           or is treated as an asset. The application or recertification form shall include a  
9           statement that the state becomes a remainder beneficiary under any annuity in  
10          which the individual or his or her spouse has an interest by virtue of the provision  
11          of the medical assistance. The applicant or recipient shall, no later than 30 days after  
12          the department receives the application or recertification form, take any action  
13          required by the annuity issuer to make the state a remainder beneficiary.

14          2. The department shall notify the issuer of an annuity disclosed under subd.  
15          1. of the state's right as a remainder beneficiary and shall request that the issuer  
16          notify the department of any changes to or payments made under the annuity  
17          contract.

(END OF INSERT 11-13)

**Kahler, Pam**

---

**From:** Jessup, Vicki L - DHFS  
**Sent:** Tuesday, January 30, 2007 1:52 PM  
**To:** Megna, Richard - DHFS; Kahler, Pam  
**Cc:** Jones, James D - DHFS; LaPhilliph, John O - DHFS  
**Subject:** Re: Fwd: FW: LRB Draft: 07-0266/2 Medicaid asset transfers

**Attachments:** BEM Response to Last LRB Draft of Statutes for DRA Asset Divestment Provisions.doc



BEM Response to  
Last LRB Draft..

Attached are our comments to the latest draft of divestment statutes.

Vicki Jessup  
Medicaid Policy and Analysis Section Chief DHFS/DHCF/BEM  
1 West Wilson St.- Room 365  
PO Box 309  
Madison, WI 53701-0309

Phone: 608/261-7805

\* \* \* \* \*

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\* \* \* \* \*

>>> James Jones 1/30/2007 8:44:22 AM >>>  
we will drop everything else, other than reviewing the BC+ statutory language, to accomplish this. Thanks.

>>> Richard Megna 1/30/2007 8:40 AM >>>  
Can you review the attached version of the asset transfer draft this morning? We have to get back to DOA by mid-afternoon at the latest?

Richard

>>> "Milioto, Steve - DOA" <steve.milioto@wisconsin.gov> 1/30/2007 8:15 AM >>>  
Attached is the revised version of draft 266. Please review ASAP and get any changes back to me by mid-afternoon at the latest -- we are out of time. Best, Steve

---

From: Frantzen, Jean [mailto:Jean.Frantzen@legis.wisconsin.gov]  
Sent: Tuesday, January 30, 2007 8:03 AM  
To: Milioto, Steve - DOA  
Cc: Johnston, James - DOA; Hanaman, Cathlene - LEGIS; Palchik, Laurie A  
- DOA  
Subject: LRB Draft: 07-0266/2 Medicaid asset transfers

Following is the PDF version of draft 07-0266/2.

**BEM Response to Last LRB Draft of Statutes for DRA Asset Divestment Provisions**

January 30, 2007

The following remarks are comments and/or edits to the LRB final draft received 1/30/07. The headers refer to the page and line number or section of the draft document.

**Pg. 3, Section 3:** We found a problem caused by the spousal impoverishment definition of "institutionalized spouse" that in turn affects the community spouse definition. Please change 49.453 (1) (ar) to read, " (ar) "Community spouse" means the spouse of either the institutionalized person or the noninstitutionalized person."

✓ **Page 6, Section 22:** Please make the following change to (4)(d):

"49.453 (4) (d) For purposes of sub. (2), the purchase of an annuity by an institutionalized individual or his or her community spouse or anyone acting on their behalf, shall be treated as a transfer of assets for less than fair market value unless any of the following applies:"

✓ **Page 11, Line 11:** Due to the definition change requested above, please change the reference on this line from "49.455 (1) (a)" to "49.453 (1) (ar)".

**Kahler, Pam**

---

**From:** Jessup, Vicki L - DHFS  
**Sent:** Tuesday, January 30, 2007 3:20 PM  
**To:** Kahler, Pam  
**Cc:** LaPhilliph, John O - DHFS; Milioto, Steve - DOA  
**Subject:** RE: Fwd: FW: LRB Draft: 07-0266/2 Medicaid asset transfers

Hi Pam,  
Yes, the same applicability of s. 49.453 (4) (em) should be included for s. 49.47 (4) (cr) of this draft.

Vicki

>>> "Kahler, Pam" <Pam.Kahler@legis.wisconsin.gov> 1/30/2007 2:38 PM

>>>  
Vicki, I have a question for you about the changes that I made to this draft yesterday. When I moved what is now s. 49.47 (4) (cr) (on page 11, lines 6 to 21 of this draft) from s. 49.453 (4) (d) to s. 49.47 (4) (cr), I did not bring with it the applicability provision at s. 49.453 (4) (em) (on page 7, lines 18 to 22). Should I include that same applicability for s. 49.47 (4) (cr) in this draft?

Pam

-----Original Message-----

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Cc: Jones, James D - DHFS; LaPhilliph, John O - DHFS  
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Phone: 608/261-7805

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