

## 2013 DRAFTING REQUEST

### Bill

Received: 11/26/2012 Received By: pkahler  
Wanted: As time permits Same as LRB:  
For: Administration-Budget 7-7980 By/Representing: Iwata  
May Contact: Drafter: pkahler  
Subject: Health - long-term care Addl. Drafters: tdodge  
Medical Assistance  
Public Assistance - misc  
Extra Copies:

Submit via email: YES

Requester's email:

Carbon copy (CC) to:

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#### Pre Topic:

DOA:.....Iwata, BB0260 -

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#### Topic:

Estate recovery for Medical Assistance

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#### Instructions:

See attached

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#### Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	pkahler 12/7/2012	jdyer 12/11/2012		_____			
/P1	pkahler 1/3/2013	jdyer 1/7/2013	rschluet 1/8/2013	_____	sbasford 12/11/2012		State
/P2	pkahler 1/22/2013			_____	srose 1/8/2013		State
/P3	pkahler	jdyer	phenry	_____	srose		State

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	2/1/2013	1/25/2013	1/25/2013	_____	1/25/2013		
/1	pkahler 2/5/2013	jdyer 2/1/2013	jfrantze 2/1/2013	_____	srose 2/1/2013		State
/2		jdyer 2/6/2013	rschlue 2/6/2013	_____	sbasford 2/6/2013		State

FE Sent For:

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*613*  
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/?	pkahler	11/12 jld					
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12/11/12

FE Sent For:

<END>

## Kahler, Pam

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**From:** Dodge, Tamara  
**Sent:** Monday, November 26, 2012 9:30 AM  
**To:** Kahler, Pam  
**Subject:** FW: Statutory Language Drafting Request - BB0260  
**Attachments:** 13-15 Estate Recovery Program Statutory Language.doc

Pam,

I received this MA budget request from Cathlene this morning. I'm still working on that long MA changes / BC+ draft so it's yours if you want it. From the attachment, this looks like quite an involved request too.

Tami

### Tamara J. Dodge

Attorney  
Wisconsin Legislative Reference Bureau  
P.O. Box 2037  
Madison, WI 53701-2037  
(608) 267 - 7380  
[tamara.dodge@legis.wisconsin.gov](mailto:tamara.dodge@legis.wisconsin.gov)

**From:** Hanaman, Cathlene  
**Sent:** Monday, November 26, 2012 9:25 AM  
**To:** Dodge, Tamara  
**Subject:** FW: Statutory Language Drafting Request - BB0260

Sending only to you. If not you, please feel free to forward.

**From:** [Yuko.Iwata@wisconsin.gov](mailto:Yuko.Iwata@wisconsin.gov) [<mailto:Yuko.Iwata@wisconsin.gov>]  
**Sent:** Monday, November 26, 2012 9:21 AM  
**To:** Hanaman, Cathlene  
**Cc:** Thornton, Scott - DOA; Gauger, Michelle C - DOA; Iwata, Yuko - DOA  
**Subject:** Statutory Language Drafting Request - BB0260

**Biennial Budget:** 2013-15

**Topic:** Estate Recovery Program for Medicaid

**Tracking Code:** BB0260

**SBO Team:** HSI

**SBO Analyst:** Iwata, Yuko - DOA  
**Phone:** (608) 267-7980  
**E-mail:** [Yuko.Iwata@wisconsin.gov](mailto:Yuko.Iwata@wisconsin.gov)

**Agency Acronym:** DHS

**Agency Number:** 435

**Priority:** Medium

**Intent:**

To maximize the assets available to repay Medicaid through the Estate Recovery Program.

**Attachments:** True

*Please send completed drafts to [statlanguage@wisapps.wi.gov](mailto:statlanguage@wisapps.wi.gov)*

## Estate Recovery Program

### Decision Needed

Should the State seek statutory changes to maximize the assets available to repay Medicaid through the Estate Recovery Program?

### Background

1. The Wisconsin Medicaid Estate Recovery Program seeks repayment for the cost of certain long term care services paid for by Medicaid on behalf of recipients. Recovery is made from the estates of recipients and from liens placed on their homes. The money recovered is returned to the Medicaid Program and used to fund Medicaid benefits.
2. Section 1917 (b) of the Social Security Act requires states to establish an estate recovery program that pursues recovery of benefits payments from the probate estates of permanently institutionalized Medicaid recipients of any age and certain benefits received by all Medicaid participants over the age of 55. Under 42 U.S.C. 1396p (b)(4)(b), federal law also allows states to include non-probate assets in their definition of estate for recovery purposes. Wisconsin currently recovers from those assets that are part of the probate estate, as well as certain non-probate assets. → *transfers by affidavit*
3. The Department proposes changes to the Estate Recovery Program:

- a. Expand the definition of estate to equal the full allowable federal definition; → *non-probate assets, too*
- b. Allow DHS to file notices of encumbrance and potential claims; → *when to whom?*
- c. Limit the amount retained by a pooled trust;
- d. Require DHS to be notified of terminations of special needs trusts;
- e. Recover all services for members participating in a long-term care waiver program;
- f. Recover the capitation payment amount in managed care situations; and
- g. Void unrecorded and certain other real property transfers.

### Current Language

1. Current estate recovery statutes are under Wis. Stat. § 49.496. The Department's proposal would also affect marital property under chapter 766, as well as several other chapters.

## **Proposed Change**

1. Attachment 1 provides drafting instructions enumerating the current statutory language and proposed changes.
2. Attachment 2 explains how the Department would recover from the expanded estate.
3. Attachment 3 provides the statutory language referenced by Attachments 1 and 2, including statutory language from other states that have successfully expanded estate recovery.

**Desired Effective Date:** See Attachment 4.  
**Agency:** DHS  
**Agency Contact:** Lara Rosen  
**Phone:** 266-5655

# Attachment 1. Drafting Instructions

## Expanded Definition of Estate

### Section 49.682 (2)(a) (Family Care)

- x-ref correct?*
1. This may have to be amended to make it clear that Family Care recovery follows s. 49.496, Wis. Stats. The rules (DHS 10.62) cover both Medicaid and Non-Medicaid Family Care (which doesn't exist anymore) and only reference certain provisions of s. 49.496.

*rules under s. 46.286(7) amend ↗ ?*

### Section 46.27 (7g) (Community Options Program)

### Section 49.682 (Wisconsin Chronic Disease Program)

### Section 49.496 (Medicaid)

1. Define estate to the full allowable federal definition (probate estate plus all other optional property). See 42 USC 1396p 9(b) (4).
2. Define that the individual's property interest continues after his or her death.
3. Define "other arrangement" to include all property that was at one time marital property within the five years prior to the application for Medicaid or other recoverable program, no matter how subsequently titled. (See Idaho Supreme Court, In the Matter of the Estate of George D. Perry). Also include annuities in this definition (see State Medicaid Manual 3810 B. 4.).
4. Define "personal property" to include any property that is not real property. This includes, but is not limited to, such things as cash, jewelry, household goods, life insurance properties, automobiles, promissory notes, etc. See Ohio Administrative Code 5101:1-38-10 (6).
5. Include language to allow filing claims in the estates of surviving spouses and that the claim represents an obligation to the estate of the surviving spouse for Medicaid and other recoverable program costs provided to the member spouse. (See Idaho Supreme Court, In the Matter of the Estate of George D. Perry and St. Mary's Medical Center v. Brody (Ct. App. 1994); Sinai Samaritan Medical Center Inc. v. McCabe (Ct. App. 1995); Froedert Memorial Lutheran Hospital, Inc. v. Jerome and Estelle Mueller (Ct. App. 1996); and Medical College of Wisconsin v. Missimer (Ct. App. 2009).) It should be clarified that a marriage settlement agreement or other such arrangement does not eliminate this obligation. State that it is presumed that all property in the surviving spouse's estate was community property of the deceased recipient or has been transferred by "other arrangement" and is subject to recovery unless rebutted by clear evidence. Offer an alternative method for the surviving spouse to limit the financial responsibility of his/her estate immediately after the member's death similar to South Dakota Codified Laws 28-6-23-1.
6. Define the deceased member's interest in real property that is owned jointly with someone other than a spouse as being equal to the fractional interest the person would have owned in the jointly held property had the individual and the other owners held title to the property as tenants in common. For other property (not real estate), it is equal to the percentage deemed to have been the member's interest when determining program

*reference or set out all pieces?*

*no cause what if divorced + new spouse?*

*it does anyway*

*49.496 + 682 mixing "necessaries" w/ Mar prop*

*new*

*49.849*

*includes any prop i which dec had or it. at death*

*check some of these cases*

eligibility or if undetermined at eligibility, equal to the fractional interest the person would have owned in the jointly held property. (Note: For eligibility purposes, joint bank accounts where only one of the joint owners is an EBD applicant are deemed to belong entirely to that EBD member.)

*elderly / blind / disabled*

7. The deceased member's interest in a life estate should be defined as the member's percentage of ownership based on the member's age at the date of death and calculated using the property's fair market value and life estate/remainderman tables used by the Department to value life estates for Medicaid eligibility purposes.
8. Fair market value should be defined as the price at which the property would change hands between a willing buyer and seller. The burden of proof for establishing the fair market value to the Department's satisfaction lies with the surviving owners or beneficiaries, or their representatives, and must be established through a credible methodology, including, but not limited to, an appraisal performed by a certified and licensed appraiser.
9. Define the procedure to allow placing liens on real property that the member had an interest (joint, survivorship marital or individual property of the spouse that was once marital property per the definition of "other arrangement"). This process would include sending the joint owner a notice of claim and hearing rights relating to the extent or value of the deceased interest. (See Minnesota Statutes 256B.15 Subd. 1e, Subd. 1f.)
10. Define the procedure to allow the Department to recover non-probate assets other than real property in which the member had an interest (joint, survivorship marital or individual property of the spouse that was once marital property per the definition of "other arrangement"). This process would include sending the joint owner or beneficiary a notice of claim and hearing rights relating to the extent or value of the deceased interest. This process would only be used to recover assets other than real estate from the member's estate when there is no surviving spouse or minor or disabled child and it would be used to recover non-probate assets from the estate of the member's surviving spouse.
11. State that the surviving property holders or beneficiaries have a right to request a hardship waiver pursuant to HFS 108.02 (12) prior to the Department placing a post-death lien. *49.496 (6m) ??*
12. State that post-death liens will be released if the property is sold by the surviving spouse, minor or disabled child for fair market value/arms-length sale during their lifetime. If the spouse/disabled child transfers the property without consideration and the person receiving the property sells it for fair market value during the spouse's/disabled child's lifetime, make provisions to allow the lien to be released if the proceeds from the sale are secured in a trust, bond or other type of security. The secured amount would be paid to the Department upon the death of the surviving spouse or disabled child. State that if a surviving spouse or minor or disabled child refinances the property, the Department will subordinate its lien to the new encumbrance. (See Nevada Supreme Court, Nevada Department of Human Resources v. Estate of Ullmer.)
13. Add a provision similar to Minnesota law that states that a surviving owner, or other interested party, may voluntarily pay off, settle or otherwise satisfy the claim/lien. The payoffs, settlements and satisfactions shall be deemed to be voluntary repayments of past Medicaid or other recoverable program payments for the benefit of the deceased recipient, and neither the process of settling the claim, the payment of the claim, nor

*849*  
*what about current law?*

*??*

acceptance of the payment shall constitute an adjustment or recovery that is otherwise prohibited. (See Minnesota Statutes 256B.15 subd.1i (f).)

14. Add provisions similar to that in Wyoming Administrative Code that clarifies what costs will be allowed from the sale of the property. For example, if the property is not sold at the member's death, taxes and expenses for improvements made while the transferee lived in the home should not be allowed to be deducted from the amount due the Department from the sales proceeds. Having allowable costs in statute will greatly diminish discussion and argument when the sale of the property closes. (See Wyoming Department of Health, Wyoming Medicaid Rules, Chapter 35, Medicaid Benefit Recovery, Section 4 (kk).)

15. Provide that the new type of liens obtained by the Department (or any liens obtained under §§ 49.496, 46.27 (7g), and 49.682) may be enforced by foreclosure in the same manner as a mortgage on real property. Clarify that liens have the same statute of limitations as a mortgage under Wis. Stat. s. 893.33 (30 years).

16. Provide the Department with a simplified process to obtain a judgment or warrant against any surviving joint owner or beneficiary who fails to pay the Department's claim. This process could be devised to be similar to that enumerated in Wis. Stat. § 49.85, or a warrant process similar to that described in Wis. Stat. Chapter 71.

any sale of property - what dept has a lien?

liens on real property? 49.496(3)(e)

unrec'd? lien?

star set off

Section 445.125 (Funeral Directors - Burial Agreements)

1. Amend or create a section to make it clear that any funds from burial agreements (funded either through trusts or life insurance) that remain after funeral and burial costs have been paid are subject to the Department's claim for estate recovery under Wis. Stat. §§ 49.496, 46.27 (7g), 49.682, and 867.035.

any creditor issues? (except from)

transfer by affidavit/MA recovery

Section 632.415 (Insurance Contracts in Specific Lines - Funeral policies)

1. Amend or create a section to make it clear that any funds from funeral policies that remain after funeral and burial costs have been paid are subject to the Department's claim for estate recovery under Wis. Stat. §§ 49.496, 46.27 (7g), 49.682, and 867.035.

Chapter 632, Subchapter V (Insurance Contracts in Specific Lines - Life Insurance and Annuities)

1. Amend or create a section to make it clear that any payments from life insurance contracts or annuities are subject to the Department's claim for estate recovery under Wis. Stat. §§ 49.496, 46.27 (7g), 49.682, and 867.035.

impair contract?

payments to beneficiary??

Chapter 700 (Interests in Property)

1. Amend or create a section to make it clear that transfer/ownership is subject to the Department's claim for estate recovery and post-death liens under Wis. Stat. §§ 49.496, 46.27 (7g), 49.682, and 867.035.

Chapter 701 (Trusts)

1. Amend or create a section to make it clear that a living trust is required to pay the Department's claim for estate recovery under Wis. Stat. §§ 49.496, 46.27 (7g), 49.682, and 867.035.

what is recip relationship? what's prop? recip?

2. Amend Wis. Stat. § 701.065 with language similar to Wis. Stat. § 859.07 (2)(a) and (b) to require the trustee to provide the Department with written notice when the trust is terminated. If the property has been distributed or transferred prior to the Department's

rather death of recip?

not be necessary

wt.

clarify trust item

what trustee? recip was beneficiary - settlor??

request for recovery, require the trustee to provide information on the parties the property was distributed or transferred to. Clarify that the Department may seek recovery from the beneficiaries of any such distribution.

Section 705.04 (2g) (Right of Survivorship)

→ see 705.07

1. If the joint or P.O.D. account has been closed and the remaining balance transferred prior to the Department's request for recovery, require the financial institution to provide information on the parties the funds were transferred to.

only to extent of interest at death, right?

Section 705.10 (Other Non-Probate Transfers)

1. Amend or create a section to make it clear that property transferred under this section is subject to the Department's claim for estate recovery under Wis. Stat. §§ 49.496, 46.27 (7g), 49.682, and 867.035. If the property has been transferred prior to the Department's request for recovery, require the transferor to provide information on the parties to whom the property was transferred.

Section 705.15 (TOD deeds)

1. Amend or create a section to make it clear that beneficiary takes ownership subject to the Department's claim for estate recovery under Wis. Stat. §§ 49.496, 46.27 (7g), 49.682, and 867.035.

Chapter 705, Subchapter III (Transfer on Death Security Registration)

1. Amend or create a section to make it clear that ownership on death is subject to the Department's claim for estate recovery under Wis. Stat. §§ 49.496, 46.27 (7g), 49.682, and 867.035. If the property has been transferred prior to the Department's request for recovery, require the transferor to provide information on the parties to whom the property was transferred.

Chapter 766 (Marital Property)

1. Amend or create a section to define that all property that was at one time marital property within the five years prior to the application for Medicaid or other recoverable programs, no matter how subsequently titled, is subject to the Department's claim for estate recovery under Wis. Stat. §§ 49.496, 46.27 (7g), 49.682, and 867.035. State that the Department's claim is an obligation to the estate of the surviving spouse.

ltd to some spouse at death?

→ of?

spouse at the time?

Chapter 854 (Transfers on Death – General Rules)

1. Amend or create a section to make it clear that transfers on death are subject to the Department's claim for estate recovery under Wis. Stat. §§ 49.496, 46.27 (7g), 49.682, and 867.035.
2. As an alternative to amending Wis. Stat. § 867.035, to allow an affidavit under that section to be used to recover non-probate assets, create a section with that authority in this Chapter. It may be better applicable because it appears that almost all transfers at death refer back to this chapter.

??

but that is where transfers by affidavit

is located

Section 867.03 (Transfer by Affidavit)

1. Amend (1m) (b) to remove the 10 day requirement.

2. Amend (2g) to include that property being transferred is subject to the Department's estate recovery claims.

Section 867.035 (Transfer by Affidavit)

→ in current law, this only applies to probate assets

1. Cross reference back to the definition of estate/property described in Wis. Stat. § 49.496, or as applicable for other programs.
2. Include language to allow affidavits to be used in the estates of surviving spouses. State that it presumed that the surviving spouse's estate is all property subject to recovery unless rebutted by clear evidence.
3. Clarify that the Department's affidavit may be used to recover non-probate assets (assets not subject to administration) in any amount (not limited to the amount specified by Wis. Stat. § 867.03(1)(intro.)). Alternatively, create a new affidavit process (perhaps in Chapter 854) to allow the Department to recover non-probate assets in any amount.
4. Remove the requirement that the affidavit cannot be used until 20 day after the individual's date of death before the affidavit can be us.

867.035 really should be in Ch 867 - not all probate

want to use our affidavit for probate?

**Notice of Encumbrance/Potential Claim**

Chapter 706 (Conveyances of Real Property; Recording; Titles)

1. Amend or create sections in this chapter to provide for the notice of encumbrance/notice of potential claim. Combine the best elements of notice of encumbrance language (sans hearing rights because the notice does not constitute a lien on the property during the recipient's life and hearing rights will be provided prior to filing a post-death lien) from Washington (RCW 64.04.210, RCW 43 43.20B.750), Oregon (ORS 93.268, ORS 411.692, ORS 411.694), Idaho (55-819 Idaho Code, 56-225 Idaho Code) and notice of potential claim (Minnesota Statutes 256B.15 Subd. 1c., Subd. 1d.).
2. Clarify this notice applies to all ownership interests/transfers, including a vendor's interest in a land contract and the assignment of a land contract. Clarify that this notice can be filed for any real property the recipient has an interest and any real property that was at one time the recipient's marital property within five years prior to her/his application for Medicaid (or other recoverable program), no matter if it is titled solely in the spouse's name.

**Limit the Amount Retained by a Pooled Trust**

Section 49.454

1. Amend or create a provision that pooled trusts established 42 USC 1396p (d) (4) (C) may only retain up to 30 percent of the remaining trust balance at a member's death. (See Minnesota Statutes 256B.056, Subd. 3b. (d).)

30% of total balance or member's amount?

Section 701.06

1. Amend to clarify that pooled trusts established 42 USC 1396p (d) (4) (C) may only retain up to 30 percent of the remaining trust balance at a member's death.

↳ member's balance

See 2. under next section (failure to notify....)

Trustees must notify DHS (

✓ **Notice of Termination of Special Need Trust**

*Section 49.454*

1. Amend or create a provision that trustees of trusts established 42 USC 1396p (d) (4) must notify the Department at the member's death and comply with the Medicaid repayment language in the trust within 30 days of the date of death. Failure to notify the Department and repay Medicaid to the extent possible would be considered a breach of duties and the trustee would be personally liable for the Department's costs in recovering any assets distributed prior to Medicaid repayment and for the amount of any assets that could not be recovered.
2. Failure to provide notice on a pooled trust would result in the pooled trust being prohibited from retaining any of the trust assets/funds. *W/in 30 days of death?*

*Section 701.06*

1. Amend to clarify that trustees of trusts established 42 USC 1396p (d) (4) must notify the Department at the member's death and comply with the Medicaid repayment language in the trust.

✓ **Recovery of All Services for Members Participating in a Long-Term Care Waiver Program**

*Section 49.496*

1. Amend subd. (3)(a) 2. to extend recovery to all services received while participating in any long-term care waiver (rather just related inpatient and drugs specified by (b) and (c), or while participating in the Program of All-Inclusive Care for the Elderly (PACE). This would supersede DHS 108.02 (10) (c) 3., 4., 5. and 6. *don't understand whether we take out or add*

TJD

✓ **Recovery of the Capitation Payment Amount in Managed Care Situations**

*Section 49.496*

1. Define the amount of medical assistance paid to be the capitation amount for services received in a managed care setting. This would include Family Care, Partnership and PACE. This would supersede DHS 10.62 (1)(a). *Tami ↗*

**Voiding Unrecorded and Certain Other Real Property Transfers**

*Section 706.08*

1. Amend or create a provision that provides that any conveyance that was delivered, but not recorded or not reported to the Medicaid agency during a period of time the individual was eligible for Medicaid may be voided and the property returned to the individual or estate of the individual. A notwithstanding clause referencing this provision can be included in Subd. (1a) can be inserted to continue to protect purchasers of good faith and for valuable consideration if thought necessary. *receiving?* *received by receipt? made by receipt?*

*Chapter 49*

1. Create a section in Chapter 49 that allows fraudulent transfers or transfers for less than fair market value to be voided or an action taken. (See Minnesota Statutes 256B.0595.

subd. 8.; Oregon ORS 411.708 and 411.620; Florida Statutes 414.28 (3); Idaho Statutes 56-218 (2); Iowa Administrative Code 441-89(249F); Kansas Code 39-709 (g)(2); and Illinois 305 ILCS 5/3-11.)

## Attachment 2. Method of Recovery from the Expanded Estate

### Definition of Estate

The definition of estate for estate recovery purposes would be expanded to the full definition allowed by federal law. Estate would include all solely owned property and any other real or personal property and other assets in which the individual had any legal title or interest in at the time of death (to the extent of such interest), including such assets conveyed to a survivor, heir or assign of the deceased individual through joint tenancy, tenancy in common, survivorship, living trust or other arrangement.

Statute should clarify that the deceased's interest in property survives his or her death.

“Other arrangement” should be defined to include annuities and any property that was at any time marital property five years prior to the member applying for the program, no matter how the property was subsequently reclassified or transferred (e.g. reclassified as the community spouse’s individual property or transferred to a trust). *↑ no make it separate*

*Does anyway* “Personal property” should be defined to include any property that is not real property. This includes, but is not limited to, such things as cash, jewelry, household goods, life insurance policies, automobiles, promissory notes, etc. [See Ohio Administrative Code 5101:1-38-10 (6).]

Recovery from funeral agreements (funded either from trusts or life insurance) or funeral insurance policies would be limited to any proceeds that remain after funeral and burial costs have been paid.

*Presumption in state of spouse that all is marital prop* Estate recovery of Medicaid (and other recoverable program) costs paid on behalf of the pre-deceased member spouse would be considered an obligation to the surviving spouse to be satisfied with 100 percent of any property that was at any time marital property of the member five years prior to applying for the program, no matter how the property was subsequently reclassified or transferred. It should be clarified that a marriage settlement agreement or other such arrangement does not eliminate this obligation. Filing claims in the estates of surviving spouses would be allowed. It would be presumed that all property in the surviving spouse’s estate was at one time marital property and is subject to recovery, unless rebutted by clear and convincing evidence. However, the surviving spouse would be given a method to limit the financial responsibility of his/her estate immediately after the member’s death similar to South Dakota Codified Laws 28-6-23-1. *When other spouse dies ←*

The deceased member’s interest in real property that is owned jointly with someone other than a spouse should be defined as being equal to the fractional interest the person would have owned in the jointly held property had the individual and the other owners held title to the property as tenants in common. For other property (not real estate), it is equal to the percentage deemed to have been the member’s interest when determining program eligibility or if undetermined at eligibility, equal to the fractional interest the person would have owned in the jointly held property. (Note: For eligibility purposes, joint bank accounts where only one of the joint owners is an EBD applicant are deemed to belong entirely to that EBD member.)

decedent's ?

The deceased interest in a life estate should be defined as the member's percentage of ownership based on the member's age at the date of death and calculated using the property's fair market value and life estate/remainderman tables used by the Department to value life estates for Medicaid eligibility purposes.

Fair market value would be defined as the price at which the property would change hands between a willing buyer and seller. The burden of proof for establishing the fair market value to the Department's satisfaction lies with the surviving owners or beneficiaries, or their representatives, and must be established through a credible methodology, including, but not limited to, an appraisal performed by a certified and licensed appraiser.

where does this come in (relevance)

used in stats disjunctively

Chapter 445.125, Wis. Stats. (Funeral Directors – Burial Agreements); Chapter 632.415 (Insurance Contracts in Specific Lines – Funeral policies); Chapter 632, Subchapter V, (Insurance Contracts in Specific Lines – Life Insurance and Annuities); Chapter 700 (Interests in Property); Chapter 701 (Trusts); Section 705.04 (2g), Wis. Stats.; Section 705.10 (Other Non-Probate Transfers); Section 705.15 (TOD Deeds); Chapter 705, Subchapter III (Transfer on Death Security Registration) and Chapter 854 (Transfers on Death – General Rules) should be modified to make it clear such non-probate transfers are subject to estate recovery claims. Require any individual, entity or financial institution that has transferred or distributed any of the individual's assets provide information to the Department regarding the transferees and distributees.

**Notice of Encumbrance/Potential Claim**

what is this ?

The Department would file a combination Request for Notice of Encumbrance/Notice of Potential Claim with the applicable register of deeds when an individual becomes eligible for Elderly, Blind and Disabled Medicaid (or other recoverable program) and has an ownership interest or had a marital property interest within the previous five years in real estate (including a vendee's, vendor's interest in a land contract or interest in property in a revocable trust). The notice could be filed regardless of whether the real property is currently titled only in the community spouse's name.

The request would not affect title to real property and is not a lien on or other interest in real property.

While the member is living, this request for notice/notice of potential claim would require a title company to list the request/notice in a title search prepared for a sale/mortgage. It would be the responsibility of the person or agent that is transferring or encumbering the property to give notice to the Department that the property is being transferred/encumbered. This would alert the Department to any transfers that may affect Medicaid eligibility. No clearance from the Department would be required to be recorded for the transfer/encumbrance to be valid. [See Washington (RCW 64.04.210, RCW 43 43.20B.750), Oregon (ORS 93.268, ORS 411.692, ORS 411.694), Idaho (55-819 Idaho Code, 56-225 Idaho Code) and notice of potential claim (Minnesota Statutes 256B.15 Subd. 1c., Subd. 1d.).]

The Department should also have the ability to file a Termination of Request for Notice/Notice of Potential Claim in situations where it is discovered that the individual went off Medicaid (or other recoverable program) and incurred no recoverable services while eligible.

citations 49.47(4)(a), 13, + 4.??

What situation is this that current law doesn't cover?

**Death of Member – Real Property**

If a notice has been filed on the real property and the member subsequently dies, in order for any transfer, encumbrance or termination of property interest to be valid, a Certificate of Clearance from the Department would be required to be recorded at the same time the transfer/encumbrance/termination is recorded. The person requesting transfer, encumbrance or termination (e.g. TOD beneficiary, joint owner, remainder beneficiary) would contact the Department for clearance. The Department would determine whether there was a claim for estate recovery. If no claim, a clearance certificate would be issued. The transferee would be responsible for recording the certificate and paying any recording fees. However, if there is a claim for estate recovery, the Department would send a statement of claim to the person requesting transfer. The statement would inform the transferee of the Department's intent to recover from the property. The statement would also detail the estate recovery claim amount; the transferee's right to an administrative fair hearing on the extent and fair market value of the deceased member's interest in the property; and give notice to the transferee of the estate recovery hardship provisions. Statutory provisions would clarify that the transferees (e.g. TOD beneficiary, joint owner, life estate remainderman, trust beneficiary, etc.) are the only individuals eligible to apply for a hardship waiver in this situation. [See Minnesota Statutes 256B.15 Subd. 1e, Subd. 1f. for part of process.]

If no notice was filed on the property prior to the death of the member, the Department should be allowed and have a mechanism to file a statement of claim with surviving property owner. Once filed, the same procedure would be used as when a notice was filed prior to the member's death (i.e. administrative fair hearing on extent/value of deceased's interest and opportunity to apply for a hardship waiver). *How would DHS know? is this if no probate?*

Once the claim is determined to be valid, the Department would determine the most practicable method to recover. The transferee could pay the claim from other sources and secure a full clearance/release; the Department could issue a partial clearance/release, contingent on payment of the claim, to allow a sale or mortgage; or the Department could decide to secure its interest with a lien. *options*

The Department would make no immediate recovery if the transferee were a surviving spouse or disabled child or minor child. In these cases, the Department would take a lien on the property. Recovery would be made after the death of the surviving spouse or disabled child or after the minor child reaches adulthood. If the surviving spouse or disabled child (or minor child while still a minor) sells the property during their lifetime for fair market value, the lien would be released without recovery. If the surviving spouse or minor or disabled child refinances the property, the Department would subordinate its lien to the new encumbrance.

If the surviving spouse or minor or disabled child transfer the property to a third party for less than fair market value and the third party sells the property, the lien would only be released if proceeds of the sale in an amount equal to the lien are secured in a trust, bond or other type of security. This secured amount would be paid to the Department upon the death of the surviving spouse or disabled child or when the minor child becomes an adult. *ED whom?*

Liens would also be taken when a sibling or caretaker child inhabits the home. Recovery in their case would be made after death or upon sale or transfer of the home to a third party.

*if don't sell, get \$ in estate of spouse  
if sell for FMV, released (get \$ in estate of spouse?)*

*if sell for less than FMV release if put trust? (also note: put trust?)*

*What a lot of this current law?*

*any two liens? how do 3rd party release?*

All other liens would primarily be satisfied upon sale, transfer of the property or upon refinance if the surviving owner is someone other than a surviving spouse or minor or disabled child. The Department, however, should have the statutory ability to foreclose on the property in a manner similar to a mortgage. This is needed to protect the Department's interest should it be jeopardized (e.g. tax deed proceeding due to the failure to pay taxes, transferring to a third party without a sale taking place, etc.). The lien (and it should be clarified that all other estate recovery and TEFRA liens) will have the same statute of limitations as a mortgage. ?

Statute should provide that liens may be paid or settled voluntarily by the joint owner or other interested party and that such a voluntary payment/settlement will in no way constitute a prohibited adjustment or recovery. [See Minnesota Statutes 256B.15 subd.1i (f).]

Statute should clarify what costs will be allowed from the sale of the property. For example, if the property is not sold at the Medicaid member's death, taxes and expenses for improvements made while the transferee lived in the home should not be allowed to be deducted from the Department's share of the amount due from the sales proceeds. Having allowable costs in statute will greatly diminish discussion and argument when the sale of the property closes. [See Wyoming Department of Health, Wyoming Medicaid Rules, Chapter 35, Medicaid Benefit Recovery, Section 4 (kk).]

**Death of Member – Other Non-Probate Property**

(Section 867.035 should be amended or a new section created (perhaps in Chapter 854), to allow the Department to use an affidavit to initiate recovery of non-probate assets other than real property. The affidavit would detail the estate recovery claim amount; the surviving joint owners' or beneficiaries' right to a fair hearing on the extent and fair market value of the deceased member's interest in the property; and give notice to the transferee of the estate recovery hardship provisions. Statutory provisions would clarify that the surviving joint owners or beneficiaries are the only individuals eligible to apply for a hardship waiver in this situation. ?

The Department would file its affidavit with the individual, entity, life insurance company or financial institution that received or hold the non-probate assets. If the assets have been transferred or distributed to surviving owners or beneficiaries, the individual, entity or financial institution would be required to provide information regarding the surviving owners or beneficiaries that received the property. The Department would send its affidavit to those surviving owners or beneficiaries and demand recovery.

The Department should be provided with a simplified process to obtain a judgment or warrant against any surviving joint owner or beneficiary who fails to pay the Department's claim. Perhaps something similar to s. 49.85, Wis. Stats., or a warrant process similar to that described in Chapter 71, Wis. Stats. could be devised/described. *tax intercept - ch 71??*

The Department would allow, but limit the amount of non-probate assets to be used to pay funeral and burial costs of the deceased member. *> is this burial & funeral or something else?*

*how now*

*what sale are we talking about? any??*

*can now under that section what's missing?*

*→ which ones will & which ones would?*

*this is new??*

**Trusts – Living Trusts, Special Needs Trusts and Special Needs-Pooled Trusts**

Trustees of living trusts where the settlor received benefits from a recoverable program should be required to provide written notice to the Department prior to trust termination or distribution of trust assets to beneficiaries. The Department would file the affidavit of claim (used for non-probate assets) with the trustee of a living trust. If the required notice was not given, the amount of any assets distributed to a beneficiary would remain subject to the Department’s recovery claim and could be recovered from the beneficiary.

Trustees of special needs trusts and special needs-pooled trusts with language that require Medicaid to be repaid should also be required to provide written notice to the Department within 30 days of the Medicaid recipient’s death and before any trust assets are distributed to beneficiaries. The Department would follow current practices and send a letter with the recoverable amount to the trustee or trust company.

*Don't  
like this  
no from  
already*

If a trustee of a special needs trust or special needs- pooled trust fails to give the Department notice and repay Medicaid within 30 days of the Medicaid recipient’s death and prior to distribution to beneficiaries, it should be considered a breach of duty. The trustee should be personally liable for any costs incurred by the Department in recovering trust assets and for any amount that cannot be recovered from beneficiaries. In addition, in the case of a pooled trust, no amount of trust assets should be allowed to be retained by the pooled trust.

*penalty for trustee*

*is there for law on this?*

**Death of Surviving Spouse**

The Department would make recoveries from existing liens on real property acquired after the death of the member/recipient, by filing claims in the estates of surviving spouses and by using an affidavit process to recover the surviving spouse’s non-probate assets. It would be presumed that all the assets of the deceased surviving spouse were at one time shared marital assets of the member/recipient and subject to recovery. That presumption may be rebutted by clear and convincing evidence.

**Program Simplification**

The time requirements for using affidavits in s 867.03, Wis. Stats., (10 days) and s. 867.035, Wis. Stats., (20 days) should be removed. Experience has shown that they can be confusing to heirs, beneficiaries and attorneys and are no longer necessary. The can lead to difficulties in making recoveries.

## **Attachment 3. References**

### ***Expansion of Estate***

#### **42 USC 1396p 9(b) (4)**

(4) For purposes of this subsection, the term “estate”, with respect to a deceased individual—  
(A) shall include all real and personal property and other assets included within the individual’s estate, as defined for purposes of State probate law; and  
(B) may include, at the option of the State (and shall include, in the case of an individual to whom paragraph (1)(C)(i) applies), any other real and personal property and other assets in which the individual had any legal title or interest at the time of death (to the extent of such interest), including such assets conveyed to a survivor, heir, or assign of the deceased individual through joint tenancy, tenancy in common, survivorship, life estate, living trust, or other arrangement.

#### **State Medicaid Manual 3810 B. 4.**

4. Annuities.--You may collect against an annuity that was the property of the deceased Medicaid beneficiary if you use State probate law to define estate, and the law includes annuities, or, if you use the expanded definition of estate found at §3810.B.2. When using the expanded definition of estate, an annuity is considered an “other arrangement.” If you use the expanded definition of estate, this provision is effective for deaths or estates that are opened 90 days after the publication of this manual provision and after the State meets applicable State and Federal law for appropriate notice and due process.

#### **Minnesota Statutes 256B.15 Subd. 1e, Subd. 1f**

##### **Subd. 1e. Full or partial release of notice.**

(a) The claimant may fully or partially release the notice and the lien arising out of the notice of record in the real estate records where the notice is filed or recorded at any time. The claimant may give a full or partial release to extinguish any life estates or joint tenancy interests which are or may be continued under this section or whose existence or nonexistence may create a cloud on the title to real property at any time whether or not a notice has been filed. The recorder or registrar of titles shall accept the release for recording or filing. If the release is a partial release, it must include a legal description of the property being released.

(b) At any time, the claimant may, at the claimant's discretion, wholly or partially release, subordinate, modify, or amend the recorded notice and the lien arising out of the notice.

##### **Subd. 1f. Agency lien.**

(a) The notice shall constitute a lien in favor of the Department of Human Services against the recipient's interests in the real estate it describes for a period of 20 years from the

date of filing or the date of the recipient's death, whichever is later. Notwithstanding any law or rule to the contrary, a recipient's life estate and joint tenancy interests shall not end upon the recipient's death but shall continue according to subdivisions 1h, 1i, and 1j. The amount of the lien shall be equal to the total amount of the claims that could be presented in the recipient's estate under this section.

(b) If no estate has been opened for the deceased recipient, any holder of an interest in the property may apply to the lienholder for a statement of the amount of the lien or for a full or partial release of the lien. The application shall include the applicant's name, current mailing address, current home and work telephone numbers, and a description of their interest in the property, a legal description of the recipient's interest in the property, and the deceased recipient's name, date of birth, and last four digits of the Social Security number. The lienholder shall send the applicant by certified mail, return receipt requested, a written statement showing the amount of the lien, whether the lienholder is willing to release the lien and under what conditions, and inform them of the right to a hearing under section 256.045. The lienholder shall have the discretion to compromise and settle the lien upon any terms and conditions the lienholder deems appropriate.

(c) Any holder of an interest in property subject to the lien has a right to request a hearing under section 256.045 to determine the validity, extent, or amount of the lien. The request must be in writing, and must include the names, current addresses, and home and business telephone numbers for all other parties holding an interest in the property. A request for a hearing by any holder of an interest in the property shall be deemed to be a request for a hearing by all parties owning interests in the property. Notice of the hearing shall be given to the lienholder, the party filing the appeal, and all of the other holders of interests in the property at the addresses listed in the appeal by certified mail, return receipt requested, or by ordinary mail. Any owner of an interest in the property to whom notice of the hearing is mailed shall be deemed to have waived any and all claims or defenses in respect to the lien unless they appear and assert any claims or defenses at the hearing.

(d) If the claim the lien secures could be filed under subdivision 1h, the lienholder may collect, compromise, settle, or release the lien upon any terms and conditions it deems appropriate. If the claim the lien secures could be filed under subdivision 1i or 1j, the lien may be adjusted or enforced to the same extent had it been filed under subdivisions 1i and 1j, and the provisions of subdivisions 1i, clause (f), and 1j, clause (d), shall apply to voluntary payment, settlement, or satisfaction of the lien.

(e) If no probate proceedings have been commenced for the recipient as of the date the lien holder executes a release of the lien on a recipient's life estate or joint tenancy interest, created for purposes of this section, the release shall terminate the life estate or joint tenancy interest created under this section as of the date it is recorded or filed to the extent of the release. If the claimant executes a release for purposes of extinguishing a life estate or a joint tenancy interest created under this section to remove a cloud on title to real property, the release shall have the effect of extinguishing any life estate or joint tenancy interests in the property it describes which may have been continued by reason of this section retroactive to the date of death of the deceased life tenant or joint tenant except as provided for in section 514.981, subdivision 6.

(f) If the deceased recipient's estate is probated, a claim shall be filed under this section. The amount of the lien shall be limited to the amount of the claim as finally allowed. If the claim the lien secures is filed under subdivision 1h, the lien may be released in full after any allowance of the claim becomes final or according to any agreement to settle and satisfy the claim. The release shall release the lien but shall not extinguish or terminate the interest being released. If the claim the lien secures is filed under subdivision 1i or 1j, the lien shall be released after the lien under subdivision 1i or 1j is filed or recorded, or settled according to any agreement to settle and satisfy the claim. The release shall not extinguish or terminate the interest being released. If the claim is finally disallowed in full, the claimant shall release the claimant's lien at the claimant's expense.

**Minnesota Statutes 256B.15 subd.1i (f)**

(f) The department shall make no adjustment or recovery under the lien until after the decedent's spouse, if any, has died, and only at a time when the decedent has no surviving child described in subdivision 3. The estate, any owner of an interest in the property which is or may be subject to the lien, or any other interested party, may voluntarily pay off, settle, or otherwise satisfy the claim secured or to be secured by the lien at any time before or after the lien is filed or recorded. Such payoffs, settlements, and satisfactions shall be deemed to be voluntary repayments of past medical assistance payments for the benefit of the deceased recipient, and neither the process of settling the claim, the payment of the claim, or the acceptance of a payment shall constitute an adjustment or recovery that is prohibited under this subdivision.

**Ohio Administrative Code 5101:1-38-10 (6)**

(6) "Personal property" means any property that is not real property. The term includes, but is not limited to, such things as cash, jewelry, household goods, tools, life insurance policies, automobiles, promissory notes, etc.

**South Dakota Codified Laws 28-6-23-1**

28-6-23.1. Limiting financial responsibility of estate of surviving spouse. A surviving spouse may petition the Department of Social Services for purposes of limiting the financial responsibility of the estate of the surviving spouse. The financial responsibility of the estate of the surviving spouse may not exceed the value of the estate of the surviving spouse as of the date of death of the medical assistance recipient. For purposes of the determination of the financial responsibility, it shall be assumed that the surviving spouse died simultaneously with the medical assistance recipient. The petition for financial responsibility shall be filed with the Department of Social Services within six months of the date of death of the medical assistance recipient.

**Wyoming Department of Health, Wyoming Medicaid Rules, Chapter 35, Medicaid Benefit Recovery, Section 4 (kk)**

(kk) "Reasonable expenses incurred in preserving or disposing of the asset(s)." The following expenses incurred either in maintaining or disposing of the assets of a recipient's estate distributed pursuant

to the summary distribution provisions of W.S. 2-1-201 through 2-1-205:

(i) Closing costs for the sale of real property which results in the partial or complete satisfaction of the Department's reimbursement right (closing costs include the reasonable attorney's fees of the seller, the cost of title insurance, and recording costs);

(ii) Costs of a summary probate pursuant to W.S. 2-1-204;

(iii) An incentive allowance;

(iv) Property insurance premiums;

(v) Property taxes (real and/or personal); and

(vi) Utility costs which are necessary to preserve the property.

(vii) Other costs incurred pursuant to a written property management agreement signed by the Department;

(viii) Expenses incurred in providing necessary maintenance or making necessary repairs, without which the salability of the property would be substantially impaired;

(ix) reasonable expenses:

(A) Must be documented and must have been paid after the recipient entered a nursing facility; and

(B) Shall not be allowable for any time during which another individual was residing in the home.

### ***Notice of Encumbrance/Potential Claim***

#### **Idaho (55-819 Idaho Code, 56-225 Idaho Code)**

##### ***§ 55-819 - Requirements Regarding A Request For Notice Of Transfer Or Encumbrance – Rulemaking.***

(1) If the department of health and welfare has recorded a request for notice of transfer or encumbrance pursuant to section 56-225 , Idaho Code:

(a) When a title insurance company or agent discovers the presence of a request for notice of transfer or encumbrance recorded in the real property records in the county in which the property described in such notice is located while performing a title search on such property and any individual identified in such notice is the record owner of such property, the title insurance company or agent shall disclose the presence of the request for notice of transfer or encumbrance in any commitment to offer to issue a title insurance product to insure title to such real property; and

(b) If, after the date of the recording the request for notice of transfer or encumbrance described in subsection (1)(a) of this section, the individual identified in such request for notice transfers or encumbers real property described in such filing, such individual, his agent or family member shall provide the department of health and welfare with a notice of transfer or encumbrance within ten (10) days after the date of the transfer or encumbrance. For the purposes of this subsection (1)(b), a title insurance company or agent shall not be deemed or appointed an agent of the individual identified in the request for notice of transfer or encumbrance. The department of health and welfare shall adopt by rule a model form for notice of transfer or encumbrance to be used by said individual when notifying the department.

(2) If the department of health and welfare has caused to be recorded a termination of request for notice of transfer or encumbrance in the grants and conveyances records pursuant to section 56-225, Idaho Code, or if no individual identified in the request for notice of transfer or encumbrance is the record owner of the real property described therein, the title insurance company or agent is not required to disclose the notice of transfer or encumbrance as required by subsection (1)(a) of this section, and an individual transferring or encumbering the real property after the date of such recording is not required to provide the notice of transfer or encumbrance required by subsection (1)(b) of this section.

(3) The notice of transfer or encumbrance described in subsection (1)(a) of this section is personal to the individual named therein and shall not constitute a lien or encumbrance on, or prevent the transfer or encumbrance of, the property described therein. A title insurance company or agent shall have no liability to the department of health and welfare or any person or entity for failing to discover, or for disclosing, the request for notice of transfer or encumbrance as required by subsection (1)(a) of this section

***§ 56-225. Request for notice of transfer or encumbrance of real property – rulemaking.***

(1) When an individual receives medical assistance subject to recovery under this chapter and the individual is the holder of record title to real property or the purchaser under a land sale contract, the department of health and welfare may present to the county recorder for recording in the grants and conveyances records of a county a request for notice of transfer or encumbrance of the real property. The department shall adopt a rule providing prior notice and hearing rights to the record titleholder or purchaser under a land sale contract.

(2) The department shall present to the county recorder for recording a termination of request for notice of transfer or encumbrance when, in the judgment of the department, it is no longer necessary or appropriate for the department to monitor transfers or encumbrances related to the real property.

(3) The department shall adopt by rule a form for the request for notice of transfer or encumbrance and the termination of request for notice of transfer or encumbrance that, at a minimum:

(a) Contains the name of the public assistance recipient, and the spouse of such public assistance recipient, if any, and a departmental case identifier or other appropriate information that links the individual who is the holder of record title to real property or the purchaser under a land sale contract to the individual's public assistance records;

(b) Contains the legal description of the real property;

(c) Contains a mailing address for the department to receive the notice of transfer or encumbrance; and

(d) Complies with the requirements for recording in section 55-805, Idaho Code, for those forms intended to be recorded.

(4) The request for notice of transfer or encumbrance described in this section does not affect title to real property and is not a lien on, encumbrance of, or other interest in, the real property.

**Minnesota Statutes 256B.15 Subd. 1c., Subd. 1d.**

**Subd. 1c. Notice of potential claim.**

(a) A state agency with a claim or potential claim under this section may file a notice of potential claim under this subdivision anytime before or within one year after a medical assistance recipient dies. The claimant shall be the state agency. A notice filed prior to the

recipient's death shall not take effect and shall not be effective as notice until the recipient dies. A notice filed after a recipient dies shall be effective from the time of filing.

(b) The notice of claim shall be filed or recorded in the real estate records in the office of the county recorder or registrar of titles for each county in which any part of the property is located. The recorder shall accept the notice for recording or filing. The registrar of titles shall accept the notice for filing if the recipient has a recorded interest in the property. The registrar of titles shall not carry forward to a new certificate of title any notice filed more than one year from the date of the recipient's death.

(c) The notice must be dated, state the name of the claimant, the medical assistance recipient's name and last four digits of the Social Security number if filed before their death and their date of death if filed after they die, the name and date of death of any predeceased spouse of the medical assistance recipient for whom a claim may exist, a statement that the claimant may have a claim arising under this section, generally identify the recipient's interest in the property, contain a legal description for the property and whether it is abstract or registered property, a statement of when the notice becomes effective and the effect of the notice, be signed by an authorized representative of the state agency, and may include such other contents as the state agency may deem appropriate.

**Subd. 1d. Effect of notice.**

From the time it takes effect, the notice shall be notice to remainderpersons, joint tenants, or to anyone else owning or acquiring an interest in or encumbrance against the property described in the notice that the medical assistance recipient's life estate, joint tenancy, or other interests in the real estate described in the notice:

(1) shall, in the case of life estate and joint tenancy interests, continue to exist for purposes of this section, and be subject to liens and claims as provided in this section;

(2) shall be subject to a lien in favor of the claimant effective upon the death of the recipient and dealt with as provided in this section;

(3) may be included in the recipient's estate, as defined in this section; and

(4) may be subject to administration and all other provisions of chapter 524 and may be sold, assigned, transferred, or encumbered free and clear of their interest or encumbrance to satisfy claims under this section.

**Oregon (ORS 93.268, ORS 411.692, ORS 411.694)**

**Notice to state agency of transfer or encumbrance of real property by title insurance company**

(1) As used in this section, encumbrance has the meaning given that term in ORS 411.692 (Definition for ORS 93.268 and 411.694).

(2) A title insurance company or agent that discovers the presence of a request for notice of transfer or encumbrance pursuant to ORS 411.694 (Request for notice of transfer or encumbrance of real property held by recipient) in the deed and mortgage records when performing a title search on real property shall:

(a) Provide the state agency that filed the request with a notice of transfer or encumbrance of the real property within 30 days of a transfer or encumbrance that results in the issuance of a certificate of title insurance; and

(b) Disclose the presence of the request for notice of transfer or encumbrance in any report preliminary to, or any commitment to offer, a certificate of title insurance for the real property.

(3) If the Department of Human Services or the Oregon Health Authority has caused to be recorded a termination of request for notice of transfer or encumbrance in the deed and mortgage records, a title insurance company or agent is no longer required to provide the notice of transfer or encumbrance required by subsection (2)(a) of this section for the affected real property.

(4) A title insurance company or agent shall use the form adopted under ORS 411.694 (Request for notice of transfer or encumbrance of real property held by recipient) or a form substantially similar to that form when providing the notice required by subsection (2)(a) of this section. [

#### **Definition for ORS 93.268 and 411.694**

As used in ORS 93.268 (Notice to state agency of transfer or encumbrance of real property by title insurance company) and 411.694 (Request for notice of transfer or encumbrance of real property held by recipient), encumbrance means a voluntary instrument granting a security interest in the affected real property to secure a monetary obligation. [

#### **Request for notice of transfer or encumbrance of real property held by recipient**

- • rules

(1) When an individual receives public assistance as defined in ORS 411.010 (Definitions) and the individual is the holder of record title to real property or the purchaser under a land sale contract, the Department of Human Services or the Oregon Health Authority may present to the county clerk for recordation in the deed and mortgage records of a county a request for notice of transfer or encumbrance of the real property.

(2) A title insurance company or agent shall provide the state agency that filed the request with a notice of transfer or encumbrance as required by ORS 93.268 (Notice to state agency of transfer or encumbrance of real property by title insurance company).

(3) If the department or the authority has filed a request for notice of transfer or encumbrance for recording in the deed and mortgage records, the department or the authority shall file with the county clerk a termination of request for notice of transfer or encumbrance when it is no longer necessary or appropriate to monitor transfers or encumbrances related to the real property.

(4) The department shall adopt by rule a form of the request for notice of transfer or encumbrance, the notice of transfer or encumbrance and the termination of request for notice of transfer or encumbrance that, at a minimum:

(a) Contains the name of the public assistance recipient, a case identifier or other appropriate information that links the individual who is the holder of record title to real property or the purchaser under a land sale contract to the individual's public assistance records;

- (b) Contains the legal description of the real property;
- (c) Contains a mailing address for the department or the authority to receive the notice of transfer or encumbrance; and
- (d) Complies with the requirements for recordation in ORS 205.232 (Conditions for instruments to be recorded) and 205.234 (Requirements for first page of instruments to be recorded) for those forms intended to be recorded.
- (5) The authority shall use the forms adopted by the department under subsection (4) of this section and may designate the department to receive, on behalf of the authority, a notice of transfer or encumbrance provided in accordance with subsection (2) of this section.
- (6) The department or the authority shall pay the recordation fee required by the county clerk under ORS 205.320 (Fees collected by county clerk).
- (7) The request for notice of transfer or encumbrance described in this section does not affect title to real property and is not a lien on, encumbrance of or other interest in the real property.

**Washington (RCW 64.04.210, RCW 43 43.20B.750)**

Requests for notice of transfer or encumbrance — Disclosure — Notice to department of social and health services.

(1) If the department of social and health services has filed a request for notice of transfer or encumbrance under RCW 43.20B.750:

(a) A title insurance company or agent that discovers the presence of a request for notice of transfer or encumbrance when performing a title search on real property shall disclose the presence of the request for notice of transfer or encumbrance in any report preliminary to, or any commitment to offer, a certificate of title insurance for the real property; and

(b) Any individual who transfers or encumbers real property shall provide the department of social and health services with a notice of transfer or encumbrance. The department of social and health services shall adopt by rule a model form for notice of transfer or encumbrance to be used by a purchaser or lender when notifying the department.

(2) If the department of social and health services has caused to be recorded a termination of request for notice of transfer or encumbrance in the deed and mortgage records under RCW 43.20B.750, an individual transferring or encumbering the real property is not required to provide the notice of transfer or encumbrance required by subsection (1)(b) of this section.

**RCW 43.20B.750**

Recipients holding title to real property or purchasing under land sales contracts — Recording request for notice or termination or request for notice of transfer or encumbrance of property — Notice and hearing — Rules.

(1) When an individual receives medical assistance subject to recovery under this chapter and the individual is the holder of record title to real property or the purchaser under a land sale contract, the department of social and health services may present to the county auditor for recording in the deed and mortgage records of a county a request for notice of transfer or encumbrance of the real property. The department shall adopt a rule providing prior notice and hearing rights to the record title holder or purchaser under a land sale contract.

(2) The department shall present to the county auditor for recording a termination of request for notice of transfer or encumbrance when, in the judgment of the department, it is no longer necessary or appropriate for the department to monitor transfers or encumbrances related to the real property.

(3) The department shall adopt by rule a form for the request for notice of transfer or encumbrance and the termination of request for notice of transfer or encumbrance that, at a minimum:

(a) Contains the name of the public assistance recipient and a departmental case identifier or other appropriate information that links the individual who is the holder of record title to real property or the purchaser under a land sale contract to the individual's public assistance records;

(b) Contains the legal description of the real property;

(c) Contains a mailing address for the department to receive the notice of transfer or encumbrance; and

(d) Complies with the requirements for recording in RCW 36.18.010 for those forms intended to be recorded.

(4) The department shall pay the recording fee required by the county clerk under RCW 36.18.010.

(5) The request for notice of transfer or encumbrance described in this section does not affect title to real property and is not a lien on, encumbrance of, or other interest in the real property.

### ***Limit the Amount Retained by a Pooled Trust***

#### **Minnesota Statutes 256B.056, Subd. 3b. (d).**

(d) A beneficiary's interest in a pooled trust is considered an available asset unless the trust provides that upon the death of the beneficiary or termination of the trust during the beneficiary's lifetime, whichever is sooner, the department receives any amount, up to the amount of medical assistance benefits paid on behalf of the beneficiary, remaining in the beneficiary's trust account after a deduction for reasonable administrative fees and expenses, and an additional remainder amount. The retained remainder amount of the subaccount must not exceed ten percent of the account value at the time of the beneficiary's death or termination of the trust, and must only be used for the benefit of disabled individuals who have a beneficiary interest in the pooled trust.

## ***Void Unrecorded and Certain Other Real Property Transfers***

### **Florida Statutes 414.28 (3)**

(3) FRAUDULENT CONVEYANCE.—Any person who transfers or encumbers his or her property for an inadequate consideration with the intent of defeating or hindering the claim of the department for reimbursement shall have made a fraudulent conveyance, and such transfer or encumbrance is void and of no effect as against the claim of the department if the department institutes a suit to set aside the conveyance within 1 year after the death of the debtor. A transfer or encumbrance for an inadequate consideration made within 6 months immediately preceding the death of the transferor is presumed to have been made with the intent of defeating or hindering the claim of the department. This section does not void any conveyance or encumbrance that is made upon and for good consideration and bona fide, as to any person or persons or bodies, politic or corporate.

### **Idaho Statutes 56-218 (2)**

(2) Transfers of real or personal property, on or after the look-back dates defined in 42 U.S.C. 1396p, by recipients of such aid, or their spouses, without adequate consideration are voidable and may be set aside by an action in the district court.

### **Illinois (305 ILCS 5/3-11) (from Ch. 23, par. 3-11)**

Sec. 3-11. Fraudulent transfer of real property.

A transfer of any legal or equitable interest in real property, whether vested, contingent, or inchoate, by a person who is or has been a recipient, including any such transfers prior to application which would have initially disqualified the person as provided in Section 3-1.3, shall, under any of the following conditions, be deemed prima facie fraudulent as to the Illinois Department.

- (1.) Where the deed or assignment has not been recorded or registered by the grantee, trustee, or assignee
- (2.) When the deed or assignment, even though recorded or registered, fails to state the consideration
- (3.) When the consideration for the deed or assignment, even though recorded or registered, is not paid
- (4.) When the consideration for the deed or assignment, even though recorded or registered, does not approximate the fair, cash market value.

The Attorney General, upon request of the Illinois Department, shall file suit to rescind any such transfer or assignment of real property. Any aid furnished under this Article shall be recoverable in any such proceeding from such person or from his estate.

## **Iowa Administrative Code 441-89 (249F)**

### **CHAPTER 89**

#### **DEBTS DUE FROM TRANSFERS OF ASSETS**

##### **PREAMBLE**

This chapter provides for the establishment of a debt for medical assistance due to a transfer of assets for less than fair market value. These rules allow the department to establish a debt against a person who receives the transferred assets from a Medicaid applicant or recipient within five years prior to an application for medical assistance if the applicant is approved for Medicaid. The debt is established against the transferee in an amount equal to the medical assistance provided, but not in excess of the fair market value of the assets transferred.

#### **441—89.1**

##### **Definitions.**

*"Department"* shall mean the department of human services.

*"Dwelling"* shall mean real property in which a person has an ownership interest and which serves as the person's principal place of residence. Real property shall include the shelter in which the person lives, the land on which the shelter is located and related buildings on the land.

*"Fair market value"* shall mean the price for which property or an item could have been sold on the open market at the time of transfer.

*"Medical assistance"* shall mean "medical assistance," "additional medical assistance," "discretionary medical assistance" or "Medicare cost sharing" as each is defined in Iowa Code section 249A.2 which is provided to a person pursuant to Iowa Code chapter 249A and Title XIX of the federal Social Security Act.

*"Property"* shall mean anything of value, including both tangible and intangible property, real property and personal property.

*"Transfer"* shall mean the disposal of property for less than fair market value through gifting, sale or any transfer or assignment of a legal or equitable interest in property.

*"Transferee"* shall mean the person who receives a transfer or assignment of a legal or equitable interest in property for less than fair market value.

*"Transferor"* shall mean the person who makes a transfer of a legal or equitable interest in property for less than fair market value.

#### **441—89.2**

##### **Creation of debt.**

##### **89.2(1) *Transfer of property.***

Except as provided in rule 441—89.3(249F), any transfer of property for less than fair market value creates a debt due and owing to the department from the transferee if:

- a. The transfer is made while the transferor is receiving medical assistance or within five years prior to application for medical assistance and on or after July 1, 1993.
- b. The transfer is made with the intent on the part of the transferee of enabling the transferor to obtain or maintain eligibility for medical assistance.

##### **89.2(2) *Amount of debt.***

The amount of the debt is the lesser of:

- a. An amount equal to the medical assistance provided to or on behalf of the transferor on or after the date of the transfer.

b. The difference between the fair market value of the property at the time of transfer and the value of any consideration received.

#### **441—89.3**

##### **Exceptions.**

Notwithstanding rule 441—89.2(249F), exceptions for transfers that occur between July 1, 1993, and June 30, 1996, are in accordance with the rules during that time period. Notwithstanding rule 441—89.2(249F), the following exceptions apply to transfers that occur on or after July 1, 1996. The following transfers do not create a debt to the department:

1. Transfers to or for the sole benefit of the transferor's spouse, including a transfer to a spouse by an institutionalized spouse pursuant to Section 1924(f)(1) of the federal Social Security Act.
2. Transfers to or for the sole benefit of the transferor's child who is blind or disabled, as defined in Section 1614 of the federal Social Security Act.
3. Transfer of a dwelling, which serves as the transferor's home as defined in 20 CFR Section 416.1212, as amended to August 23, 1994, to a child of the transferor under 21 years of age.
4. Transfer of a dwelling, which serves as the transferor's home as defined in 20 CFR Section 416.1212, as amended to August 23, 1994, after the transferor is institutionalized, to either of the following:
  - a) A sibling of the transferor who has an equity interest in the dwelling and who was residing in the dwelling for a period of at least one year immediately prior to the date the transferor became institutionalized.
  - b) A child of the transferor who was residing in the dwelling for a period of at least two years immediately prior to the date the transferor became institutionalized and who provided care to the transferor which permitted the transferor to reside at the dwelling rather than in an institution or facility.
5. Transfers of less than \$2,000. All transfers by the same transferor during the five-year period prior to the application for medical assistance by the transferor shall be aggregated. If a transferor transfers property to more than one transferee during the five-year period prior to application for medical assistance by the transferor, the \$2,000 exemption shall be divided equally between the transferees for the five-year period prior to application for medical assistance.
  - a) Transfers that would, at the time of the transferor's application for medical assistance, have been exempt from consideration as a resource if they had been retained by the transferor, pursuant to 42 U.S.C. Section 1382(b)(a).
  - b) Transfers to a trust established solely for the benefit of the transferor's child who is blind or permanently and totally disabled as defined in Section 1614 of the federal Social Security Act.
  - c) Transfers to a trust established solely for the benefit of a person under 65 years of age who is disabled, as defined in Section 1614 of the federal Social Security Act.
  - d) Rescinded IAB 11/29/00, effective 1/3/01.

#### **441—89.4**

##### **Presumption of intent.**

Any transfer of property for less than fair market consideration made while the transferor is receiving medical assistance or within five years prior to an application for medical assistance is presumed to be made with the intent, on the part of the transferee, of enabling the transferor to obtain or maintain eligibility for medical assistance. This presumption can be rebutted only by clear and convincing evidence that the transferor's eligibility or potential eligibility for medical assistance was no part of the transferee's reason for accepting the transfer of property.

#### **441—89.5**

##### **Notice of debt.**

The department may issue a notice establishing and demanding payment of an accrued or accruing debt due and owing to the department as provided in rule 441—89.2(249F). The notice shall be sent by restricted certified mail, as defined in Iowa Code section 618.15, to the transferee at the transferee's last-known address. If service of the notice is unable to be completed by restricted certified mail, the notice shall be served upon the transferee in accordance with the Iowa Rules of Civil Procedure. The notice shall include all of the following:

##### **89.5(1) Amount of debt.**

The amount of medical assistance provided to the transferor to date which creates the debt.

##### **89.5(2) Computation of debt.**

A computation of the debt due and owing.

##### **89.5(3) Demand for payment.**

A demand for immediate payment of the debt.

##### **89.5(4) Request for conference.**

- a.* A statement that if the transferee desires to discuss the notice, the transferee may contact the department and request an informal conference.
- b.* A statement that, if a conference is requested, the transferee has until 10 days after the date set for the conference or until 20 days after the date of service of the original notice, whichever is later, to send a written request for a hearing to the department.
- c.* A statement that after the conference, the department may issue a new notice to be sent to the transferee or the transferee's attorney.
- d.* A statement that if the department issues a new notice the transferee has until 10 days after the date of mailing of the new notice or until 20 days after the date of service of the original notice to send a written request for a hearing to the department.

##### **89.5(5) Request for hearing without conference.**

A statement that the transferee has until 20 days after the date of service of the original notice to send a written response setting forth any objections and requesting a hearing to the department.

##### **89.5(6) Hearing in district court.**

A statement that if a timely written request for a hearing is received by the department, the transferee has the right to a hearing to be held in district court; and if no timely written request for hearing is received, the department shall enter an order in accordance with the latest notice.

**89.5(7) Collection action.**

A statement that as soon as the order is entered the property of the transferee is subject to collection action including, but not limited to, wage withholding, garnishment, attachment of a lien, issuance of a distress warrant, or execution.

**89.5(8) Responsibilities of transferee.**

A statement that the transferee must give the department written notice of any change of address or employment.

**89.5(9) Questions.**

A statement that if the transferee has any questions regarding the transfer of assets, the transferee should contact the department or consult an attorney.

**89.5(10) Other information.**

Other information as the department finds appropriate.

**441—89.6**

**No timely request of a hearing.**

**89.6(1) Entering of order.**

If a timely written request for hearing is not received by the department, the department may enter an order in accordance with the latest notice. The order is final, and action by the department to enforce and collect upon the order may be taken from the date of the issuance of the order.

**89.6(2) Order.**

The transferee shall be sent a copy of the order by first-class mail addressed to the transferee at the transferee's last known address or, if applicable, to the transferee's attorney at the last known address of the transferee's attorney. The order shall specify:

- a. The amount to be paid with directions as to the manner of payment.
- b. The amount of the debt accrued and accruing in favor of the department.
- c. Notice that the property of the transferee is subject to collection action including, but not limited to, wage withholding, garnishment, attachment of a lien, issuance of a distress warrant, and execution.

**441—89.7**

**Timely request for a hearing.**

If a timely written request for a hearing is received by the department, the department shall certify the matter for hearing to the district court where the transferee resides or to the district court where the transferor resides if the transferee is not an Iowa resident. If neither the transferor nor the transferee resides in Iowa, the order may be filed in any county in which the transferor formerly resided.

The certification shall include true copies of the original notice, the return of service, any request for an informal conference, if applicable, any subsequent notices, the written request for hearing, and true copies of any administrative orders previously entered.

#### **441—89.8**

##### **Department-requested hearing.**

The department may also request a hearing on its own motion regarding the determination of a debt at any time prior to entry of an administrative order.

#### **441—89.9**

##### **Filing and docketing of the order.**

A true copy of an order entered by the department, pursuant to this chapter, along with a true copy of the return of service, if applicable, may be filed in the office of the clerk of the district court in the county in which the transferee resides or, if the transferee resides in another state, in the office of the district court in the county in which the transferor resides. The department's order shall be presented, ex parte, to the district court for review and approval.

#### **441—89.10**

##### **Exemption from Iowa Code chapter 17A.**

Actions initiated under Iowa Code chapter 249F are not subject to Iowa Code chapter 17A. Review by the district court shall be an original hearing before the district court.

#### **Kansas Code 39-709 (g)(2)**

(2) The amount of any medical assistance paid after June 30, 1992, under the provisions of subsection (e) is (A) a claim against the property or any interest therein belonging to and a part of the estate of any deceased recipient or, if there is no estate, the estate of the surviving spouse, if any, shall be charged for such medical assistance paid to either or both, and (B) a claim against any funds of such recipient or spouse in any account under K.S.A. 9-1215, 9-1216, 17-2263, 17-2264, 17-5828 or 17-5829, and amendments thereto. There shall be no recovery of medical assistance correctly paid to or on behalf of an individual under subsection (e) except after the death of the surviving spouse of the individual, if any, and only at a time when the individual has no surviving child who is under 21 years of age or is blind or permanently and totally disabled. Transfers of real or personal property by recipients of medical assistance without adequate consideration are voidable and may be set aside. Except where there is a surviving spouse, or a surviving child who is under 21 years of age or is blind or permanently and totally disabled, the amount of any medical assistance paid under subsection (e) is a claim against the estate in any guardianship or conservatorship proceeding. The monetary value of any benefits received by the recipient of such medical assistance under long-term care insurance, as defined by K.S.A. 40-2227, and amendments thereto, shall be a credit against the amount of the claim provided for such medical assistance under this subsection (g). The secretary is authorized to enforce each claim provided for under this subsection (g). The secretary shall not be required to pursue every claim, but is granted discretion to determine which claims to pursue. All moneys received by the secretary from claims under this subsection (g) shall be deposited in the social welfare fund. The secretary may adopt rules and regulations for the implementation and administration of the medical assistance recovery program under this subsection (g).

**Minnesota Statutes 256B.0595, subd. 8. and subd. 9**

**Subd. 8. Cause of action; transfer prior to death.**

(a) A cause of action exists against a transferee who receives assets for less than fair market value, either:

(1) from a person who was a recipient of medical assistance and who made an uncompensated transfer that was known to the county agency but a penalty period could not be implemented under this section due to the death of the person; or

(2) from a person who was a recipient of medical assistance who made an uncompensated transfer that was not known to the county agency and the transfer was made with the intent to hinder, delay, or defraud the state or local agency from recovering as allowed under section 256B.15. In determining intent under this clause, consideration may be given, among other factors, to whether:

(i) the transfer was to a family member;

(ii) the transferor retained possession or control of the property after the transfer;

(iii) the transfer was concealed;

(iv) the transfer included the majority of the transferor's assets;

(v) the value of the consideration received was not reasonably equivalent to the fair market value of the property; and

(vi) the transfer occurred shortly before the death of the transferor.

(b) No cause of action exists under this subdivision unless:

(1) the transferee knew or should have known that the transfer was being made by a person who was receiving medical assistance as described in section 256B.15, subdivision 1, paragraph (b); and

(2) the transferee received the asset without providing a reasonable equivalent fair market value in exchange for the transfer.

(c) The cause of action is for the uncompensated amount of the transfer or the amount of medical assistance paid on behalf of the person, whichever is less. The uncompensated transfer amount is the fair market value of the asset at the time it was given away, sold, or disposed of, less the amount of the compensation received.

**Subd. 9. Filing cause of action; limitation.**

(a) The county of financial responsibility under chapter 256G may bring a cause of action under any or all of the following:

(1) subdivision 1, paragraph (f);

(2) subdivision 2, paragraphs (a) and (b);

(3) subdivision 3, paragraph (b);

(4) subdivision 4, paragraph (d); and

(5) subdivision 8

on behalf of the claimant who must be the commissioner.

(b) Notwithstanding any other law to the contrary, a cause of action under subdivision 2, paragraph (a) or (b), or 8, must be commenced within six years of the date the local agency determines that a transfer was made for less than fair market value. Notwithstanding any other law to the contrary, a cause of action under subdivision 3, paragraph (b), or 4, clause (5), must be commenced within six years of the date of approval of a waiver of the penalty period for a transfer for less than fair market value based on undue hardship.

**Oregon ORS 411.708 and 411.620**

**§ 411.708<sup>1</sup>**

**Recovery of supplemental income program assistance from certain estates**

- exceptions
- certain transfers of property voidable

(1) The amount of any assistance paid under ORS 411.706 (Oregon Supplemental Income Program) is a claim against the property or interest in the property belonging to and a part of the estate of any deceased recipient. If the deceased recipient has no estate, the estate of the surviving spouse of the deceased recipient, if any, shall be charged for assistance granted under ORS 411.706 (Oregon Supplemental Income Program) to the deceased recipient or the surviving spouse. There shall be no adjustment or recovery of assistance correctly paid on behalf of any deceased recipient under ORS 411.706 (Oregon Supplemental Income Program) except after the death of the surviving spouse of the deceased recipient, if any, and only at a time when the deceased recipient has no surviving child who is under 21 years of age or who is blind or has a disability. Transfers of real or personal property by recipients of assistance without adequate consideration are voidable and may be set aside under ORS 411.620 (Recovery of public assistance obtained or disposed of unlawfully) (2).

(2) Except when there is a surviving spouse, or a surviving child who is under 21 years of age or who is blind or has a disability, the amount of any assistance paid under ORS 411.706 (Oregon Supplemental Income Program) is a claim against the estate in any conservatorship proceedings and may be paid pursuant to ORS 125.495 (Payment of claims against estate or protected person).

(3) Nothing in this section authorizes the recovery of the amount of any assistance from the estate or surviving spouse of a recipient to the extent that the need for assistance resulted from a crime committed against the recipient.

**§ 411.620<sup>1</sup>**

**Recovery of public assistance obtained or disposed of unlawfully**

(1) The Department of Human Services or the Oregon Health Authority may prosecute a civil suit or action against any person who has obtained, for personal benefit or for the benefit of any other person, any amount or type of general assistance or public assistance or has aided any other person to obtain such general assistance or public assistance, in violation of any provision of ORS 411.630 (Unlawfully obtaining public assistance), or in violation of ORS 411.640 (Overpayments of public assistance). In such suit or action the department or the authority may recover the amount or value

of such general assistance or public assistance so obtained in violation of ORS 411.630 (Unlawfully obtaining public assistance), or in violation of ORS 411.640 (Overpayments of public assistance), with interest thereon, together with costs and disbursements incurred therein.

(2) Excepting as to bona fide purchasers for value, the department, the authority, the conservator for the recipient or the personal representative of the estate of a deceased recipient may prosecute a civil suit or action to set aside the transfer, gift or other disposition of any money or property made in violation of any provisions of ORS 411.630 (Unlawfully obtaining public assistance), 411.708 (Recovery of supplemental income program assistance from certain estates) and 416.350 (Recovery of medical assistance) and the department or the authority may recover out of such money or property, or otherwise, the amount or value of any general assistance or public assistance obtained as a result of such violation, with interest thereon, together with costs and disbursements incurred therein.

## Attachment 4. Effective Dates

### Expanded Definition of Estate

All applicable statutory changes apply to any individual who dies on or after the latter of October 1, 2013, or 90 days after the passage of the 2013-15 Biennial Budget.

*← which, exactly*  
*→ 90 days after July 1*  
*← this will always be Oct 1 or later*

### Notice of Encumbrance/Potential Claim

All applicable statutory changes apply to any individual, or the spouse of that individual, who is receiving medical assistance on or after the latter of October 1, 2013, or 90 days after the passage of the 2013-15 Biennial Budget. This would allow us to file notices for members who on Medicaid prior to the effective date and continue on Medicaid after the effective date.

### Limit the Amount Retained by a Pooled Trust

All applicable statutory changes apply to trusts established by individuals who apply for medical assistance on or after the latter of October 1, 2013, or 90 days after the passage of the 2013-15 Biennial Budget. This would mean that many members with existing trusts would have to have their trust repayment sections amended to reflect the new payback requirement or else become ineligible for Medicaid.

### Notice of Termination of Special Need Trust

All applicable statutory changes apply to any trust terminated on or after the latter of October 1, 2013, or 90 days after the passage of the 2013-15 Biennial Budget.

### Recovery of All Services for Members Participating in a Long-Term Care Waiver Program

All applicable statutory changes apply to any additional services that are received by the individual on or after the latter of October 1, 2013, or 90 days after the passage of the 2013-15 Biennial Budget.

### Recovery of the Capitation Payment Amount in Managed Care Situations

All applicable statutory changes apply to any capitation payments made for services that are received by the individual on or after the latter of October 1, 2013, or 90 days after the passage of the 2013-15 Biennial Budget.

### Voiding Unrecorded and Certain Other Real Property Transfers

All applicable statutory changes apply to any interests in property that are conveyed or transferred on or after the latter of October 1, 2013, or 90 days after the passage of the 2013-15 Biennial Budget. They also apply to any conveyances or transfers made prior to that date by any

individual who is receiving medical assistance on or after that date if those conveyances or transfers were not reported or disclosed to the medical assistance certifying agency as required.