



P3

TODAY, if possible,
or Thursday a.m.

revision

DOA:.....Iwata, BB0260 - Estate recovery for Medical Assistance

FOR 2013-2015 BUDGET - NOT READY FOR INTRODUCTION

(w/ 1-22)

do not
insert

part

4

1 AN ACT ~~relating to~~; 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

49.848, and
score

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~~ ^{↙ strike} 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~~ ^{↙ strike} and under rules promulgated under
18 s. 46.286 (7) ~~49.849~~ ^{↘ 49.848, and ← SCORE} 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.

↙ 49.848, and
↘ SCORE

Insert 3-1 →

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 affidavits and from estates, of correctly
5 ~~and incorrectly~~ paid family care benefits, ~~that are substantially similar to the~~
6 applicable provisions under ss. 49.496 ~~and 49.497~~ 49.849. → 49.848, and ✓
↑ score

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. Under 42 USC 1396u-2 and a waiver under 42 USC 1396n(c) ✓

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.

or 42 USC 1396u-2; $\Delta = \Delta = \Delta$

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

or 42 USC 1396u; $\Delta = \Delta = \Delta$

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

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

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

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

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

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

~~or 42 USC 1396u.~~ All to an individual while the individual is participating in

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

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

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

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

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

Insert 4-9

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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) ^{insert 5-6 v} 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?

11 **SECTION 21.** 49.496 (3m) of the statutes is created to read:

12 49.496 (3m) **LIMITING FINANCIAL RESPONSIBILITY OF SPOUSE'S ESTATE.** A
13 nonrecipient surviving spouse may, no later than 6 months after the recipient's
14 death, file a petition with the department to limit the financial responsibility under
15 this section of the nonrecipient surviving spouse's estate. The financial
16 responsibility of the nonrecipient surviving spouse's estate may not exceed the value
17 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.

18 **SECTION 22.** 49.496 (6) (b) of the statutes is amended to read:

1 49.496 (6) (b) The department may file a claim under sub. (3) only with respect
2 to a recipient who dies after ~~September 30, 1991~~ the date that is 90 days after the
3 effective date of this paragraph [LRB inserts date].

4 **SECTION 23.** 49.496 (6m) of the statutes is amended to read:

5 49.496 (6m) **WAIVER DUE TO HARDSHIP.** The department shall promulgate rules
6 establishing standards for determining whether the application of this section would
7 work an undue hardship in individual cases. If the department determines that the
8 application of this section would work an undue hardship in a particular case, the
9 department shall waive application of this section in that case. This subsection does
10 not apply with respect to claims against the estates of nonrecipient surviving
11 spouses.

12 **SECTION 24.** 49.4962 of the statutes is created to read:

13 **49.4962 Voiding certain transfers of real property.** (1) **DEFINITIONS.** In
14 this section:

15 (a) "Conveyance" has the meaning given in s. 706.01 (4).

16 (b) "Fair market value" means the price that a willing buyer would pay a willing
17 seller for the purchase of real property.

18 (c) "Fraudulent transfer" means any of the following:

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

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

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

¶ (d) "Grantee" has the meaning given in s. 706.01 (6).

¶ (e) "Grantor" has the meaning given in s. 706.01 (6).

during the lifetime of the grantor

grantor who was ✓

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

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

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

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(b) The department may commence an action in circuit court against the transferee to void the transfer. *grantee* ✓

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If the court voids the transfer, the title to the real property reverts to the transferor for his or her estate. *grantor* ✓

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

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(3) PRESUMPTION. There is a presumption, which may be rebutted by clear and convincing evidence, that a transfer described in sub. (2) (a) 1. that is a fraudulent transfer was made to hinder, delay, or defraud the department from recovering medical assistance benefits that were paid on behalf of the transferor. *grantor* ✓

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

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

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

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

3 **SECTION 26.** 49.682 (1) (d) of the statutes is created to read:

4 49.682 (1) (d) "Nonclient surviving spouse" means any person who was married
5 to a client while the client was receiving services for which the cost may be recovered
6 under sub. (2) (a) and who survived the client.

7 **SECTION 27.** 49.682 (2) (a) of the statutes is amended to read:

8 49.682 (2) (a) Except as provided in par. (d), the department shall file a claim
9 against the estate of a client ~~or, and~~ against the estate of ~~the~~ a nonclient surviving
10 spouse ~~of a client,~~ for the amount of aid under s. 49.68, 49.683, or 49.685 paid to or
11 on behalf of the client.

12 **SECTION 28.** 49.682 (2) (bm) of the statutes is created to read:

13 49.682 (2) (bm) ^{→ insert 9-13 ✓} There is a presumption, which may be rebutted by clear and
14 convincing evidence, that all property in the estate of the nonclient surviving spouse
15 was marital property held with the client and that 100 percent of the property in the
16 estate of the nonclient surviving spouse is subject to the department's claim under
17 par. (a).

18 **SECTION 29.** 49.682 (2) (c) (intro.) of the statutes is amended to read:

19 49.682 (2) (c) (intro.) The court shall reduce the amount of a claim under par.
20 (a) by up to the amount specified in s. 861.33 (2) if necessary to allow the client's
21 decedent's heirs or the beneficiaries of the client's decedent's will to retain the
22 following personal property:

23 **SECTION 30.** 49.682 (2) (e) 1. of the statutes is amended to read:

24 49.682 (2) (e) 1. If the department's claim is not allowable because of par. (d)
25 and the estate includes an interest in real property, including a home, the court

✓ Insert 9-6 →

1 exercising probate jurisdiction shall, in the final judgment or summary findings and
 2 order, assign the interest in the ~~home~~ real property subject to a lien in favor of the
 3 department for the amount described in par. (a). The personal representative or
 4 petitioner for summary settlement or summary assignment of the estate shall record
 5 the final judgment as provided in s. 863.29, 867.01 (3) (h), or 867.02 (2) (h).

6 **SECTION 31.** 49.682 (2) (e) 2. of the statutes is amended to read:

7 49.682 (2) (e) 2. If the department's claim is not allowable because of par. (d),
 8 the estate includes an interest in real property, including a home, and the personal
 9 representative closes the estate by sworn statement under s. 865.16, the personal
 10 representative shall stipulate in the statement that the ~~home~~ real property is
 11 assigned subject to a lien in favor of the department for the amount described in par.
 12 (a). The personal representative shall record the statement in the same manner as
 13 described in s. 863.29, as if the statement were a final judgment.

14 **SECTION 32.** 49.682 (2) (f) (intro.) of the statutes is amended to read:

15 49.682 (2) (f) (intro.) The department may not enforce [✓]the ^{→ a}lien under par. (e)
 16 on a home as long as any of the following survive the decedent:

17 ✓ **SECTION 33.** 49.682 (2m) of the statutes is created to read:

18 49.682 (2m) A nonclient surviving spouse may, no later than 6 months after
 19 the client's death, file a petition with the department to limit the financial
 20 responsibility under this section of the nonclient surviving spouse's estate. The
 21 financial responsibility of the nonclient surviving spouse's estate may not exceed the
 22 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). ✓

23 **SECTION 34.** 49.682 (3) of the statutes is amended to read:

1 49.682 (3) The department shall administer the program under this section
2 and may contract with an entity to administer all or a portion of the program,
3 including gathering and providing the department with information needed to
4 recover payment of aid provided under s. 49.68, 49.683, or 49.685. All funds received
5 under this subsection, net of any amount claimed under s. ~~867.035 (3)~~ 49.849 (5),
6 shall be remitted for deposit in the general fund.

7 **SECTION 35.** 49.682 (4) (b) of the statutes is amended to read:

8 49.682 (4) (b) The department may file a claim under sub. (2) only with respect
9 to a client who dies after ~~September 1, 1995~~ the date that is 90 days after the effective
10 date of this paragraph [LRB inserts date].

11 **SECTION 36.** 49.682 (5) of the statutes is amended to read:

12 49.682 (5) The department shall promulgate rules establishing standards for
13 determining whether the application of this section would work an undue hardship
14 in individual cases. If the department determines that the application of this section
15 would work an undue hardship in a particular case, the department shall waive
16 application of this section in that case. This subsection does not apply with respect
17 to claims against the estates of nonclient surviving spouses.

18 **SECTION 37.** 49.848 of the statutes is created to read:

19 **49.848 Treatment of real property owned by certain public assistance**
20 **recipients. (1) DEFINITIONS.** In this section:

21 (a) “Department” means the department of health services.

22 (b) “Public assistance” means any services provided as a benefit under a
23 long-term care program, as defined in s. 49.496 (1) (bk), that may be recoverable
24 under s. 49.496 (3) (a); medical assistance under subch. IV that may be recoverable
25 under s. 49.496 (3) (a); long-term community support services funded under s. 46.27

1 (7) that may be recoverable under s. 46.27 (7g) (c) 1.; or aid under s. 49.68, 49.683,
2 or 49.685 that may be recoverable under s. 49.682 (2) (a).

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

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

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

14 (b) A document entitled "TERMINATION OF REQUEST FOR NOTICE OF
15 ENCUMBRANCE AND NOTICE OF POTENTIAL CLAIM," which shall provide
16 notice that the department no longer has a claim against property for which a
17 REQUEST FOR NOTICE OF ENCUMBRANCE AND NOTICE OF POTENTIAL
18 CLAIM has been recorded and that no notice to the department is required when title
19 to the property is transferred, an encumbrance is placed on the property, or an
20 interest in the property is terminated.

1 (c) A document entitled "CERTIFICATE OF CLEARANCE," which shall
2 authorize, by the department, the transfer of title to, encumbering of, or termination
3 of an interest in, property against which a REQUEST FOR NOTICE OF
4 ENCUMBRANCE AND NOTICE OF POTENTIAL CLAIM has been recorded, but
5 against which a TERMINATION OF REQUEST FOR NOTICE OF
6 ENCUMBRANCE AND NOTICE OF POTENTIAL CLAIM has not been recorded.

7 (3) RECORDING OF REQUEST FOR NOTICE AND TERMINATION OF REQUEST FOR NOTICE

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

12 a. A current ownership interest in real property, including as a vendee or
13 vendor under a land contract or in real property held in a revocable trust.

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

***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?

18 2. The department shall record the document in the office of the register of
19 deeds of the county in which the real property under subd. 1. a. or b., whichever is
20 applicable, is located.

21 (b) Whenever the department determines that a recipient for whom the
22 department recorded a REQUEST FOR NOTICE OF ENCUMBRANCE AND
23 NOTICE OF POTENTIAL CLAIM has not incurred or no longer owes any amount

1 that is recoverable under s. 46.27 (7g) (c) 1., 49.496 (3) (a), or 49.682 (2) (a), the
2 department shall record a TERMINATION OF REQUEST FOR NOTICE OF
3 ENCUMBRANCE AND NOTICE OF POTENTIAL CLAIM in the office of the
4 register of deeds of each county in which a REQUEST FOR NOTICE OF
5 ENCUMBRANCE AND NOTICE OF POTENTIAL CLAIM with respect to the
6 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.

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

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

15 (b) If, upon receipt of the notice under par. (a), the department determines that
16 the recipient who had the ownership interest in the property when the department
17 recorded the REQUEST FOR NOTICE OF ENCUMBRANCE AND NOTICE OF
18 POTENTIAL CLAIM is alive, the person may transfer title to, encumber, or
19 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?

20 (c) If, upon receipt of the notice under par. (a), the department determines that
21 the recipient who had the ownership interest in the property when the department

1 recorded the REQUEST FOR NOTICE OF ENCUMBRANCE AND NOTICE OF
2 POTENTIAL CLAIM has died, all of the following apply:

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

6 2. If the department determines that it has no claim under subd. 1., the
7 department shall issue to the person seeking to transfer title to, encumber, or
8 terminate an interest in, the real property a CERTIFICATE OF CLEARANCE,
9 which the person shall record along with the instrument transferring title to,
10 encumbering, or terminating the interest in, the property.

11 3. If the department determines that it has a claim under subd. 1., the
12 department shall send to the person a statement of claim that states all of the
13 following:

14 a. That the department has a claim against the property that it intends to
15 recover from the property.

16 b. The amount of and basis for the claim.

17 c. That the person has a right to an administrative hearing on the extent and
18 fair market value of the recipient's interest in the property and how to request an
19 administrative hearing.

20 d. That the transferee of the recipient's interest in the property may request
21 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?

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1 4. Transferring title to, encumbering, or terminating an interest in, the
 2 property ^{is not valid unless the department issues to the person, and the person}
 3 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.

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

15 1. The recipient's spouse.

16 2. The recipient's child who is under age 21 or disabled, as defined in s. 49.468

17 (1) (a) 1.

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

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

20 (c) The department shall release a lien under par. (a) if any of the following
 21 applies:

1 1. The recipient's surviving spouse or child sells the property for fair market
2 value during the spouse's or child's lifetime.

3 2. The recipient's surviving spouse or child transfers the property for less than
4 fair market value, as described in s. 49.849 (5c) (d), during the spouse's or child's
5 lifetime, the purchaser sells the property during the spouse's or child's lifetime and
6 places proceeds equal to the department's claim in a trust or bond, and the
7 department is paid the secured amount upon the death of the recipient's spouse or
8 disabled child 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?

9 SECTION 38. 49.849 of the statutes is created to read:

10 **49.849 Recovery of correct payments under certain public assistance**
11 **programs. (1) DEFINITIONS. In this section:**

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

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

15 (c) "Nonrecipient surviving spouse" means any person who was married to a
16 recipient while the recipient was receiving public assistance and who survived the
17 recipient.

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

immediately before ✓

Insert 17-8 ✓

Steps

***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.)?

Insert 18-5

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

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

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

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

(2) RECOVERABLE AMOUNTS. (c) There is a presumption, which may be rebutted by clear and convincing evidence, that all property of the deceased nonrecipient surviving spouse was marital property held with the recipient and that 100 percent of the property of the deceased nonrecipient surviving spouse is subject to the department's claim under par. (a).

(2m) LIMITING FINANCIAL RESPONSIBILITY OF SPOUSE'S PROPERTY. No later than 6 months after the death of a recipient, the nonrecipient surviving spouse may file a petition with the department to limit the financial responsibility of the property of the nonrecipient surviving spouse. The financial responsibility of the property of the nonrecipient surviving spouse may not exceed the value of the property of the nonrecipient surviving spouse as of the date of death of the recipient.

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

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

8 (c) An affidavit under this subsection shall contain all of the following
9 information:

10 1. That the department has a claim against the property that it intends to
11 recover from the property.

12 2. The amount of and basis for the claim.

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

15 4. How to request an administrative hearing under subd. 3.

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

18 6. How to request a hardship waiver under subd. 5.

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

may have ✓
under sub. (5m) ✓
sub. (5m) ✓

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

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

5 (4) (c) 3. or (5).

OF REAL PROPERTY ✓

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

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

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

13 3. An incentive allowance.

****NOTE: What is this?

14 ¶ 2 ✗. Property insurance premiums.

15 ¶ 3 ✗. Property taxes → due ✓

16 ¶ 4 ✗. Utility costs necessary to preserve the property.

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

19 ¶ 5 ✗. Expenses incurred in providing necessary maintenance or making necessary
20 repairs, without which the salability of the property would be substantially
21 impaired.

22 (b) Any expense under par. (a) may be deducted from the sale proceeds only if
23 it is documented, it was paid after the recipient entered a nursing facility, and, if the

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§ 20-5

and approved by the department and

1 property is real property, it was not incurred while any other individual was living
2 on the property.

***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?

3 **(5c) VALUE OF DECEDENT'S INTEREST.** For purposes of determining the value of
4 the decedent's interest in property of the decedent, all of the following apply:

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

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

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

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

17 (c) If the decedent held a life estate in real property, the decedent's interest is
18 equal to the decedent's percentage of ownership *in the property* based on the decedent's age on the
19 date of death and calculated using the fair market value of the property and life
20 estate-remainderman tables used by the department to value life estates for
21 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

Susant 21-21

calculate a percentage of ownership in the property by using age, fair market value, and tables?

1 (d) A property's fair market value is the price that a willing buyer would pay
2 a willing seller for the purchase of the property. The burden of proof for establishing
3 a property's fair market value is on the surviving owners or beneficiaries, or their
4 representatives. Fair market value must be established through a credible
5 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?

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

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

Subject 22-5
✓

1 judgment rendered under this paragraph shall have the same effect and shall be
2 entered in the judgment and lien docket and may be enforced in the same manner
3 as if the judgment had been rendered in an action tried and determined by the circuit
4 court.

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

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

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

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

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

1 (b) The clerk of circuit court shall accept, file, and enter each warrant under
2 par. (a) and each satisfaction, release, or withdrawal under par. (d), (e), (g), or (h) in
3 the judgment and lien docket without prepayment of any fee, but the clerk of circuit
4 court shall submit a statement of the proper fee semiannually to the department
5 covering the periods from January 1 to June 30 and July 1 to December 31 unless a
6 different billing period is agreed to between the clerk of circuit court and the
7 department. The department shall pay the fees, but shall add the fees provided by
8 s. 814.61 (5) for entering the warrants to the amount of the warrant and shall collect
9 the fees from the person named in the warrant when satisfaction or release is
10 presented for entry.

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

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

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

1 (f) Notwithstanding s. 49.96, at any time after the filing of a warrant, the
 2 department may commence and maintain a garnishment action as provided by ch.
 3 812 or may use the remedy of attachment as provided by ch. 811 for actions to enforce
 4 a judgment. The place of trial of such an action may be either in Dane County or the
 5 county where the debtor resides and may not be changed from the county in which
 6 that action is commenced, except upon consent of the parties.

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

10 (h) If the department arranges a payment schedule with the debtor and the
 11 debtor complies with the payment schedule, the department may issue a notice of
 12 withdrawal of the warrant to the clerk of circuit court for the county in which the
 13 warrant is filed. If the department issues a notice of withdrawal of the warrant, the
 14 clerk shall void the warrant and the resulting liens.

15 **(6) PAYMENTS FROM RECOVERED AMOUNTS.**

16 **SECTION 39.** 59.43 (1) (w) of the statutes is created to read:

17 59.43 (1) (w) Record and index the documents specified in s. 49.848 (2).

18 **SECTION 40.** 700.24 of the statutes is amended to read:

19 **700.24 Death of a joint tenant; effect of liens.** A real estate mortgage, a
 20 security interest under ch. 409, or a lien under s. 72.86 (2), 1985 stats., or s. 71.91 (5)
 21 (b), or ch. 49 or 779 or rules promulgated under s. 46.286 (7) on or against the interest
 22 of a joint tenant does not defeat the right of survivorship in the event of the death
 23 of such joint tenant, but the surviving joint tenant or tenants take the interest such
 24 deceased joint tenant could have transferred prior to death subject to such mortgage,
 25 security interest, or statutory lien.

Insert 25-15

Insert 25-17

1 SECTION 41. 701.065 (1) (b) 1. of the statutes is amended to read:

2 701.065 (1) (b) 1. The claim is a claim based on tort, on a marital property
3 agreement that is subject to the time limitations under s. 766.58 (13) (b) or (c), on
4 Wisconsin income, franchise, sales, withholding, gift, or death taxes, or on
5 unemployment compensation contributions due or benefits overpaid; a claim for
6 funeral or administrative expenses; a claim of this state under s. 46.27 (7g), 49.496
7 ~~or, 49.682, or rules promulgated under s. 46.286 (7) 49.849~~; or a claim of the United
8 States.

9 SECTION 42. 701.065 (5) of the statutes is created to read:

10 701.065 (5) CLAIMS OF DEPARTMENT OF HEALTH SERVICES. (a) *Definitions*. In this
11 subsection:

12 1. "Department" means the department of health services.

13 2. "Long-term care program" has the meaning given in s. 49.496 (1) (bk).

14 (b) *Living trusts*. 1. Notwithstanding sub. (1) (a), if a settlor of a living trust
15 received, at any time before death, any services provided as a benefit under a
16 long-term care program, medical assistance under subch. IV of ch. 49, long-term
17 community support services funded under s. 46.27 (7), or aid under s. 49.68, 49.683,
18 or 49.685, the trustee shall provide written notice to the department within 30 days
19 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?

20 2. After the death of a settlor described in subd. 1., the department may recover
21 under s. 46.27 (7g), 49.496, 49.682, or 49.849, from property held in the living trust
22 immediately before the settlor's death, an amount equal to the medical assistance
23 that is recoverable under s. 49.496 (3) (a), an amount equal to aid under s. 49.68,

or the spouse of a settlor,
by registered or
certified mail,
26-19

Insert 27-3

Insert 27-9

1 49.683, or 49.685 that is recoverable under s. 49.682 (2) (a), or an amount equal to
2 long-term community support services under s. 46.27 that is recoverable under s.
3 46.27 (7g) (c) 1. and that was paid on behalf of the decedent or the decedent's spouse.

4 3. ^{insert 27-4A ✓} If a trustee under subd. 1. ^{insert 27-4B ✓} distributes property from the trust before the
5 department makes a ^{request} ^{claim ✓} to the trustee for the recovery of any amount specified
6 in subd. 2., the trustee shall provide the department with information about the
7 distributed property and to whom it was distributed or transferred. The department
8 is entitled to recover any amounts specified in subd. 2. from the persons to whom the
9 property was distributed or transferred.

10 (c) *Special needs or pooled trusts.* 1. Notwithstanding sub. (1) (a), within 30
11 days after the death of a beneficiary under a trust described in 42 USC 1396p (d) (4)
12 (A) or (C), the trustee shall provide written notice to the department ^{insert 27-12 ✓} and shall repay
13 the department for any medical assistance paid on behalf of the decedent, as required
14 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?

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

21 3. Notwithstanding the terms of the trust, after the death of a beneficiary under
22 a trust described in 42 USC 1396p (d) (4) (C), the trustee may retain up to 30 percent
23 of the balance in the decedent's account, unless the trustee fails to comply with the

1 notice and repayment requirements under subd. 1., in which case the trustee may
2 not retain any of the balance in the decedent's account.

3 **SECTION 43.** 705.04 (2g) of the statutes is amended to read:

4 705.04 (2g) Notwithstanding subs. (1) and (2), the department of health
5 services may collect, from funds of a decedent that are held by the decedent
6 immediately before death in a joint account or a P.O.D. account, an amount equal to
7 the medical assistance that is recoverable under s. 49.496 (3) (a), an amount equal
8 to aid under s. 49.68, 49.683, or 49.685 that is recoverable under s. 49.682 (2) (a), or
9 an amount equal to long-term community support services under s. 46.27 that is
10 recoverable under s. 46.27 (7g) (c) 1. and that was paid on behalf of the decedent or
11 the decedent's spouse ~~or an amount equal to the family care benefit under s. 46.286~~
12 ~~that is recoverable under rules promulgated under s. 46.286 (7) and that was paid~~
13 ~~on behalf of the decedent or the decedent's spouse.~~

14 **SECTION 44.** 859.02 (2) (a) of the statutes is amended to read:

15 859.02 (2) (a) It is a claim based on tort, on a marital property agreement that
16 is subject to the time limitations under s. 766.58 (13) (b) or (c), on Wisconsin income,
17 franchise, sales, withholding, gift, or death taxes, or on unemployment insurance
18 contributions due or benefits overpaid; a claim for funeral or administrative
19 expenses; a claim of this state under s. 46.27 (7g), 49.496 ~~or~~, 49.682, or rules
20 ~~promulgated under s. 46.286 (7)~~ 49.849; or a claim of the United States; or

21 **SECTION 45.** 859.07 (2) (a) 3. of the statutes is amended to read:

22 859.07 (2) (a) 3. The decedent or the decedent's spouse received ~~the family care~~
23 ~~benefit under s. 46.286~~ services provided as a benefit under a long-term care
24 program, as defined in s. 49.496 (1) (bk), medical assistance under subch. IV of ch.

1 49, long-term community support services funded under s. 46.27 (7), or aid under s.
2 49.68, 49.683, or 49.685.

3 **SECTION 46.** 867.01 (3) (am) 4. of the statutes is amended to read:

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

9 **SECTION 47.** 867.01 (3) (d) of the statutes is amended to read:

10 867.01 (3) (d) *Notice.* The court may hear the matter without notice or order
11 notice to be given under s. 879.03. If the decedent or the decedent's spouse received
12 ~~the family care benefit under s. 46.286~~ services provided as a benefit under a
13 long-term care program, as defined in s. 49.496 (1) (bk), medical assistance under
14 subch. IV of ch. 49, long-term community support services funded under s. 46.27 (7),
15 or aid under s. 49.68, 49.683, or 49.685, the petitioner shall give notice by certified
16 mail to the department of health services as soon as practicable after filing the
17 petition with the court.

18 **SECTION 48.** 867.02 (2) (am) 6. of the statutes is amended to read:

19 867.02 (2) (am) 6. Whether the decedent or the decedent's spouse received ~~the~~
20 ~~family care benefit under s. 46.286~~ services provided as a benefit under a long-term
21 care program, as defined in s. 49.496 (1) (bk), medical assistance under subch. IV of
22 ch. 49, long-term community support services funded under s. 46.27 (7), or aid under
23 s. 49.68, 49.683, or 49.685.

24 **SECTION 49.** 867.03 (1g) (c) of the statutes is amended to read:

SECTION 49

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

6 **SECTION 50.** 867.03 (1m) (a) of the statutes is amended to read:

7 867.03 (1m) (a) Whenever an heir, trustee, or person who was guardian of the
8 decedent at the time of the decedent's death intends to transfer a decedent's property
9 by affidavit under sub. (1g) and the decedent or the decedent's spouse ever received
10 ~~the family care benefit under s. 46.286~~ services provided as a benefit under a
11 long-term care program, as defined in s. 49.496 (1) (bk), medical assistance under
12 subch. IV of ch. 49, long-term community support services funded under s. 46.27 (7),
13 or aid under s. 49.68, 49.683, or 49.685, the heir, trustee, or person who was guardian
14 of the decedent at the time of the decedent's death shall give notice to the department
15 of health services of his or her intent. The notice shall include the information in the
16 affidavit under sub. (1g) and the heir, trustee, or person who was guardian of the
17 decedent at the time of the decedent's death shall give the notice by certified mail,
18 return receipt requested.

19 **SECTION 51.** 867.03 (1m) (b) of the statutes is amended to read:

20 867.03 (1m) (b) An heir, trustee, or person who was guardian of the decedent
21 at the time of the decedent's death who files an affidavit under sub. (1g) that states
22 that the decedent or the decedent's spouse received ~~the family care benefit under s.~~
23 ~~46.286~~ services provided as a benefit under a long-term care program, as defined in
24 s. 49.496 (1) (bk), medical assistance under subch. IV of ch. 49, long-term community
25 support services funded under s. 46.27 (7), or aid under s. 49.68, 49.683, or 49.685

1 shall attach to the affidavit the proof of mail delivery of the notice required under par.
2 (a) showing ~~a the delivery date that is not less than 10 days before the day on which~~
3 ~~the heir, trustee, or person who was guardian of the decedent at the time of the~~
4 ~~decedent's death files the affidavit.~~

5 **SECTION 52.** 867.03 (2g) of the statutes is renumbered 867.03 (2g) (a) and
6 amended to read:

7 867.03 (2g) (a) By accepting the decedent's property under this section the heir,
8 trustee, or guardian assumes a duty to apply the property transferred for the
9 payment of obligations according to priorities established under s. 859.25 and to
10 distribute any balance to those persons designated in the appropriate governing
11 instrument, as defined in s. 854.01, of the decedent or if there is no governing
12 instrument, according to the rules of intestate succession under ch. 852, subject to
13 par. (b). An heir or guardian may publish a notice to creditors in the same manner
14 and with the same effect as a trustee under s. 701.065. This subsection paragraph
15 does not prohibit any appropriate person from requesting administration of the
16 decedent's estate under s. 856.07 or ch. 865.

17 **SECTION 53.** 867.03 (2g) (b) of the statutes is created to read:

18 867.03 (2g) (b) Property transferred under this section to or by an heir, trustee,
19 or guardian is subject to the right of the department of health services to recover
20 under s. 46.27 (7g), 49.496, 49.682, or 49.849 an amount equal to the medical
21 assistance that is recoverable under s. 49.496 (3) (a), an amount equal to aid under
22 s. 49.68, 49.683, or 49.685 that is recoverable under s. 49.682 (2) (a), or an amount
23 equal to long-term community support services under s. 46.27 that is recoverable
24 under s. 46.27 (7g) (c) 1. and that was paid on behalf of the decedent or the decedent's
25 spouse. Upon request, the heir, trustee, or guardian shall provide to the department

1 of health services information about any of the decedent's property that the heir,
2 trustee, or guardian has distributed and information about the persons to whom the
3 property was distributed.

4 SECTION 54. 867.035 (title) of the statutes is repealed.

5 SECTION 55. 867.035 (1) (a) (intro.) of the statutes is renumbered 49.849 (2) (a)
6 (intro.) and amended to read:

7 49.849 (2) (a) (intro.) Subject to par. ~~(b)~~ (b), the department of health services
8 may collect from the property of a decedent, ~~including funds of a decedent that are~~
9 ~~held by the decedent immediately before death in a joint account or a P.O.D. account,~~
10 by affidavit under sub. (2) (3) (b) or by lien under sub. ~~(2m)~~ (4) ^(a) an amount equal to
11 the medical assistance that is recoverable under s. 49.496 (3) (a), the long-term
12 community support services under s. 46.27 that is recoverable under s. 46.27 (7g) (c)
13 1., the family care benefit that is recoverable under rules promulgated under s.
14 46.286 (7), or the aid under s. 49.68, 49.683, or 49.685 that is recoverable under s.
15 49.682 (2) (a), and that was paid on behalf of the decedent or the decedent's spouse,
16 if all of the following conditions are satisfied:

change component

17 SECTION 56. 867.035 (1) (a) 1. of the statutes is renumbered 49.849 (2) (a) 1. *repealed*

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

18 SECTION 57. 867.035 (1) (a) 2. [✓] of the statutes is renumbered [✓] 49.849 (2) (a) ¹ and
19 amended to read:

20 49.849 (2) (a) [✓] 2. ¹ The decedent died after September 30, 1991 the date that is
21 90 days after the effective date of this subdivision [LRB inserts date].

22 SECTION 58. 867.035 (1) (a) 3. [✓] of the statutes is renumbered 49.849 (2) (a) ².

23 SECTION 59. 867.035 (1) (a) 4. of the statutes is repealed.

1 SECTION 60. 867.035 (1) (bm) of the statutes is renumbered 49.849 (2) (b), and
2 49.849 (2) (b) (intro.), as renumbered, is amended to read:

3 49.849 (2) (b) (intro.) The department of ~~health services~~ shall reduce the
4 amount of its recovery under par. (a) by up to the amount specified in s. 861.33 (2)
5 if necessary to allow the decedent's heirs or beneficiaries under the decedent's will
6 to retain the following personal property of the decedent:

7 SECTION 61. 867.035 (2) of the statutes is renumbered 49.849 (3) (b) and
8 amended to read:

9 49.849 (3) (b) A person who possesses or receives property of a decedent shall
10 transmit the property to the department of ~~health services~~, if the conditions in sub.
11 (1) (a) 1. to 4. (2) (a) 1. to 3. and 2 are satisfied, upon receipt of an affidavit by a person
12 designated by the secretary of health services to administer this section showing that
13 the department paid on behalf of the decedent or the decedent's spouse recoverable
14 benefits specified in sub. (1) (2) (a). Upon transmittal, the person is released from
15 any obligation to other creditors or heirs of the decedent.

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

16 SECTION 62. 867.035 (2m) ^(a) of the statutes is renumbered 49.849 (4) ^(a) and 49.849
17 (4) (a) (intro.) and (b) ^{is} as renumbered, are amended to read: ^{condition}

18 49.849 (4) (a) (intro.) If the conditions ^{condition} in sub. (1) (a) 1., 2., and 4. (2) (a) 1. and
19 2. ^{(2) (a) 1. is} are satisfied, the department of ~~health services~~ shall have a lien in the amount that
20 any property of the decedent that is real property it may recover under sub. (1) (2) (a) on any interest in the ~~decedent's~~ home, as defined
21 in s. 49.496 (1) (b), transferred under s. 867.03 (1g). The department may record the
22 lien in the office of the register of deeds of the county in which the real property is

property including a

1 located. The department may enforce the lien by foreclosure in the same manner as
2 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)?~~

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

****NOTE: See my previous NOTE

9 SECTION 63. 867.035 (3) of the statutes is renumbered 49.849 (5) and amended
10 to read:

11 49.849 (5) OTHER VALID CLAIMS. If a person has a valid claim against the
12 decedent's estate property of the decedent that would have a higher priority under
13 s. 859.25 (1) if the estate were administered property were subject to administration
14 than the department of health services would have under s. 859.25 (1) (e) and the
15 person demands payment in writing within one year of the date on which the
16 property was transmitted to the department, the department shall pay to the person
17 the value of the property collected under sub. (2) (3) or the amount of the claim,
18 whichever is less. The department may authorize any person who possesses
19 property of the decedent to honor higher priority claims with the decedent's property
20 before transmitting property to the department.

21 SECTION 64. 867.035 (4) of the statutes is renumbered 49.849 (6) (a) and
22 amended to read:

Subject 34-8

1 49.849 (6) (a) From the appropriation under s. 20.435 (4) (im), with respect to
 2 funds collected by the department under sub. (1) (2) related to medical assistance
 3 paid on behalf of the decedent or the decedent's spouse, the department of health
 4 services shall pay claims under sub. (3) (5), shall pay to the federal government from
 5 the amount recovered under this section and not paid out as claims under sub. (3)
 6 ✓ (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.

INSERT
35-88

9 **SECTION 65.** 867.035 (4m) of the statutes is renumbered 49.849 (6) (b) and
 10 amended to read:

11 49.849 (6) (b) From the appropriation under s. 20.435 (7) (im), with respect to
 12 funds collected by the department under sub. (1) (2) related to long-term community
 13 support services funded under s. 46.27 (7) paid on behalf of the decedent or the
 14 decedent's spouse, the department of health services shall pay claims under sub. (3)
 15 (5) and shall spend the remainder of the funds recovered under this section for
 16 long-term community support services funded under s. 46.27 (7).

17 **SECTION 66.** 867.035 (5) of the statutes is renumbered 49.849 (7) and amended
 18 to read:

19 49.849 (7) RULES FOR HARDSHIP WAIVER. The department of health services shall
 20 promulgate rules establishing standards to determine whether the application of
 21 this section would work an undue hardship in individual cases. If the department
 22 of health services determines that the application of this section would work an
 23 undue hardship in a particular case, the department shall waive the application of
 24 this section in that case. This subsection does not apply with respect to collecting
 25 from the property of a deceased nonrecipient surviving spouse.

INSERT
35-25

decedent if the decedent is a

Insert 35-28

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

1

(END)