



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-0617/01
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DOA:.....Iwata, BB0260 – Estate recovery for Medical Assistance

FOR 2013-2015 BUDGET – NOT READY FOR INTRODUCTION

(213)
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1 AN ACT ~~x~~; relating to: the budget.

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

MEDICAL ASSISTANCE

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

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

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

2 SECTION 1. 20.435 (4) (im) of the statutes is amended to read:

3 20.435 (4) (im) *Medical assistance; correct payment recovery; collections; other*
4 *recoveries.* All moneys received from the recovery of correct medical assistance
5 payments under ss. 49.496 and 867.035 and rules promulgated under s. 46.286 (7)
6 49.849, all moneys received as collections and other recoveries from providers, drug

1 manufacturers, and other 3rd parties under medical assistance performance-based
2 contracts, and all moneys credited to this appropriation account under s. 49.89 (7)
3 (f), for payments to counties and tribal governing bodies under s. 49.496 (4) (a), for
4 payment of claims under s. ~~867.035 (3)~~ 49.849 (5), for payments to the federal
5 government for its share of medical assistance benefits recovered, for the state share
6 of medical assistance benefits provided under subch. IV of ch. 49, and for costs related
7 to collections and other recoveries.

8 **SECTION 2.** 20.435 (4) (in) of the statutes is amended to read:

9 20.435 (4) (in) *Community options program; family care; recovery of costs*
10 *administration.* From the moneys received from the recovery of costs of care under
11 ss. 46.27 (7g) and ~~867.035 and under rules promulgated under s. 46.286 (7)~~ 49.849
12 for enrollees who are ineligible for medical assistance, the amounts in the schedule
13 for administration of the recovery of costs of the care.

14 **SECTION 3.** 20.435 (7) (im) of the statutes is amended to read:

15 20.435 (7) (im) *Community options program; family care benefit; recovery of*
16 *costs; birth to 3 waiver administration.* From the moneys received from the recovery
17 of costs of care under ss. 46.27 (7g) and ~~867.035 and under rules promulgated under~~
18 ~~s. 46.286 (7)~~ 49.849 for enrollees who are ineligible for medical assistance, all moneys
19 not appropriated under sub. (4) (in), and all moneys transferred to this appropriation
20 account from the appropriation account under sub. (4) (o), for payments to county
21 departments and aging units under s. 46.27 (7g) (d), payments to care management
22 organizations for provision of the family care benefit under s. 46.284 (5), payment of
23 claims under s. ~~867.035 (3)~~ 49.849 (5), payments for long-term community support
24 services funded under s. 46.27 (7) as provided in ss. 46.27 (7g) (e) and ~~867.035 (4m)~~
25 49.849 (6) (b), and for administration of the waiver program under s. 46.99.

and affidavits ✓

1 SECTION 4. 46.286 (7) of the statutes is amended to read:

2 46.286 (7) RECOVERY OF FAMILY CARE BENEFIT PAYMENTS; RULES. The department
3 shall promulgate rules relating apply to the recovery from persons who receive the
4 family care benefit, including by liens and from estates, of correctly and incorrectly
5 paid family care benefits, ~~that are substantially similar to the~~ applicable provisions
6 under ss. 49.496 and ~~49.497~~ 49.849.

7 SECTION 5. 46.287 (2) (a) 1. k. of the statutes is amended to read:

8 46.287 (2) (a) 1. k. Recovery of family care benefit payments under s. 46.286
9 (~~7~~).

10 SECTION 6. 49.496 (1) (a) of the statutes is renumbered 49.496 (1) (ah).

11 SECTION 7. 49.496 (1) (af) of the statutes is created to read:

12 49.496 (1) (af) "Decedent" means a deceased recipient or a deceased
13 nonrecipient surviving spouse, whichever is appropriate.

14 SECTION 8. 49.496 (1) (bk) of the statutes is created to read:

15 49.496 (1) (bk) "Long-term care program" means any of the following:

- 16 1. The family care program providing the benefit under s. 46.286.
- 17 2. The self-directed services option that operates under a waiver from the
18 secretary of the federal department of health and human services under 42 USC
19 1396n (c) in which an enrolled individual selects his or her own services and service
20 providers.
- 21 3. The family care partnership program that is an integrated health and
22 long-term care program operated under an amendment to the state medical
23 assistance plan, as authorized in 42 USC 1396n (i).
- 24 4. The program for all-inclusive care for the elderly under 42 USC 1396u-4.

SECTION 8

1 5. Any program that provides long-term care services and is operated by the
2 department under an amendment to the state medical assistance plan under 42 USC
3 1396n (i), a waiver of medical assistance laws under 42 USC 1396n (c) or 42 USC
4 1396n (b) and (c), or a demonstration project under 42 USC 1315 or 42 USC 1396n
5 (c).

6 **SECTION 9.** 49.496 (1) (bw) of the statutes is created to read:

7 49.496 (1) (bw) “Nonrecipient surviving spouse” means any person who was
8 married to a recipient while the recipient was receiving services for which the cost
9 may be recovered under sub. (3) (a) and who survived the recipient.

10 **SECTION 10.** 49.496 (3) (a) (intro.) of the statutes is amended to read:

11 49.496 (3) (a) (intro.) Except as provided in par. (b), the department shall file
12 a claim against the estate of a recipient, and against the estate of a nonrecipient
13 surviving spouse, for all of the following, subject to the exclusion of any amounts
14 under the Long-Term Care Partnership Program established under s. 49.45 (31),
15 unless already recovered by the department under this section:

16 **SECTION 11.** 49.496 (3) (a) 2. a. of the statutes is amended to read:

17 49.496 (3) (a) 2. a. Home-based or community-based services under 42 USC
18 1396d (a) (7) and (8) ~~and under any waiver granted under 42 USC 1396n (e) (4) (B)~~
19 ~~or 42 USC 1396u.~~

20 **SECTION 12.** 49.496 (3) (a) 2. am. of the statutes is created to read:

21 49.496 (3) (a) 2. am. Any services provided as a benefit under a long-term care
22 program.

23 **SECTION 13.** 49.496 (3) (a) 2. b. of the statutes is repealed.

24 **SECTION 14.** 49.496 (3) (a) 2. c. of the statutes is repealed.

25 **SECTION 15.** 49.496 (3) (ad) of the statutes is created to read:

1 49.496 (3) (ad) The amount the department may claim against an estate of a
2 recipient for services that are described under par. (a) 2. am. and that are provided
3 by a managed long-term care program funded by capitated payments is equal to the
4 amount of the capitated payment for that recipient.

5 **SECTION 16.** 49.496 (3) (aj) of the statutes is created to read:

6 49.496 (3) (aj) There is a presumption, which may be rebutted by clear and
7 convincing evidence, that all property in the estate of a nonrecipient surviving
8 spouse was marital property held with the recipient and that 100 percent of the
9 property in the estate of the nonrecipient surviving spouse is subject to the
10 department's claim under par. (a).

11 **SECTION 17.** 49.496 (3) (am) (intro.) of the statutes is amended to read:

12 49.496 (3) (am) (intro.) The court shall reduce the amount of a claim under par.
13 (a) by up to the amount specified in s. 861.33 (2) if necessary to allow the recipient's
14 decedent's heirs or the beneficiaries of the ~~recipient's~~ decedent's will to retain the
15 following personal property:

16 **SECTION 18.** 49.496 (3) (c) 1. of the statutes is amended to read:

17 49.496 (3) (c) 1. If the department's claim is not allowable because of par. (b)
18 and the estate includes an interest in any real property, including a home, the court
19 exercising probate jurisdiction shall, in the final judgment or summary findings and
20 order, assign the interest in the ~~home~~ real property subject to a lien in favor of the
21 department for the amount described in par. (a). The personal representative or
22 petitioner for summary settlement or summary assignment of the estate shall record
23 the final judgment as provided in s. 863.29, 867.01 (3) (h), or 867.02 (2) (h).

24 **SECTION 19.** 49.496 (3) (c) 2. of the statutes is amended to read:

1 49.496 (3) (c) 2. If the department's claim is not allowable because of par. (b),
2 the estate includes an interest in any real property, including a home, and the
3 personal representative closes the estate by sworn statement under s. 865.16, the
4 personal representative shall stipulate in the statement that the ~~home~~ real property
5 is assigned subject to a lien in favor of the department for the amount described in
6 par. (a). The personal representative shall record the statement in the same manner
7 as described in s. 863.29, as if the statement were a final judgment.

8 SECTION 20. 49.496 (3) (d) (intro.) of the statutes is amended to read:

9 49.496 (3) (d) (intro.) The department may not enforce ~~the~~ a lien under par. (c)
10 on a home as long as any of the following survive the decedent:

****NOTE: Am I correct to assume that, even with the survivors mentioned, the lien
may be enforced against real property that is not a home?

Insert 6-11

11 SECTION 21. 49.496 (6) (b) of the statutes is amended to read:

12 49.496 (6) (b) The department may file a claim under sub. (3) only with respect
13 to a recipient who dies after ~~September 30, 1991~~ the date that is 90 days after the
14 effective date of this paragraph [LRB inserts date].

15 SECTION 22. 49.496 (6m) of the statutes is amended to read:

16 49.496 (6m) WAIVER DUE TO HARDSHIP. The department shall promulgate rules
17 establishing standards for determining whether the application of this section would
18 work an undue hardship in individual cases. If the department determines that the
19 application of this section would work an undue hardship in a particular case, the
20 department shall waive application of this section in that case. This subsection does
21 not apply with respect to claims against the estates of nonrecipient surviving
22 spouses.

23 SECTION 23. 49.4962 of the statutes is created to read:

1 **49.4962 Voiding certain transfers of real property. (1) DEFINITIONS.** In
2 this section:

3 (a) “Conveyance” has the meaning given in s. 706.01 (4).

4 (b) “Fair market value” means the price that a willing buyer would pay a willing
5 seller for the purchase of real property.

6 (c) “Fraudulent transfer” means any of the following:

7 1. A transfer of title to real property for less than fair market value.

8 2. A transfer of title to real property by a conveyance that is not recorded in the
9 office of the register of deeds of the county in which the real property is located.

10 **(2) VOIDABLE TRANSFERS.** (a) A transfer of real property to which all of the
11 following apply is voidable by the department:

12 1. The transfer was made by a person receiving or who received medical
13 assistance, or someone on his or her behalf, during the time that the person was
14 eligible for medical assistance.

15 2. The department was not notified and was unaware that the transfer was
16 made.

17 3. The transfer was made to hinder, delay, or defraud the department from
18 recovering medical assistance benefits that were paid on behalf of the transferor.

19 (b) The department may commence an action in circuit court against the
20 transferee to void the transfer. If the court voids the transfer, the title to the real
21 property reverts to the transferor or his or her estate.

 ****NOTE: Practically, how would the department void a transfer except by a court
action?

22 **(3) PRESUMPTION.** There is a presumption, which may be rebutted by clear and
23 convincing evidence, that a transfer described in sub. (2) (a) 1. that is a fraudulent

1 transfer was made to hinder, delay, or defraud the department from recovering
2 medical assistance benefits that were paid on behalf of the transferor.

3 (4) BURDEN OF PROOF. With respect to a transfer under sub. (1) (c) 1., the burden
4 of proof for establishing fair market value is on the party to whom the property was
5 transferred. Fair market value must be established through a credible methodology,
6 which may include an appraisal performed by a licensed appraiser.

7 (5) INAPPLICABLE TO PURCHASER IN GOOD FAITH. Subsection (2) does not apply if,
8 after the transfer described in sub. (2), the real property was transferred to a
9 purchaser in good faith and for a valuable consideration and the conveyance was
10 recorded.

By a conveyance

11 SECTION 24. 49.682 (1) (am) of the statutes is created to read:

12 49.682 (1) (am) "Decedent" means a deceased client or a deceased nonclient
13 surviving spouse, whichever is applicable.

14 SECTION 25. 49.682 (1) (d) of the statutes is created to read:

15 49.682 (1) (d) "Nonclient surviving spouse" means any person who was married
16 to a client while the client was receiving services for which the cost may be recovered
17 under sub. (2) (a) and who survived the client.

18 SECTION 26. 49.682 (2) (a) of the statutes is amended to read:

19 49.682 (2) (a) Except as provided in par. (d), the department shall file a claim
20 against the estate of a client ~~or, and~~ against the estate of ~~the~~ a nonclient surviving
21 spouse ~~of a client,~~ for the amount of aid under s. 49.68, 49.683, or 49.685 paid to or
22 on behalf of the client.

23 SECTION 27. 49.682 (2) (bm) of the statutes is created to read:

24 49.682 (2) (bm) There is a presumption, which may be rebutted by clear and
25 convincing evidence, that all property in the estate of the nonclient surviving spouse

1 was marital property held with the client and that 100 percent of the property in the
2 estate of the nonclient surviving spouse is subject to the department's claim under
3 par. (a).

4 **SECTION 28.** 49.682 (2) (c) (intro.) of the statutes is amended to read:

5 49.682 (2) (c) (intro.) The court shall reduce the amount of a claim under par.
6 (a) by up to the amount specified in s. 861.33 (2) if necessary to allow the ~~client's~~
7 decedent's heirs or the beneficiaries of the ~~client's~~ decedent's will to retain the
8 following personal property:

9 **SECTION 29.** 49.682 (2) (e) 1. of the statutes is amended to read:

10 49.682 (2) (e) 1. If the department's claim is not allowable because of par. (d)
11 and the estate includes an interest in real property, including a home, the court
12 exercising probate jurisdiction shall, in the final judgment or summary findings and
13 order, assign the interest in the ~~home~~ real property subject to a lien in favor of the
14 department for the amount described in par. (a). The personal representative or
15 petitioner for summary settlement or summary assignment of the estate shall record
16 the final judgment as provided in s. 863.29, 867.01 (3) (h), or 867.02 (2) (h).

17 **SECTION 30.** 49.682 (2) (e) 2. of the statutes is amended to read:

18 49.682 (2) (e) 2. If the department's claim is not allowable because of par. (d),
19 the estate includes an interest in real property, including a home, and the personal
20 representative closes the estate by sworn statement under s. 865.16, the personal
21 representative shall stipulate in the statement that the ~~home~~ real property is
22 assigned subject to a lien in favor of the department for the amount described in par.
23 (a). The personal representative shall record the statement in the same manner as
24 described in s. 863.29, as if the statement were a final judgment.

25 **SECTION 31.** 49.682 (2) (f) (intro.) of the statutes is amended to read:

Insert 10-2

1 49.682 (2) (f) (intro.) The department may not enforce the lien under par. (e)
2 on a home as long as any of the following survive the decedent:



3 SECTION 32. 49.682 (3) of the statutes is amended to read:

4 49.682 (3) The department shall administer the program under this section
5 and may contract with an entity to administer all or a portion of the program,
6 including gathering and providing the department with information needed to
7 recover payment of aid provided under s. 49.68, 49.683, or 49.685. All funds received
8 under this subsection, net of any amount claimed under s. ~~867.035 (3)~~ 49.849 (5),
9 shall be remitted for deposit in the general fund.

10 SECTION 33. 49.682 (4) (b) of the statutes is amended to read:

11 49.682 (4) (b) The department may file a claim under sub. (2) only with respect
12 to a client who dies after September 1, 1995 the date that is 90 days after the effective
13 date of this paragraph ... [LRB inserts date].

14 SECTION 34. 49.682 (5) of the statutes is amended to read:

15 49.682 (5) The department shall promulgate rules establishing standards for
16 determining whether the application of this section would work an undue hardship
17 in individual cases. If the department determines that the application of this section
18 would work an undue hardship in a particular case, the department shall waive
19 application of this section in that case. This subsection does not apply with respect
20 to claims against the estates of nonclient surviving spouses.

Insert 10-20

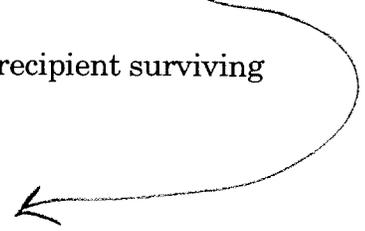


21 SECTION 35. 49.849 of the statutes is created to read:

22 49.849 Recovery by affidavit of correct payments under certain public
23 assistance programs. (1) In this section:

24 (a) "Decedent" means a deceased recipient or a deceased nonrecipient surviving
25 spouse, whichever is appropriate.

DEFINITIONS.



1 (b) "Department" means the department of health services. ✓

2 (c) "Nonrecipient surviving spouse" ✓ means any person who was married to a
3 recipient while the recipient was receiving public assistance and who survived the
4 recipient.

5 (d) 1. "Property of a decedent" ✓ means all real and personal property to which
6 the decedent held any legal title or in which the decedent had any legal interest at
7 the time of death, to the extent of that title or interest, including assets transferred
8 to a survivor, heir, or assignee through joint tenancy, tenancy in common,
9 survivorship, life estate, living trust, or any other arrangement.

***NOTE: This language parallels the federal law. However, instead of "at the time of death," should the language be "immediately before death," as in s. 867.035 (1) (a) (intro.)?

10 2. Notwithstanding subd. 1., "property of a decedent" includes any marital
11 property in which the recipient had an interest, within 5 years before the date on
12 which the recipient applied for public assistance, with the spouse to whom the
13 recipient was married on the date on which the recipient applied for public
14 assistance.

***NOTE: Does this work for both decedents, even if the surviving spouse was not the same spouse as the one on the date on which the recipient applied for public assistance?

15 (e) "Public assistance" means any services provided as a benefit under a
16 long-term care program, as defined in s. 49.496 (1) (bk), medical assistance under
17 subch. IV, long-term community support services funded under s. 46.27 (7), or aid
18 under s. 49.68, 49.683, or 49.685.

19 (f) "Recipient" means a person who received public assistance.

***NOTE: Section 867.035 is renumbered into this new section.

20 (2) (c) There is a presumption, which may be rebutted by clear and convincing
21 evidence, that all property of the deceased nonrecipient surviving spouse was

Insert 11-19 ✓

SECTION 35

TRANSMITTAL OF PROPERTY UPON RECEIPT OF

AFFIDAVIT

1 marital property held with the recipient and that 100 percent of the property of the
2 deceased nonrecipient surviving spouse is subject to the department's claim under
3 par. (a).

Insert 12-3

4 (3)(a) Any of the decedent's property that is transferred by a person who has
5 possession of the property at the time of the decedent's death is subject to the right
6 of the department to recover the amounts specified in sub. (2) (a). Upon request, the
7 person who transferred the property shall provide to the department information
8 about the decedent's property that the person has transferred and information about
9 the persons to whom the property was transferred.

Insert 12-9

10 SECTION 36. 700.24 of the statutes is amended to read:

11 **700.24 Death of a joint tenant; effect of liens.** A real estate mortgage, a
12 security interest under ch. 409, or a lien under s. 72.86 (2), 1985 stats., or s. 71.91 (5)
13 (b), ~~or ch. 49 or 779 or rules promulgated under s. 46.286 (7)~~ on or against the interest
14 of a joint tenant does not defeat the right of survivorship in the event of the death
15 of such joint tenant, but the surviving joint tenant or tenants take the interest such
16 deceased joint tenant could have transferred prior to death subject to such mortgage,
17 security interest, or statutory lien.

18 SECTION 37. 701.065 (1) (b) 1. of the statutes is amended to read:

19 701.065 (1) (b) 1. The claim is a claim based on tort, on a marital property
20 agreement that is subject to the time limitations under s. 766.58 (13) (b) or (c), on
21 Wisconsin income, franchise, sales, withholding, gift, or death taxes, or on
22 unemployment compensation contributions due or benefits overpaid; a claim for
23 funeral or administrative expenses; a claim of this state under s. 46.27 (7g), 49.496
24 ~~or, 49.682, or rules promulgated under s. 46.286 (7) 49.849;~~ or a claim of the United
25 States.

1 **SECTION 38.** 701.065 (5) of the statutes is created to read:

2 701.065 (5) CLAIMS OF DEPARTMENT OF HEALTH SERVICES. (a) *Definitions.* In this
3 subsection:

4 1. “Department” means the department of health services.

5 2. “Long-term care program” has the meaning given in s. 49.496 (1) (bk).

6 (b) *Living trusts.* 1. Notwithstanding sub. (1) (a), if a settlor of a living trust
7 received, at any time before death, any services provided as a benefit under a
8 long-term care program, medical assistance under subch. IV of ch. 49, long-term
9 community support services funded under s. 46.27 (7), or aid under s. 49.68, 49.683,
10 or 49.685, the trustee shall provide written notice to the department within 30 days
11 after the death of the settlor and before any property held in the trust is distributed.

 ****NOTE: What information should the notice provide to DHS?

 ****NOTE: Is this okay or do you want to limit this to either a revocable or an
irrevocable living trust?

12 2. After the death of a settlor described in subd. 1., the department may recover
13 under s. 46.27 (7g), 49.496, 49.682, or 49.849, from property held in the living trust
14 immediately before the settlor’s death, an amount equal to the medical assistance
15 that is recoverable under s. 49.496 (3) (a), an amount equal to aid under s. 49.68,
16 49.683, or 49.685 that is recoverable under s. 49.682 (2) (a), or an amount equal to
17 long-term community support services under s. 46.27 that is recoverable under s.
18 46.27 (7g) (c) 1. and that was paid on behalf of the decedent or the decedent’s spouse.

19 3. If a trustee under subd. 1. distributes property from the trust before the
20 department makes a request to the trustee for the recovery of any amount specified
21 in subd. 2., the trustee shall provide the department with information about the
22 distributed property and to whom it was distributed or transferred. The department

1 is entitled to recover any amounts specified in subd. 2. from the persons to whom the
2 property was distributed or transferred.

3 (c) *Special needs or pooled trusts.* 1. Notwithstanding sub. (1) (a), within 30
4 days after the death of a beneficiary under a trust described in 42 USC 1396p (d) (4)
5 (A) or (C), the trustee shall provide written notice to the department and shall repay
6 the department for any medical assistance paid on behalf of the decedent, as required
7 under the terms of the trust.

****NOTE: What information should the notice provide to DHS?

****NOTE: Is 30 days sufficient time for the trustee to comply with the repayments
provisions in the trust, or is it only the notice that must be given within 30 days of death?

8 2. If a trustee under subd. 1. fails to comply with the notice and repayment
9 requirements under subd. 1., the trustee is personally liable to the department for
10 any costs the department incurs in recovering medical assistance amounts paid on
11 behalf of the decedent from property distributed from the trust before any repayment
12 is made and for any recoverable amounts that the department is unable to recover
13 from persons to whom the property was distributed.

14 3. Notwithstanding the terms of the trust, after the death of a beneficiary under
15 a trust described in 42 USC 1396p (d) (4) (C), the trustee may retain up to 30 percent
16 of the balance in the decedent's account, unless the trustee fails to comply with the
17 notice and repayment requirements under subd. 1., in which case the trustee may
18 not retain any of the balance in the decedent's account.

19 **SECTION 39.** 705.04 (2g) of the statutes is amended to read:

20 705.04 (2g) Notwithstanding subs. (1) and (2), the department of health
21 services may collect, from funds of a decedent that are held by the decedent
22 immediately before death in a joint account or a P.O.D. account, an amount equal to
23 the medical assistance that is recoverable under s. 49.496 (3) (a), an amount equal

1 to aid under s. 49.68, 49.683, or 49.685 that is recoverable under s. 49.682 (2) (a), or
2 an amount equal to long-term community support services under s. 46.27 that is
3 recoverable under s. 46.27 (7g) (c) 1. and that was paid on behalf of the decedent or
4 the decedent's spouse ~~or an amount equal to the family care benefit under s. 46.286~~
5 ~~that is recoverable under rules promulgated under s. 46.286 (7) and that was paid~~
6 ~~on behalf of the decedent or the decedent's spouse.~~

7 **SECTION 40.** 859.02 (2) (a) of the statutes is amended to read:

8 859.02 (2) (a) It is a claim based on tort, on a marital property agreement that
9 is subject to the time limitations under s. 766.58 (13) (b) or (c), on Wisconsin income,
10 franchise, sales, withholding, gift, or death taxes, or on unemployment insurance
11 contributions due or benefits overpaid; a claim for funeral or administrative
12 expenses; a claim of this state under s. 46.27 (7g), 49.496 ~~or~~, 49.682, or rules
13 ~~promulgated under s. 46.286 (7)~~ 49.849; or a claim of the United States; or

14 **SECTION 41.** 859.07 (2) (a) 3. of the statutes is amended to read:

15 859.07 (2) (a) 3. The decedent or the decedent's spouse received ~~the family care~~
16 ~~benefit under s. 46.286~~ services provided as a benefit under a long-term care
17 program, as defined in s. 49.496 (1) (bk), medical assistance under subch. IV of ch.
18 49, long-term community support services funded under s. 46.27 (7), or aid under s.
19 49.68, 49.683, or 49.685.

20 **SECTION 42.** 867.01 (3) (am) 4. of the statutes is amended to read:

21 867.01 (3) (am) 4. Whether the decedent or the decedent's spouse received ~~the~~
22 ~~family care benefit under s. 46.286~~ services provided as a benefit under a long-term
23 care program, as defined in s. 49.496 (1) (bk), medical assistance under subch. IV of
24 ch. 49, long-term community support services funded under s. 46.27 (7) or aid under
25 s. 49.68, 49.683 or 49.685.

1 **SECTION 43.** 867.01 (3) (d) of the statutes is amended to read:

2 867.01 **(3)** (d) *Notice.* The court may hear the matter without notice or order
3 notice to be given under s. 879.03. If the decedent or the decedent's spouse received
4 ~~the family care benefit under s. 46.286~~ services provided as a benefit under a
5 long-term care program, as defined in s. 49.496 (1) (bk), medical assistance under
6 subch. IV of ch. 49, long-term community support services funded under s. 46.27 (7),
7 or aid under s. 49.68, 49.683, or 49.685, the petitioner shall give notice by certified
8 mail to the department of health services as soon as practicable after filing the
9 petition with the court.

10 **SECTION 44.** 867.02 (2) (am) 6. of the statutes is amended to read:

11 867.02 **(2)** (am) 6. Whether the decedent or the decedent's spouse received ~~the~~
12 ~~family care benefit under s. 46.286~~ services provided as a benefit under a long-term
13 care program, as defined in s. 49.496 (1) (bk), medical assistance under subch. IV of
14 ch. 49, long-term community support services funded under s. 46.27 (7), or aid under
15 s. 49.68, 49.683, or 49.685.

16 **SECTION 45.** 867.03 (1g) (c) of the statutes is amended to read:

17 867.03 **(1g)** (c) Whether the decedent or the decedent's spouse ever received ~~the~~
18 ~~family care benefit under s. 46.286~~ services provided as a benefit under a long-term
19 care program, as defined in s. 49.496 (1) (bk), medical assistance under subch. IV of
20 ch. 49, long-term community support services funded under s. 46.27 (7) or aid under
21 s. 49.68, 49.683 or 49.685.

22 **SECTION 46.** 867.03 (1m) (a) of the statutes is amended to read:

23 867.03 **(1m)** (a) Whenever an heir, trustee, or person who was guardian of the
24 decedent at the time of the decedent's death intends to transfer a decedent's property
25 by affidavit under sub. (1g) and the decedent or the decedent's spouse ever received

1 ~~the family care benefit under s. 46.286~~ services provided as a benefit under a
2 long-term care program, as defined in s. 49.496 (1) (bk), medical assistance under
3 subch. IV of ch. 49, long-term community support services funded under s. 46.27 (7),
4 or aid under s. 49.68, 49.683, or 49.685, the heir, trustee, or person who was guardian
5 of the decedent at the time of the decedent's death shall give notice to the department
6 of health services of his or her intent. The notice shall include the information in the
7 affidavit under sub. (1g) and the heir, trustee, or person who was guardian of the
8 decedent at the time of the decedent's death shall give the notice by certified mail,
9 return receipt requested.

10 **SECTION 47.** 867.03 (1m) (b) of the statutes is amended to read:

11 867.03 **(1m)** (b) An heir, trustee, or person who was guardian of the decedent
12 at the time of the decedent's death who files an affidavit under sub. (1g) that states
13 that the decedent or the decedent's spouse received ~~the family care benefit under s.~~
14 ~~46.286~~ services provided as a benefit under a long-term care program, as defined in
15 s. 49.496 (1) (bk), medical assistance under subch. IV of ch. 49, long-term community
16 support services funded under s. 46.27 (7), or aid under s. 49.68, 49.683, or 49.685
17 shall attach to the affidavit the proof of mail delivery of the notice required under par.
18 (a) showing ~~a~~ the delivery date ~~that is not less than 10 days before the day on which~~
19 ~~the heir, trustee, or person who was guardian of the decedent at the time of the~~
20 ~~decedent's death files the affidavit.~~

21 **SECTION 48.** 867.03 (2g) of the statutes is renumbered 867.03 (2g) (a) and
22 amended to read:

23 867.03 **(2g)** (a) By accepting the decedent's property under this section the heir,
24 trustee, or guardian assumes a duty to apply the property transferred for the
25 payment of obligations according to priorities established under s. 859.25 and to

1 distribute any balance to those persons designated in the appropriate governing
2 instrument, as defined in s. 854.01, of the decedent or if there is no governing
3 instrument, according to the rules of intestate succession under ch. 852, subject to
4 par. (b). An heir or guardian may publish a notice to creditors in the same manner
5 and with the same effect as a trustee under s. 701.065. This ~~subsection~~ paragraph
6 does not prohibit any appropriate person from requesting administration of the
7 decedent's estate under s. 856.07 or ch. 865.

8 **SECTION 49.** 867.03 (2g) (b) of the statutes is created to read:

9 867.03 (2g) (b) Property transferred under this section to or by an heir, trustee,
10 or guardian is subject to the right of the department of health services to recover
11 under s. 46.27 (7g), 49.496, 49.682, or 49.849 an amount equal to the medical
12 assistance that is recoverable under s. 49.496 (3) (a), an amount equal to aid under
13 s. 49.68, 49.683, or 49.685 that is recoverable under s. 49.682 (2) (a), or an amount
14 equal to long-term community support services under s. 46.27 that is recoverable
15 under s. 46.27 (7g) (c) 1. and that was paid on behalf of the decedent or the decedent's
16 spouse. Upon request, the heir, trustee, or guardian shall provide to the department
17 of health services information about any of the decedent's property that the heir,
18 trustee, or guardian has distributed and information about the persons to whom the
19 property was distributed.

20 **SECTION 50.** 867.035 (title) of the statutes is repealed.

21 **SECTION 51.** 867.035 (1) (a) (intro.) of the statutes is renumbered 49.849 (2) (a)
22 (intro.) and amended to read:

23 49.849 (2) (a) (intro.) Subject to par. ~~(bm)~~ (b), the department ~~of health services~~
24 may collect from the property of a decedent, ~~including funds of a decedent that are~~
25 ~~held by the decedent immediately before death in a joint account or a P.O.D. account,~~

1 by affidavit under sub. ~~(2)~~ (3) (b) or by lien under sub. ~~(2m)~~ (4) an amount equal to
 2 the medical assistance that is recoverable under s. 49.496 (3) (a), the long-term
 3 community support services under s. 46.27 that is recoverable under s. 46.27 (7g) (c)
 4 1., ~~the family care benefit that is recoverable under rules promulgated under s.~~
 5 ~~46.286 (7),~~ or the aid under s. 49.68, 49.683, or 49.685 that is recoverable under s.
 6 49.682 (2) [✓](a) [→] and that was paid on behalf of the decedent or the decedent's spouse,
 7 if all of the following conditions are satisfied:

8 **SECTION 52.** 867.035 (1) (a) 1. of the statutes is renumbered 49.849 (2) (a) 1.

****NOTE: I have retained this provision. Don't you need to know whether there will
 be an estate in which to file a claim?

9 **SECTION 53.** 867.035 (1) (a) 2. of the statutes is renumbered 49.849 (2) (a) 2. and
 10 amended to read:

11 49.849 (2) (a) 2. The decedent died after ~~September 30, 1991~~ the date that is
 12 90 days after the effective date of this subdivision [LRB inserts date].

13 **SECTION 54.** 867.035 (1) (a) 3. of the statutes is renumbered 49.849 (2) (a) 3.

14 **SECTION 55.** 867.035 (1) (a) 4. of the statutes is repealed.

15 **SECTION 56.** 867.035 (1) (bm) of the statutes is renumbered 49.849 (2) (b), and
 16 49.849 (2) (b) (intro.), as renumbered, is amended to read:

17 49.849 (2) (b) (intro.) The department ~~of health services~~ shall reduce the
 18 amount of its recovery under par. (a) by up to the amount specified in s. 861.33 (2)
 19 if necessary to allow the decedent's heirs or beneficiaries under the decedent's will
 20 to retain the following personal property of the decedent:

21 **SECTION 57.** 867.035 (2) of the statutes is renumbered 49.849 (3) (b) and
 22 amended to read:

1 49.849 (3) (b) A person who possesses or receives property of a decedent shall
 2 transmit the property to the department of ~~health services~~, if the conditions in sub.
 3 ~~(1) (a) 1. to 4.~~ (2) (a) 1. to 3. are satisfied, upon receipt of an affidavit by a person
 4 designated by the secretary of health services to administer this section showing that
 5 the department paid on behalf of the decedent or the decedent's spouse recoverable
 6 benefits specified in sub. ~~(1)~~ (2) (a). Upon transmittal, the person is released from
 7 any obligation to other creditors or heirs of the decedent.

Insert 20-7

RECOVERY AGAINST REAL PROPERTY.

8 SECTION 58. 867.035 (2m) of the statutes is renumbered 49.849 (4), and 49.849
 9 (4) (a) (intro.) and (b), as renumbered, are amended to read:

10 49.849 (4) (a) (intro.) If the conditions in sub. ~~(1) (a) 1., 2., and 4.~~ (2) (a) 1. and
 11 2. are satisfied, the department of ~~health services~~ shall have a lien in the amount that
 12 it may recover under sub. ~~(1)~~ (2) (a) on any interest in the decedent's home, as defined
 13 in s. 49.496 (1) (b), transferred under s. 867.03 (1g). The department may record the
 14 lien in the office of the register of deeds of the county in which the real property is
 15 located. The department may enforce the lien by foreclosure in the same manner as
 16 a mortgage on real property, unless any of the following is alive:

****NOTE: Should the reference to s. 867.03 (1g) be removed in both this and the next provision so that the department would have liens on the home and any other real property, regardless of whether they were transferred under s. 867.03 (1g)?

17 (b) If the conditions in sub. ~~(1) (a) 1. to 4.~~ (2) (a) 1. to 3. are satisfied, the
 18 department of ~~health services~~ shall have a lien in the amount that it may recover
 19 under sub. ~~(1)~~ (2) (a) on any interest in any real property of the decedent transferred
 20 under s. 867.03 (1g). The department may record the lien in the office of the register
 21 of deeds of the county in which the real property is located and may enforce the lien
 22 by foreclosure in the same manner as a mortgage on real property.

****NOTE: See my previous NOTE.

OTHER VALID CLAIMS.

SECTION 59. 867.035 (3) of the statutes is renumbered 49.849 (5) and amended

to read:

49.849 (5) If a person has a valid claim against the decedent's estate that would

have a higher priority under s. 859.25 (1) if the estate were administered than the

department of health services would have under s. 859.25 (1) (e) and the person

demands payment in writing within one year of the date on which the property was

transmitted to the department, the department shall pay to the person the value of

the property collected under sub. (2) (3) or the amount of the claim, whichever is less.

The department may authorize any person who possesses property of the decedent

to honor higher priority claims with the decedent's property before transmitting

property to the department.

SECTION 60. 867.035 (4) of the statutes is renumbered 49.849 (6) (a) and

amended to read:

49.849 (6) (a) From the appropriation under s. 20.435 (4) (im), with respect to

funds collected by the department under sub. (1) (2) related to medical assistance

paid on behalf of the decedent or the decedent's spouse, the department of health

services shall pay claims under sub. (3) (5), shall pay to the federal government from

the amount recovered under this section and not paid out as claims under sub. (3)

(5) an amount equal to the amount of federal funds used to pay the benefits recovered

under this section and shall spend the remainder of the amount recovered under this

section for medical assistance benefits under subch. IV of ch. 49.

SECTION 61. 867.035 (4m) of the statutes is renumbered 49.849 (6) (b) and

amended to read:

49.849 (6) (b) From the appropriation under s. 20.435 (7) (im), with respect to

funds collected by the department under sub. (1) (2) related to long-term community

PAYMENTS FROM RECOVERED AMOUNTS

Property of the decedent

the decedent's estate that would property were subject to administration

administration

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1 support services funded under s. 46.27 (7) paid on behalf of the decedent or the
2 decedent's spouse, the department of ~~health services~~ shall pay claims under sub. (3)
3 (5) and shall spend the remainder of the funds recovered under this section for
4 long-term community support services funded under s. 46.27 (7).

5 SECTION 62. 867.035 (5) of the statutes is renumbered 49.849[✓] (7) and amended
6 to read:

RULES FOR HARDSHIP WAIVER. ✓
CS

7 49.849 (7) } The department of ~~health services~~ shall promulgate rules
8 establishing standards to determine whether the application of this section would
9 work an undue hardship in individual cases. If the department of ~~health services~~
10 determines that the application of this section would work an undue hardship in a
11 particular case, the department shall waive the application of this section in that
12 case. This subsection does not apply with respect to collecting from the property of
13 a deceased nonrecipient surviving spouse.

****NOTE: Initial applicability and effective date provisions are not included in this version of the draft.

14 (END)

D - note

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INSERT 6-11

1 SECTION 1. 49.496 (3m) of the statutes is created to read:

2 49.496 (3m) LIMITING FINANCIAL RESPONSIBILITY OF SPOUSE'S ESTATE. A
3 nonrecipient surviving spouse may, no later than 6 months after the recipient's
4 death, file a petition with the department to limit the financial responsibility under
5 this section of the nonrecipient surviving spouse's estate. The financial
6 responsibility of the nonrecipient surviving spouse's estate may not exceed the value
7 of the nonrecipient surviving spouse's estate as of the date of death of the recipient.

****NOTE: This is based on the language of the South Dakota law suggested in the instructions. The South Dakota law does not say what happens after the petition is filed. May DHS grant or deny the petition? Should DHS promulgate rules establishing standards for granting or denying petitions similar to the rules for granting hardship waivers? Does the second sentence mean that the financial responsibility of the surviving spouse's estate may not exceed its value on the recipient's date of death but DHS may limit it to less than that? Or does this mean that DHS may take note of the value of the surviving spouse's estate on the recipient's date of death and limit the financial responsibility to that value? I'm not sure how to interpret the second sentence, i.e., whether the stated financial responsibility is before or after limitation.

(END OF INSERT 6-11)

INSERT 10-2

8 SECTION 2. 49.682 (2m) of the statutes is created to read:

9 49.682 (2m) A nonclient surviving spouse may, no later than 6 months after
10 the client's death, file a petition with the department to limit the financial
11 responsibility under this section of the nonclient surviving spouse's estate. The
12 financial responsibility of the nonclient surviving spouse's estate may not exceed the
13 value of the nonclient surviving spouse's estate as of the date of death of the client.

****NOTE: See ****NOTE after proposed s. 49.496 (3m).

(END OF INSERT 10-2)

INSERT 10-20



Ens. 10-20 cont'd

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SECTION 3. 49.848 of the statutes is created to read:

49.848 Treatment of real property owned by certain public assistance recipients. (1) DEFINITIONS. In this section:

(a) "Department" means the department of health services.

(b) "Public assistance" means any services provided as a benefit under a long-term care program, as defined in s. 49.496 (1) (bk), that may be recoverable under s. 49.496 (3) (a); medical assistance under subch. IV that may be recoverable under s. 49.496 (3) (a); long-term community support services funded under s. 46.27 (7) that may be recoverable under s. 46.27 (7g) (c) 1.; or aid under s. 49.68, 49.683, or 49.685 that may be recoverable under s. 49.682 (2) (a).

(c) "Recipient" means a person who received public assistance.

(2) CREATION OF DOCUMENTS FOR RECORDING. The department shall create all of the following documents for recording in the office of the register of deeds in the real estate records index:

(a) A document entitled "REQUEST FOR NOTICE OF ENCUMBRANCE AND NOTICE OF POTENTIAL CLAIM," which shall provide notice that the department may have a claim against the property to which the document relates on the basis of providing public assistance to a recipient who has or had a legal interest in the property and shall require that any person proposing to transfer title to, encumber, or terminate an interest in, the property must provide notice of that proposed transfer, encumbrance, or termination to the department.

****NOTE: Wouldn't providing information about ^a public assistance receipt violate confidentiality requirements under various statutes, such as s. 49.45 (4), or do you consider this disclosure part of program administration? *

****NOTE: Usually a person who is acquiring property checks the title. Rather than "transferring title" should this say a person "acquiring title" needs to notify the department? A person transferring title would probably be the person who received public assistance.



Ins 10-20 covered 2/2/04

1 (b) A document entitled "TERMINATION OF REQUEST FOR NOTICE OF
2 ENCUMBRANCE AND NOTICE OF POTENTIAL CLAIM," which shall provide
3 notice that the department no longer has a claim against property for which a
4 REQUEST FOR NOTICE OF ENCUMBRANCE AND NOTICE OF POTENTIAL
5 CLAIM has been recorded and that no notice to the department is required when title
6 to the property is transferred, an encumbrance is placed on the property, or an
7 interest in the property is terminated.

8 (c) A document entitled "CERTIFICATE OF CLEARANCE," which shall
9 authorize, by the department, the transfer of title to, encumbering of, or termination
10 of an interest in, property against which a REQUEST FOR NOTICE OF
11 ENCUMBRANCE AND NOTICE OF POTENTIAL CLAIM has been recorded, but
12 against which a TERMINATION OF REQUEST FOR NOTICE OF
13 ENCUMBRANCE AND NOTICE OF POTENTIAL CLAIM has not been recorded.

14 (3) RECORDING OF REQUEST FOR NOTICE AND TERMINATION OF REQUEST FOR NOTICE.

15 (a) 1. Whenever an individual becomes eligible for public assistance, the department
16 shall record a REQUEST FOR NOTICE OF ENCUMBRANCE AND NOTICE OF
17 POTENTIAL CLAIM if the individual has any of the following ownership interests
18 in real property:

19 a. The individual has a current ownership interest in real property, including
20 as a vendee or vendor under a land contract or in real property held in a revocable
21 trust.

22 b. Within the previous 5 years, the individual had a marital property interest
23 in real property, including as a vendee or vendor under a land contract or in real
24 property held in a revocable trust, regardless of who holds title to the property when
25 the individual becomes eligible for public assistance.



Jan 10-20 cont'd 3886

****NOTE: What if the real property that was marital property was sold for fair market value before the individual became eligible for public assistance? Are you only interested in property that is held by the individual or the individual's spouse with whom the individual had a marital property interest in the property?

1 2. The department shall record the document in the office of the register of
2 deeds of the county in which the real property under [✓]subd. 1. a. or b. [✓]is located.

3 (b) Whenever the department determines that a recipient for whom the
4 department recorded a REQUEST FOR NOTICE OF ENCUMBRANCE AND
5 NOTICE OF POTENTIAL CLAIM has not incurred [✓]or no longer owes any amount
6 that is recoverable under s. 46.27 (7g) (c) 1., 49.496 (3) (a) [✓], or 49.682 (2) (a), the
7 department shall record a TERMINATION OF REQUEST FOR NOTICE OF
8 ENCUMBRANCE AND NOTICE OF POTENTIAL CLAIM [✓]in the office of the
9 register of deeds of each county in which a [✓]REQUEST FOR NOTICE OF
10 ENCUMBRANCE AND NOTICE OF POTENTIAL CLAIM with respect to the
11 recipient's property was recorded.

****NOTE: What if the department never makes this determination? The original recorded document could put a cloud on title to the property indefinitely.

12 (4) [✓]TRANSFERRING, ENCUMBERING, OR TERMINATING AN INTEREST IN PROPERTY;
13 CLEARANCE BY THE DEPARTMENT. (a) Any person transferring title to, encumbering, or
14 terminating an interest in, property against which a REQUEST FOR NOTICE OF
15 ENCUMBRANCE AND NOTICE OF POTENTIAL CLAIM [✓]has been recorded, but
16 against which a [✓]TERMINATION OF REQUEST FOR NOTICE OF
17 ENCUMBRANCE AND NOTICE OF POTENTIAL CLAIM has not been recorded,
18 shall notify the department of the proposed transfer, encumbrance, or termination.

****NOTE: Should a person who is acquiring, rather than transferring, title notify the department instead?

19 (b) If, upon receipt of the notice under par. (a), [✓]the department determines that
20 the recipient who had the ownership interest in the property when the department

), whichever is applicable)

of interest



Ins 10-20 cont'd 4886

1 recorded the REQUEST FOR NOTICE OF ENCUMBRANCE AND NOTICE OF
2 POTENTIAL CLAIM is alive,[✓] the person may transfer title to, encumber, or
3 terminate an interest in, the property with no further action by the department.

****NOTE: Should the department provide some notice to the person? Should a document terminating the REQUEST FOR NOTICE be recorded at this time?

4 (c) If, upon receipt of the notice under par. (a),[✓] the department determines that
5 the recipient who had the ownership interest in the property when the department
6 recorded the[✓] REQUEST FOR NOTICE OF ENCUMBRANCE AND NOTICE OF
7 POTENTIAL CLAIM has died, all of the following apply:[✓]

8 1. The department shall determine whether it has a claim against the property
9 for amounts paid on behalf of the recipient that are recoverable under s. 46.27 (7g)
10 (c) 1., 49.496 (3) (a),[✓] or 49.682 (2) (a).[✓]

11 2. If the department determines that it has no claim under[✓] subd. 1., the
12 department shall issue to the person seeking to transfer title to, encumber, or
13 terminate an interest in, the real property a[✓] CERTIFICATE OF CLEARANCE,
14 which the person shall record along with the instrument transferring title to,
15 encumbering, or terminating the interest in, the property.

16 3. If the department determines that it has a claim under[✓] subd. 1., the
17 department shall send to the person a statement of claim that states all of the
18 following:[✓]

19 a. That the department has a claim against the property that it intends to
20 recover from the property.[✓]

21 b. The amount of and basis for the claim.[✓]



Qvs 10-20 contd 506

1 c. That the person has a right to an administrative hearing on the extent and
2 fair market value of the recipient's interest in the property and how to request an
3 administrative hearing.✓

4 d. That the transferee of the recipient's interest in the property may request
5 from the department a hardship waiver and how to request a hardship waiver.✓

***NOTE: What am I missing here? Couldn't the property have changed hands a number of times before the recipient's death? Why would the department have a right to the proceeds (instead of the owner selling the property) after a recipient's death if the property has changed hands a number of times while the recipient was alive?

6 4. Transferring title to, encumbering, or terminating an interest in, the
7 property is not valid unless the department issues to the person, and the person
8 records, a CERTIFICATE OF CLEARANCE.✓

***NOTE: The instructions did not indicate how the department would recover against the property if a REQUEST FOR NOTICE OF ENCUMBRANCE AND NOTICE OF POTENTIAL CLAIM has been recorded.✓ Since the department may send the same statement of claim regardless of whether such a document has been recorded, perhaps the provisions of proposed sub. (5) should apply to both situations.

9 (5) IF NO REQUEST FOR NOTICE RECORDED.✓ (a) If a recipient, when he or she
10 became eligible for public assistance, had an ownership interest in real property
11 described in sub. (3) (a) 1. or 2.✓ but the department did not record a REQUEST FOR
12 NOTICE OF ENCUMBRANCE AND NOTICE OF POTENTIAL CLAIM✓ with
13 respect to the property described in sub. (3) (a) 1. or 2.✓, upon the death of the recipient
14 the department may send to the surviving owner of the property a statement of claim
15 described in sub. (4) (c) 2.✓³. The department may recover against the property in the
16 manner determined by the department to be appropriate, including by placing a lien
17 on the property. The department may enforce a lien on the property by foreclosure
18 in the same manner as a mortgage on real property. However, the department may
19 not enforce any such lien as long as any of the following survives:

20 1. The recipient's spouse.✓



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- 1 2. The recipient's child who is under[✓] age 21 or disabled, as defined in s. 49.468
- 2 (1) (a) 1. ✓

****NOTE: Does this apply regardless of how many times the property has been bought and sold while the recipient was alive?

- 3 (b) If the recipient's surviving spouse or child refinances a mortgage on the
- 4 property, the department's lien is subordinate to the new encumbrance. ✓

- 5 (c) The department shall release a lien under par. (a) ✓ if any of the following
- 6 applies:

- 7 1. The recipient's surviving spouse or child sells the property for fair market
- 8 value during their^g lifetime. *spouse's or child's*
- 9 2. The recipient's surviving spouse or child transfers the property for less than
- 10 fair market value, as described in s. 49.849 (5c) (d) ✓, during their^g lifetime, the
- 11 purchaser sells the property during the spouse's or child's lifetime and places
- 12 proceeds equal to the department's claim in a trust or bond, and the department is
- 13 paid the secured amount upon the death of the recipient's spouse or disabled child
- 14 or when the recipient's child who is not disabled reaches age 22. ✓

****NOTE: The provisions in this section would seem to authorize the department to recover from property in which a recipient has no interest on the date of death. Is that the intention?

(END OF INSERT 10-20)

INSERT 11-19

15 ~~SECTION 4. 49.849 (2) (title) of the statutes is created to read:~~

16 ~~49.849 (2) (title) RECOVERABLE AMOUNTS.~~ *NO #*

(END OF INSERT 11-19)

INSERT 12-3

17 (d) No later than 6[✓] months after the death of a recipient, the nonrecipient

18 surviving spouse[✓] may file a petition with the department to limit the financial

text: treat *(2m)* *CS* LIMITING FINANCIAL RESPONSIBILITY OF SPOUSE'S PROPERTY.

ins 12-3 cont'd

1 responsibility of the property of the nonrecipient surviving spouse. ✓ The financial
2 responsibility of the property of the nonrecipient surviving spouse may not exceed
3 the value of the property of the nonrecipient surviving spouse as of the date of death
4 of the recipient.

****NOTE: See ****NOTE after proposed s. 49.496 (3m). ✓

(END OF INSERT 12-3)

INSERT 12-9

1 of 7

5 (c) An affidavit under this subsection ✓ shall contain all of the following
6 information:

7 1. That the department has a claim against the property that it intends to
8 recover from the property. ✓

9 2. The amount of and basis for the claim. ✓

10 3. That the person has a right to an administrative hearing on the extent and
11 fair market value of the decedent's interest in the property. ✓

12 4. How to request an administrative hearing under subd. 3. ✓

13 5. That the person may request from the department a hardship waiver, if the
14 person ✓ co-owned the property with the decedent or is a beneficiary of the property. ✓

15 6. How to request a hardship waiver under subd. 5. ✓

16 (d) Any person to whom the property of a decedent has been transferred or sold
17 may voluntarily pay off, settle, or otherwise satisfy the department's claim. Any such
18 payments are voluntary repayments of past public assistance payments for the
19 benefit of the deceased recipient and do not ✓ constitute a prohibited ✓ adjustment or
20 recovery. ✓

****NOTE: This is the language requested. Are the prohibited adjustments or
recovery under federal law?



RECOVERY AGAINST REAL PROPERTY. (CS)

Sub 12-9 cont'd 2 of 7

1 (4)(c) Except as provided in pars. (a) and (b), if the conditions in sub. (2) (a) 1.
2 and 2. are satisfied, the department may recover the amount, or any portion of the
3 amount, that it may recover under sub. (2) (a) from any property of the decedent that
4 is real property in the manner provided in s. 49.848 (4) (c) or (5).

5 (4m) ALLOWABLE COSTS OF SALE. (a) Subject to par. (b), if any property of a
6 decedent has been sold, only the following reasonable expenses, if any, incurred in
7 preserving or disposing of the property may be deducted from the sale proceeds that
8 the department may recover:

→ after the death of the decedent

9 1. Closing costs of sale, including reasonable attorney fees of the seller, the cost
10 of title insurance, and recording costs.

11 2. Costs of summary procedures under ch. 867.

12 3. An incentive allowance.

****NOTE: What is this?

13 4. Property insurance premiums.

14 5. Property taxes.

15 6. Utility costs necessary to preserve the property.

16 7. Other costs incurred under a written property management agreement with
17 the department.

18 8. Expenses incurred in providing necessary maintenance or making necessary
19 repairs, without which the salability of the property would be substantially
20 impaired.

21 (b) Any expense under par. (a) may be deducted only if it is documented, it was
22 paid after the recipient entered a nursing facility, and, if the property is real property,
23 it was not incurred while any other individual was living on the property.

→ from the sale proceeds



Ins 12-9 cover 3 of 7

→ ******NOTE:** I'm unsure of the context of this provision. What property and what sale is being referred to, and who is selling the property? *Is "nursing facility" the term you want to use?*

term you want to use?

1 **(5c) VALUE OF DECEDENT'S INTEREST.** For purposes of determining the value of
2 the decedent's interest in property of the decedent, all of the following apply: ✓

3 (a) If the decedent held title to real property jointly with one ✓ or more persons
4 other than his or her spouse, the decedent's interest in the real property is equal to
5 the fractional interest that the decedent would have had in the property if the
6 property had been held with the other owner or owners as tenants in common. ✓

7 (b) If the decedent held title to personal property jointly with one or more
8 persons other than his or her spouse, the decedent's interest in the personal property
9 is equal to either of the following: ✓

10 1. The percentage interest that was attributed to the decedent when his or her
11 eligibility for public assistance was determined. ✓

12 2. If the percentage interest was not determined as provided in subd. 1., the
13 fractional interest that the decedent would have had in the property if the property
14 had been held with the other *co-*owner or owners as tenants in common. ✓

15 (c) If the decedent held a life estate in real property, the decedent's interest is
16 equal to the decedent's percentage of ownership based on the decedent's age on the
17 date of death and calculated using the fair market value of the property and life
18 estate-remainderman ✓ tables used by the department to value life estates for
19 purposes of determining eligibility for ✓ Medical Assistance.

******NOTE:** I used the language supplied to me in the drafting instructions. Does this work for your purposes? To what does "percentage of ownership" refer, ownership in the life estate or the property? Do you mean that to determine the value of a life estate, you calculate a percentage of ownership in the property by using age, fair market value, and tables? *

20 (d) A property's fair market value is the price that a willing buyer would pay
21 a willing seller for the purchase of the property. The burden of proof for establishing



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1 a property's fair market value is on the surviving owners or beneficiaries, or their
2 representatives. Fair market value must be established through a credible
3 methodology, which may include an appraisal performed by a licensed appraiser.

****NOTE: The following two subsections are alternative procedures. The first is the same as the procedure under s. 49.497 (1m). The second is the warrant procedure under s. 49.195 (3m). Which do you prefer?

(CS) OR ORDER

④

(5m) ACTION TO ENFORCE RECOVERY. (a) If, after receipt of an affidavit under sub.

5 (3), a person who possesses property of a decedent fails to transmit the property to
6 the department, the department may bring an action to enforce its right to collect
7 amounts specified in sub. (2) (a) from the property or may issue an order to compel
8 transmittal of the property. Any person aggrieved by an order issued by the
9 department under this paragraph may appeal the order as a contested case under
10 ch. 227 by filing with the department a request for a hearing within 30 days after the
11 date of the order. The only issue at the hearing shall be the determination by the
12 department that the person has not transmitted the property to the department.

13 (b) If any person named in an order to compel transmittal of property issued
14 under par. (a) fails to transmit the property under the terms of the order and no
15 contested case to review the order is pending and the time for filing for a contested
16 case review has expired, the department may present a certified copy of the order to
17 the circuit court for any county. The sworn statement of the secretary shall be
18 evidence of the department's right to collect amounts specified in sub. (2) (a) from the
19 property and of the person's failure to transmit the property to the department. The
20 circuit court shall, without notice, render judgment in accordance with the order. A
21 judgment rendered under this paragraph shall have the same effect and shall be
22 entered in the judgment and lien docket and may be enforced in the same manner



in 12-9 cont'd 587

1 as if the judgment had been rendered in an action tried and determined by the circuit
2 court.

3 (c) The recovery procedure under this subsection is in addition to any other
4 recovery procedure authorized by law.

5 (5) WARRANT FOR RECOVERY. (a) 1. If any person who possess property of a
6 decedent fails to pay to the department the amount that it may recover under sub.
7 (2) (a), up to the value of the property that the person possesses, the department may
8 issue a warrant directed to the clerk of circuit court of any county.

9 2. The clerk of circuit court shall enter in the judgment and lien docket the
10 name of the person mentioned in the warrant, the amount for which the warrant is
11 issued and the date on which the clerk entered that information.

12 3. A warrant entered under subd. 2 shall be considered in all respects as a final
13 judgment constituting a perfected lien upon the person's right, title, and interest in
14 all real and personal property located in the county in which the warrant is entered.

15 4. After issuing a warrant, the department may file an execution with the clerk
16 of circuit court for filing with the sheriff of the county, commanding the sheriff to levy
17 upon and sell sufficient real and personal property of the person to pay the amount
18 stated in the warrant in the same manner as upon an execution against property
19 issued upon the judgment of a court of record, and to return the warrant to the
20 department and pay to it the money collected by virtue of the warrant within 90 days
21 after receipt of the warrant. The execution may not command the sheriff to levy upon
22 or sell any property that is exempt from execution under ss. 815.18 (3) and 815.20.

23 (b) The clerk of circuit court shall accept, file, and enter each warrant under
24 par. (a) and each satisfaction, release, or withdrawal under par. (d), (e), (g), or (h) in
25 the judgment and lien docket without prepayment of any fee, but the clerk of circuit



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1 court shall submit a statement of the proper fee semiannually to the department
2 covering the periods from January 1 to June 30 and July 1 to December 31 unless a
3 different billing period is agreed to between the clerk of circuit court and the
4 department. The department shall pay the fees, but shall add the fees provided by
5 s. 814.61 (5)✓ for entering the warrants to the amount of the warrant and shall collect
6 the fees from the person named in the warrant when satisfaction or release is
7 presented for entry.

8 (c) If a warrant that is not satisfied in full is returned, the department may
9 enforce the amount due as if the department had recovered judgment against the
10 person named in the warrant for the same amount.

11 (d) When the amount set forth in a warrant and all costs due the department
12 have been paid to it, the department shall issue a satisfaction of the warrant and file
13 it with the clerk of circuit court. The clerk of circuit court shall immediately enter
14 a satisfaction of the judgment on the judgment and lien docket. The department
15 shall send a copy of the satisfaction to the person named in the warrant.

16 (e) If the department finds that the interests of the state will not be jeopardized,
17 the department may issue a release of any warrant with respect to any real or
18 personal property upon which the warrant is a lien or cloud upon title✓. Upon
19 presentation to the clerk and payment of the fee for filing the release, the clerk shall
20 enter the release of record. The release is conclusive that the lien or cloud upon the
21 title of the property covered by the release is extinguished.

22 (f) Notwithstanding s. 49.96✓, at any time after the filing of a warrant, the
23 department may commence and maintain a garnishee action as provided by ch. 812
24 or may use the remedy of attachment as provided by ch. 811✓ for actions to enforce a
25 judgment. The place of trial of such an action may be either in ✓ Dane County or the

garnishment

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1 county where the debtor resides and may not be changed from the county in which
2 that action is commenced, except upon consent of the parties.

3 (g) If the department issues an erroneous warrant, the department shall issue
4 a notice of withdrawal of the warrant to the clerk of circuit court for the county in
5 which the warrant is filed. The clerk shall void the warrant and any resulting liens. ✓

6 (h) If the department arranges a payment schedule with the debtor and the
7 debtor complies with the payment schedule, the department may issue a notice of
8 withdrawal of the warrant to the clerk of circuit court for the county in which the
9 warrant is filed. If the department issues a notice of withdrawal of the warrant, the

10 clerk shall void the warrant and the resulting liens. ✓

→ A (C) PAYMENTS FROM RECOVERED AMOUNTS. ← (CS)

11 SECTION 5. 59.43 (1) (w) of the statutes is created to read:

12 59.43 (1) (w) Record and index the documents specified in s. 49.848 (2). ✓

(END OF INSERT 12-9)

INSERT 20-7

***NOTE: ✓ Would you prefer that the affidavit in this process be changed to a statement of claim?

(END OF INSERT 20-7)

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

LRB-0617/B1dn

PJK:.....

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date

This second version of the draft primarily adds proposed s. 49.848 and fleshes out proposed s. 49.849, which includes renumbered s. 867.035.

I have not added anything to s. 893.33 regarding a statute of limitations for liens of the department, as suggested, because I do not know why that section does not currently cover liens of the department. Please explain to me what the problem is with that section.

I must admit that I found the instructions very difficult to follow. It appeared to me that the statutes of a number of different states were canvassed and the request for this draft included anything from another state that looked advantageous. There did not appear to be a single, cohesive plan. It was very difficult for me to tell the context of many of the parts of the request, so I am not confident that I achieved your intent. Besides making modifications to what is in this draft, please advise me of what parts of the request are missing that need to be included.

Pamela J. Kahler
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**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0617/P2dn
PJK:jld:rs

January 8, 2013

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