

*Ins 17-8 cont'd 7 of 7*

1 spouse's or child's lifetime and places proceeds equal to the lesser of the department's  
2 lien or the sale proceeds due to the seller in a trust or bond, and the department is  
3 paid the secured amount upon the death of the recipient's spouse or disabled child  
4 or when the recipient's child who is not disabled reaches age 22.

5 3. The surviving owner or transferee of the property, who is not the recipient's  
6 surviving spouse or child who is under age 21 or disabled, sells the property during  
7 the lifetime of the recipient's surviving spouse or child who is under age 21 or  
8 disabled and places proceeds equal to the lesser of the department's lien or the sale  
9 proceeds due to the seller in a trust or bond, and the department is paid the secured  
10 amount upon the death of the recipient's spouse or disabled child or when the  
11 recipient's child who is not disabled reaches age 22.

(END OF INSERT 17-8)

**INSERT 18-5**

12 2. Notwithstanding subd. 1., "property of a decedent" includes any real  
13 property in which the nonrecipient surviving spouse had an ownership interest  
14 immediately before the recipient's death and in which the recipient had a marital  
15 property interest with that nonrecipient surviving spouse at any time within 5 years  
16 before the recipient applied for public assistance or during the time that the recipient  
17 was eligible for public assistance.

(END OF INSERT 18-5)

**INSERT 20-5**



2013-2014 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-0617/P3ins  
PJK:.....

INSERT 17-8-10 (to insert 17-8)

\*\*\*\*NOTE: Will the person necessarily know that the recipient is alive? Will the department provide some notice (or perhaps a Certificate of Clearance?) to the person that the property may be transferred?

(END OF INSERT 17-8-10 to Ins 17-8) 91

INSERT 17-8-18

1 If the department may not enforce a lien under par. (c) because of par (d),

(END OF INSERT 17-8-18)

2013-2014 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-0617/P3ins  
PJK:.....

INSERT 3-1

184

1 SECTION 1. 46.27 (7g) (a) 1m. of the statutes is created to read:

2 46.27 (7g) (a) 1m. "Decedent" means a deceased client or a deceased nonclient  
3 surviving spouse, whichever is applicable.

4 SECTION 2. 46.27 (7g) (a) 4. of the statutes is created to read:

5 46.27 (7g) (a) 4. "Nonclient surviving spouse" means any person who was  
6 married to a client while the client was receiving services for which the cost may be  
7 recovered under par. (c) 1. and who survived the client.

8 SECTION 3. 46.27 (7g) (a) 5. of the statutes is created to read:

9 46.27 (7g) (a) 5. a. "Property of a decedent" means all real and personal  
10 property to which the client held any legal title or in which the client had any legal  
11 interest immediately before death, to the extent of that title or interest, including  
12 assets transferred to a survivor, heir, or assignee through joint tenancy, tenancy in  
13 common, survivorship, life estate, living trust, or any other arrangement.

14 b. Notwithstanding subd. 5. a., "property of a decedent" includes any real  
15 property in which the nonclient surviving spouse had an ownership interest  
16 immediately before the client's death and in which the client had a marital property  
17 interest with that nonclient surviving spouse at any time within 5 years before the  
18 client applied for long-term community support services funded under sub. (7) or  
19 during the time that the client was eligible for long-term community support  
20 services funded under sub. (7).

21 SECTION 4. 46.27 (7g) (c) 1. of the statutes is amended to read:

22 46.27 (7g) (c) 1. Except as provided in subd. 4., the department shall file a claim  
23 against the estate of a client or, and against the estate of the a nonclient surviving



*Ins 31 cont'd 2084*

1 spouse of a client, for the amount of long-term community support services funded  
2 under sub. (7) paid on behalf of the client after the client attained 55 years of age,  
3 unless already recovered by the department under this subsection.

**History:** 1981 c. 20; 1983 a. 27; 1983 a. 189 s. 329 (5); 1983 a. 192, 239; 1985 a. 29 ss. 876s to 896am, 3200 (56); 1985 a. 120, 176; 1987 a. 27, 399; 1989 a. 31, 77, 336, 359; 1991 a. 32, 39, 235, 274; 1993 a. 16, 27, 437; 1995 a. 27; 1997 a. 13, 27, 39, 79, 237; 1999 a. 9, 63; 2001 a. 16, 103; 2003 a. 33; 2005 a. 22, 25, 264, 386, 387; 2007 a. 20 ss. 904 to 921, 9121 (6) (a); 2007 a. 141; 2009 a. 2; 2011 a. 32; s. 13.92 (1) (b) <sup>2</sup>.

4 **SECTION 5.** 46.27 (7g) (c) 2m. of the statutes is created to read:

5 46.27 (7g) (c) 2m. a. Property that is subject to the department's claim under  
6 subd. 1. in the estate of a client or in the estate of a nonclient surviving spouse is all  
7 property of a decedent that is included in the estate.

8 b. There is a presumption, which may be rebutted by clear and convincing  
9 evidence, that all property in the estate of the nonclient surviving spouse was marital  
10 property held with the client and that 100 percent of the property in the estate of the  
11 nonclient surviving spouse is subject to the department's claim under subd. 1.

12 **SECTION 6.** 46.27 (7g) (c) 3. (intro.) of the statutes is amended to read:

13 46.27 (7g) (c) 3. (intro.) The court shall reduce the amount of a claim under  
14 subd. 1. by up to the amount specified in s. 861.33 (2) if necessary to allow the client's  
15 decedent's heirs or the beneficiaries of the client's decedent's will to retain the  
16 following personal property:

**History:** 1981 c. 20; 1983 a. 27; 1983 a. 189 s. 329 (5); 1983 a. 192, 239; 1985 a. 29 ss. 876s to 896am, 3200 (56); 1985 a. 120, 176; 1987 a. 27, 399; 1989 a. 31, 77, 336, 359; 1991 a. 32, 39, 235, 274; 1993 a. 16, 27, 437; 1995 a. 27; 1997 a. 13, 27, 39, 79, 237; 1999 a. 9, 63; 2001 a. 16, 103; 2003 a. 33; 2005 a. 22, 25, 264, 386, 387; 2007 a. 20 ss. 904 to 921, 9121 (6) (a); 2007 a. 141; 2009 a. 2; 2011 a. 32; s. 13.92 (1) (b) <sup>2</sup>.

17 **SECTION 7.** 46.27 (7g) (c) 5. a. of the statutes is amended to read:

18 46.27 (7g) (c) 5. a. If the department's claim is not allowable because of subd.  
19 4. and the estate includes an interest in real property, including a home, the court  
20 exercising probate jurisdiction shall, in the final judgment or summary findings and  
21 order, assign the interest in the home real property subject to a lien in favor of the  
22 department for the amount described in subd. 1. The personal representative or

*↓*

lvs 3-1 cont'd 3 of 4

1 petitioner for summary settlement or summary assignment of the estate shall record  
2 the final judgment as provided in s. 863.29, 867.01 (3) (h), or 867.02 (2) (h).

History: 1981 c. 20; 1983 a. 27; 1983 a. 189 s. 329 (5); 1983 a. 192, 239; 1985 a. 29 ss. 876s to 896am, 3200 (56); 1985 a. 120, 176; 1987 a. 27, 399; 1989 a. 31, 77, 336, 359; 1991 a. 32, 39, 235, 274; 1993 a. 16, 27, 437; 1995 a. 27; 1997 a. 13, 27, 39, 79, 237; 1999 a. 9, 63; 2001 a. 16, 103; 2003 a. 33; 2005 a. 22, 25, 264, 386, 387; 2007 a. 20 ss. 904 to 921, 9121 (6) (a); 2007 a. 141; 2009 a. 2; 2011 a. 32; s. 13.92 (1) (bm) 2.

3 **SECTION 8.** 46.27 (7g) (c) 5. b. of the statutes is amended to read:

4 46.27 (7g) (c) 5. b. If the department's claim is not allowable because of subd.  
5 4., the estate includes an interest in real property, including a home and the personal  
6 representative closes the estate by sworn statement under s. 865.16, the personal  
7 representative shall stipulate in the statement that the home real property is  
8 assigned subject to a lien in favor of the department for the amount described in subd.  
9 1. The personal representative shall record the statement in the same manner as  
10 described in s. 863.29, as if the statement were a final judgment.

History: 1981 c. 20; 1983 a. 27; 1983 a. 189 s. 329 (5); 1983 a. 192, 239; 1985 a. 29 ss. 876s to 896am, 3200 (56); 1985 a. 120, 176; 1987 a. 27, 399; 1989 a. 31, 77, 336, 359; 1991 a. 32, 39, 235, 274; 1993 a. 16, 27, 437; 1995 a. 27; 1997 a. 13, 27, 39, 79, 237; 1999 a. 9, 63; 2001 a. 16, 103; 2003 a. 33; 2005 a. 22, 25, 264, 386, 387; 2007 a. 20 ss. 904 to 921, 9121 (6) (a); 2007 a. 141; 2009 a. 2; 2011 a. 32; s. 13.92 (1) (bm) 2.

11 **SECTION 9.** 46.27 (7g) (c) 6. (intro.) of the statutes is amended to read:

12 46.27 (7g) (c) 6. (intro.) The department may not enforce the a lien under subd.  
13 5. as long as any of the following survive the decedent:

History: 1981 c. 20; 1983 a. 27; 1983 a. 189 s. 329 (5); 1983 a. 192, 239; 1985 a. 29 ss. 876s to 896am, 3200 (56); 1985 a. 120, 176; 1987 a. 27, 399; 1989 a. 31, 77, 336, 359; 1991 a. 32, 39, 235, 274; 1993 a. 16, 27, 437; 1995 a. 27; 1997 a. 13, 27, 39, 79, 237; 1999 a. 9, 63; 2001 a. 16, 103; 2003 a. 33; 2005 a. 22, 25, 264, 386, 387; 2007 a. 20 ss. 904 to 921, 9121 (6) (a); 2007 a. 141; 2009 a. 2; 2011 a. 32; s. 13.92 (1) (bm) 2.

14 **SECTION 10.** 46.27 (7g) (f) 2. of the statutes is amended to read:

15 46.27 (7g) (f) 2. The department may file a claim under par. (c) only with respect  
16 to a client who dies after February 15, 1996 the date that is 90 days after the effective  
17 date of this subdivision .... [LRB inserts date].

History: 1981 c. 20; 1983 a. 27; 1983 a. 189 s. 329 (5); 1983 a. 192, 239; 1985 a. 29 ss. 876s to 896am, 3200 (56); 1985 a. 120, 176; 1987 a. 27, 399; 1989 a. 31, 77, 336, 359; 1991 a. 32, 39, 235, 274; 1993 a. 16, 27, 437; 1995 a. 27; 1997 a. 13, 27, 39, 79, 237; 1999 a. 9, 63; 2001 a. 16, 103; 2003 a. 33; 2005 a. 22, 25, 264, 386, 387; 2007 a. 20 ss. 904 to 921, 9121 (6) (a); 2007 a. 141; 2009 a. 2; 2011 a. 32; s. 13.92 (1) (bm) 2.

18 **SECTION 11.** 46.27 (7g) (g) of the statutes is amended to read:

19 46.27 (7g) (g) The department shall promulgate rules establishing standards  
20 for determining whether the application of this subsection would work an undue  
21 hardship in individual cases. If the department determines that the application of

↓

Ins 3-1 covered 4074

1 this subsection would work an undue hardship in a particular case, the department  
2 shall waive application of this subsection in that case. This paragraph does not apply  
3 with respect to claims against the estates of nonclient surviving spouses.

History: 1981 c. 20; 1983 a. 27; 1983 a. 189 s. 329 (5); 1983 a. 192, 239; 1985 a. 29 ss. 876s to 896am, 3200 (56); 1985 a. 120, 176; 1987 a. 27, 399; 1989 a. 31, 77, 336, 359; 1991 a. 32, 39, 235, 274; 1993 a. 16, 27, 437; 1995 a. 27; 1997 a. 13, 27, 39, 79, 237; 1999 a. 9, 63; 2001 a. 16, 103; 2003 a. 33; 2005 a. 22, 25, 264, 386, 387; 2007 a. 20 ss. 904 to 921, 9121 (6) (a); 2007 a. 141; 2009 a. 2; 2011 a. 32; s. 13.92 (1) (bm) 2.

(END OF INSERT 3-1)

INSERT 4-9

4  
5

SECTION 12. 49.496 (1) ~~(b)~~<sup>cm</sup> of the statutes is created to read:

49.496 (1) ~~(b)~~<sup>cm</sup> 1. "Property of a decedent" means all real and personal property  
to which the recipient held any legal title or in which the recipient had any legal  
interest immediately before death, to the extent of that title or interest, including  
assets transferred to a survivor, heir, or assignee through joint tenancy, tenancy in  
common, survivorship, life estate, living trust, or any other arrangement.

2. Notwithstanding subd. 1., "property of a decedent" includes any real  
property in which the nonrecipient surviving spouse had an ownership interest  
immediately before the recipient's death and in which the recipient had a marital  
property interest with that nonrecipient surviving spouse at any time within 5 years  
before the recipient applied for medical assistance or during the time that the  
recipient was eligible for medical assistance.

(END OF INSERT 4-9)

INSERT 5-6

1072

no 4

1. Property that is subject to the department's claim under par. (a) in the estate  
of a recipient or in the estate of a nonrecipient surviving spouse is all property of a  
decedent that is included in the estate.

↓

*Insert 5-6 cont'd 2/2*

1

*4* 2.

*NO*  
*H*

(END OF INSERT 5-6)

INSERT 9-6

2 SECTION 13. 49.682 (1) (e) of the statutes is created to read:

3 49.682 (1) (e) 1. "Property of a decedent" means all real and personal property  
4 to which the client held any legal title or in which the client had any legal interest  
5 immediately before death, to the extent of that title or interest, including assets  
6 transferred to a survivor, heir, or assignee through joint tenancy, tenancy in common,  
7 survivorship, life estate, living trust, or any other arrangement.

8 2. Notwithstanding subd. 1., "property of a decedent" includes any real  
9 property in which the nonclient surviving spouse had an ownership interest  
10 immediately before the client's death and in which the client had a marital property  
11 interest with that nonclient surviving spouse at any time within 5 years before the  
12 client applied for aid under s. 49.68, 49.683, or 49.685 or during the time that the  
13 recipient was eligible for aid under s. 49.68, 49.683, or 49.685.

(END OF INSERT 9-6)

INSERT 9-13

14 *not* 1. Property that is subject to the department's claim under par. (a) in the estate  
15 of a client or in the estate of a nonclient surviving spouse is all property of a decedent  
16 that is included in the estate.

17

*H* 2. *NO*  
*H*

(END OF INSERT 9-13)

INSERT 17-8



Ins 17-8 1007

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

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

\*\*\*\*NOTE: I didn't require parties to notify the department in this paragraph, as suggested, because this paragraph is intended to be just a description of the document and the parties are required to notify the department in proposed s. 49.848 (4).

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

21 (c) A document entitled "CERTIFICATE OF CLEARANCE," which shall  
22 provide notice that, with respect to property for which a REQUEST FOR NOTICE  
23 OF TRANSFER OR ENCUMBRANCE AND NOTICE OF POTENTIAL CLAIM has

Handwritten mark at the bottom center of the page.

*July 17 - 8 cont'd 2007*

1 been recorded, but against which a TERMINATION OF REQUEST FOR NOTICE  
2 OF TRANSFER OR ENCUMBRANCE AND NOTICE OF POTENTIAL CLAIM has  
3 not been recorded, no notice to the department is required when title to the property  
4 is transferred, an encumbrance is placed on the property, or an interest in the  
5 property is terminated.

\*\*\*\*NOTE: The above two documents are described as doing the exact same thing.  
→ Is this okay? *Maybe one document is sufficient.*

6 (3) RECORDING OF REQUEST FOR NOTICE AND TERMINATION OF REQUEST FOR NOTICE. ✓

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

11 a. A current ownership interest in real property, including a marital property  
12 interest.

13 b. At any time within 5 years ✓ before the individual applied for public assistance,  
14 a marital property interest in real property with his or her current spouse, if that  
15 spouse currently holds title to the real property. ✓

*\*\**

\*\*\*\*NOTE: I limited this to the spouse's ownership of the property because ✓ if the  
recipient still has a marital property interest in the property, it would come under (a.  
above.

→ \*\*\*\*NOTE: This is limited to the 5 years *before application* because, as drafted, this  
applies when an individual is determined to be eligible. *It can be drafted so that DHS  
records the document when an individual is determined to be eligible and at any time  
during the period that the individual is eligible.*

*subd. 1.*

*if you prefer*

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

19 3. In this paragraph, ✓ an interest in real property includes a vendee's or vendor's  
20 interest in a land contract or an interest in real property held in a revocable trust. ✓

*J*

*Ins 17-8 cont'd 3077*

1 (b) Whenever the department determines that, with respect to property for  
 2 which a REQUEST FOR NOTICE OF TRANSFER OR ENCUMBRANCE AND  
 3 NOTICE OF POTENTIAL CLAIM<sup>✓</sup> has been recorded, ~~it~~<sup>it</sup> no longer requires notice  
 4 when title to the property is transferred, an encumbrance is placed on the property,  
 5 or an interest in the property is terminated, the department shall record a  
 6 TERMINATION OF REQUEST FOR NOTICE OF TRANSFER OR  
 7 ENCUMBRANCE AND NOTICE OF POTENTIAL CLAIM<sup>✓</sup> in the office of the  
 8 register of deeds of the county in which ~~a~~<sup>the</sup> REQUEST FOR NOTICE OF TRANSFER  
 9 OR ENCUMBRANCE AND NOTICE OF POTENTIAL CLAIM<sup>✓</sup> with respect to the  
 10 property was recorded.

*the department ✓*

\*\*\*NOTE: This is pretty vague, since it does not provide any reason for why the department would make this determination. Is it possible to specify when the department would do this, or are the reasons potentially too numerous and indefinite to specify?

11 (3m) DISCLOSURE OF REQUEST FOR NOTICE. ~~the~~<sup>the</sup> title insurance company or agent  
 12 ~~who~~<sup>et</sup> in the course of a title search on real property, finds that a REQUEST FOR  
 13 NOTICE OF TRANSFER OR ENCUMBRANCE AND NOTICE OF POTENTIAL  
 14 CLAIM<sup>✓</sup> has been recorded against the property but a TERMINATION OF  
 15 REQUEST FOR NOTICE OF TRANSFER OR ENCUMBRANCE AND NOTICE OF  
 16 POTENTIAL CLAIM<sup>✓</sup> has not been recorded against the property shall disclose that  
 17 a REQUEST FOR NOTICE OF TRANSFER OR ENCUMBRANCE AND NOTICE  
 18 OF POTENTIAL CLAIM has been recorded against the property in any report  
 19 <sup>submitted</sup> preliminary to issuing, or in any commitment to offer, a certificate of title insurance  
 20 for the real property. ✓

*the title insurance company or agent ✓*

21 (4) TRANSFERRING, ENCUMBERING, OR TERMINATING AN INTEREST IN PROPERTY;  
 22 CLEARANCE BY THE DEPARTMENT. ✓ (a) Any person transferring title to, encumbering, or  
 23 terminating an interest in, property against which a REQUEST FOR NOTICE OF



*Ins 17-8 cont'd 407*

1 TRANSFER OR ENCUMBRANCE AND NOTICE OF POTENTIAL CLAIM<sup>✓</sup> has  
2 been recorded, but against which a TERMINATION OF REQUEST FOR NOTICE  
3 OF TRANSFER OR ENCUMBRANCE AND NOTICE OF POTENTIAL CLAIM<sup>✓</sup> has  
4 not been recorded, shall notify the department of the proposed transfer,  
5 encumbrance, or termination of interest.<sup>✓</sup>

6 (b) If, on the date that the person sends the notice under par. (a)<sup>✓</sup>, the recipient  
7 who had the ownership interest in the property when the department recorded the  
8 REQUEST FOR NOTICE OF TRANSFER OR ENCUMBRANCE<sup>✓</sup> AND NOTICE OF  
9 POTENTIAL CLAIM is alive, the person may transfer title to, encumber, or  
10 terminate an interest in, the property with no further action by the department.<sup>✓</sup>

11 (c) If, on the date that the person sends the notice under par. (a)<sup>✓</sup>, the recipient  
12 who had the ownership interest in the property when the department recorded the  
13 REQUEST FOR NOTICE OF TRANSFER OR ENCUMBRANCE AND NOTICE OF  
14 POTENTIAL CLAIM<sup>✓</sup> is deceased, all of the following apply:<sup>✓</sup>

15 1. The department shall determine whether it has a claim against the property  
16 for amounts paid on behalf of the recipient that are recoverable under s. 46.27 (7g)  
17 (c) 1.,<sup>✓</sup> 49.496 (3) (a),<sup>✓</sup> or 49.682 (2) (a).<sup>✓</sup>

18 2. If the department determines that it has no claim under<sup>✓</sup> subd. 1., the  
19 department shall issue to the person seeking to transfer title to, encumber, or  
20 terminate an interest in, the real property a<sup>✓</sup> CERTIFICATE OF CLEARANCE,  
21 which the person shall record along with the instrument transferring title to,  
22 encumbering, or terminating the interest in, the property.<sup>✓</sup>

23 3. If the department determines that it has a claim under subd. 1.,<sup>✓</sup> the  
24 department shall follow the procedure under sub. (5).<sup>✓</sup>

*Insert 17-8-10*



*Ins 17-8 contd 5007*

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. ✓

4           (5) PROCEDURE IF DEPARTMENT HAS A CLAIM AGAINST REAL PROPERTY. ✓ (a) This  
5 subsection applies ✓ in any of the following situations:

6           1. If the department determines that it has a claim against real property under  
7 sub. (4) (c) 1. ✓

8           2. Upon the death of a recipient who, immediately before death, had an  
9 ownership interest in real property, including a marital property interest, or whose  
10 surviving spouse has an ownership interest in real property in which the recipient  
11 had a marital property interest with that spouse at any time within 5 years before ✓  
12 the recipient applied for public assistance or during the time that the recipient was  
13 eligible for public assistance, regardless of whether the department recorded a  
14 REQUEST FOR NOTICE OF TRANSFER OR ENCUMBRANCE AND NOTICE OF  
15 POTENTIAL CLAIM ✓ with respect to the property.

16           (b) The department shall send to the person providing the notice to the  
17 department under sub. (4) (a) ✓, or to the surviving owner of the property, whichever  
18 is applicable, a statement of claim that states all of the following:

\*\*\*NOTE: Will the two above always be the same person? ✓

\*\*\*NOTE: Should this procedure be limited to when the property is not being transferred under s. 867.03 (1g) or through informal or formal administration?

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

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

↓

ens 17-8 contd 6077

1 3. 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. ✓

\*\*\*\*NOTE: See second NOTE after sub. (5) (b) (intro.).

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

7 (c) The department may recover against the property in the manner  
8 determined by the department to be appropriate, including by placing a lien on the  
9 property. ✓ Subject to par. (d), The department may enforce a lien on the property by foreclosure in the  
10 same manner as a mortgage on real property. ✓ However, the department may not  
11 enforce any such lien as long as any of the following survives: ✓

12 1. The recipient's spouse.

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

14 (1) (a) 1. ✓

15 If the recipient's surviving spouse or child who is under age 21 or disabled  
16 refinances a mortgage on the property, the department's lien is subordinate to the  
17 new encumbrance. ✓

18 The department shall release a lien under par. (c) if any of the following  
19 applies: ✓ **step** that the department could not enforce because of par. (d), ✓

20 1. The recipient's surviving spouse or child who is under age 21 or disabled sells  
21 the property for fair market value during the spouse's or child's lifetime. ✓ as described in s. 49.849 (5c) (d), ✓

22 2. The recipient's surviving spouse or child who is under age 21 or disabled  
23 transfers the property for less than fair market value, as described in s. 49.849 (5c)  
24 (d), during the spouse's or child's lifetime, the transferee sells the property during the



*lvs 20-5*

1 *#* (4) ✓ RECOVERY AGAINST REAL PROPERTY. (b) Section 49.848 (5) ✓ applies to the  
 2 department's recovery of the amount, or *any* <sup>*er*</sup> portion of the amount, that it may  
 3 recover under sub. (2) (a) ✓ from any property of the decedent that is real property.

(END OF INSERT 20-5)

**INSERT 21-21**

\*\*\*\*NOTE: I added "in the property" after "ownership." ✓ The suggested change was  
 to add "life tenant" before "ownership," but I don't think that really answers the question  
 of what "ownership" refers to. Is my change okay?

(END OF INSERT 21-21)

**INSERT 22-5**

4 **(5m) FAIR HEARING.** ✓ A person who has possession of any property of the  
 5 decedent, or who receives an affidavit from the department under sub. (3) (c) ✓ for  
 6 transmittal of any property of the decedent, is entitled to and may request a  
 7 departmental fair hearing on the value of property and the extent of the decedent's  
 8 interest in the property, if the property is not being transferred under s. 867.03 ✓ or  
 9 through formal or informal administration of the decedent's estate. ✓

(END OF INSERT 22-5)

**INSERT 25-15**

10 **SECTION 14.** 49.85 (title) ✓ of the statutes is amended to read:  
 11 **49.85 (title) Certification of certain public assistance overpayments,**  
 12 **payment recoveries, ✓ and delinquent loan repayments.**

History: 1993 a. 437, 1995 a. 27 ss. 2143 to 2157, 3212, 9126 (19), 9130 (4); Stats. 1995 s. 49.85; 1995 a. 289; 1997 a. 3; 2001 a. 16; 2003 a. 33; 2005 a. 25; 2007 a. 20 ss. 1685 to 1694, 9121 (6) (a).

13 **SECTION 15.** 49.85 (2) (a) (intro.) ✓ of the statutes is amended to read:  
 14 **49.85 (2) (a) (intro.)** At least annually, the department of health services shall  
 15 certify to the department of revenue the amounts that, based on the notifications



*Ins 25-15 contd*

1 received under sub. (1) and on other information received by the department of  
2 health services, the department of health services has determined that it may  
3 recover under s. 49.45 (2) (a) 10., 49.497, 49.793, ~~or~~, 49.847, or 49.849, except that the  
4 department of health services may not certify an amount under this subsection  
5 unless all of the following apply:

History: 1993 a. 437, 1995 a. 27 ss. 2143 to 2157, 3212, 9126 (19), 9130 (4); Stats. 1995 s. 49.85; 1995 a. 289; 1997 a. 3; 2001 a. 16; 2003 a. 33; 2005 a. 25; 2007 a. 20 ss. 1685 to 1694, 9121 (6) (a).

6 **SECTION 16.** 49.85 (2) (a) 4. <sup>✓</sup> of the statutes is created to read:

7 49.85 (2) (a) 4. If the determination relates to recovery of an amount under s.  
8 49.849<sup>✓</sup>, the determination was rendered to a judgment under s. 49.849 (5r) (b).<sup>✓</sup>

9 **SECTION 17.** 49.85 (3) (a) 1. <sup>✓</sup> of the statutes is amended to read:

10 49.85 (3) (a) 1. Inform the person that the department of health services  
11 intends to certify to the department of revenue an amount that the department of  
12 health services has determined to be due under s. 49.45 (2) (a) 10., 49.497, 49.793,  
13 ~~or~~, 49.847, or 49.849<sup>✓</sup>, for setoff from any state tax refund that may be due the person.

History: 1993 a. 437, 1995 a. 27 ss. 2143 to 2157, 3212, 9126 (19), 9130 (4); Stats. 1995 s. 49.85; 1995 a. 289; 1997 a. 3; 2001 a. 16; 2003 a. 33; 2005 a. 25; 2007 a. 20 ss. 1685 to 1694, 9121 (6) (a).

(END OF INSERT 25-15)

INSERT 25-17

14 **SECTION 18.** 632.697 <sup>✓</sup> of the statutes is created to read:

15 **632.697 Benefits subject to department's right to recover.** <sup>✓</sup> Death  
16 benefits payable under a life insurance policy or an annuity are subject to the right  
17 of the department of health services to recover under s. 46.27<sup>✓</sup> (7g), 49.496<sup>✓</sup>, 49.682<sup>✓</sup>,  
18 or 49.849<sup>✓</sup> an amount equal to the medical assistance that is recoverable under s.  
19 49.496 (3) (a)<sup>✓</sup>, an amount equal to aid under s. 49.68<sup>✓</sup>, 49.683<sup>✓</sup>, or 49.685<sup>✓</sup> that is  
20 recoverable under s. 49.682 (2) (a)<sup>✓</sup>, or an amount equal to long-term<sup>✓</sup> community  
21 support services under s. 46.27<sup>✓</sup> that is recoverable under s. 46.27 (7g) (c) 1. and that

*✓*

*Ins 25-17 cont'd*

1 was paid on behalf of the deceased policyholder or annuitant or the spouse of the  
2 deceased policyholder or annuitant. ✓

\*\*\*\*NOTE: Does it make sense to include the spouse here?

(END OF INSERT 25-17)

**INSERT 26-19**

3 *not* The notice shall include demographic information about the decedent and the  
4 decedent's spouse, if any, information about how to file a claim, a copy of the trust  
5 document, and documentation supporting the value of the trust on the decedent's  
6 date of death. ✓

(END OF INSERT 26-19)

**INSERT 27-3**

\*\*\*\*NOTE: If the spouse of the settlor received the services, does the settlor's spouse ✓  
need to have predeceased the settlor in the two subdivisions above?

(END OF INSERT 27-3)

**INSERT 27-4A**

7 *not* Within 90 days after receipt of a claim for recovery from the department, *NO*  
*A*

(END OF INSERT 27-4A)

**INSERT 27-4B**

8 *not* shall pay to the department any amount that the department may recover  
9 under subd. 2. ✓ If the trustee *NO*  
*A*

(END OF INSERT 27-4B)

**INSERT 27-9**

*↓*

*Ins 27-9 contd*

\*\*\*\*NOTE: I asked our trust drafter to review these provisions. She suggested that it might be helpful if there were a time limit on how long the department has to make a claim after receiving the notice from the trustee. That way, the trustee and any persons receiving property from the trust would have some finality.

(END OF INSERT 27-9)

**INSERT 27-12**

1 *wof* by registered or certified mail. The notice shall include demographic  
2 information about the decedent, information about how to file a claim, a copy of the  
3 trust document, and documentation supporting the value of the decedent's property  
4 held in the trust on the decedent's date of death. Within 90 days after receipt of a  
5 claim from the department, the trustee

*NO  
A*

(END OF INSERT 27-12)

**INSERT 34-8**

*\**

\*\*\*\*NOTE: I removed "transferred under s. 867.035(1g)" because, as I understand it, this provision applies in other situations, too.

6 **SECTION 19.** 867.035 (2m) (b) of the statutes is repealed.

(END OF INSERT 34-8)

~~Insert 35-8~~ *Insert 35-8*

7 **SECTION 20.** 766.55 (2) (bm) of the statutes is created to read:  
8 766.55 (2) (bm) An obligation incurred by a spouse that is recoverable under  
9 s. 46.27 (7g), 49.496, 49.682, 49.848, or 49.849 may be satisfied from all property that  
10 was the property of that spouse immediately before that spouse's death and from all  
11 property that was marital property at any time within 5 years before that spouse  
12 applied for public assistance, as defined in s. 49.849 (1) (e), and while that spouse was  
13 eligible for public assistance, as defined in s. 49.849 (1) (e).

*↓*

*Ins 35-8 cont'd*

\*\*\*\*NOTE: I have included a marital property provision, as you suggested. I don't think that it adds anything more to what is included in the draft in the ch. 49 sections. However, it is up to you whether it stays in the draft, as is or modified.

(END OF INSERT 35-8)

**INSERT 35-25**

1           **SECTION 21.** 893.33 (6r) of the statutes is created to read:  
2           893.33 (6r) This section applies to liens of the department of health services  
3           on real property under ss. 46.27 (7g), 49.496, 49.682, 49.848, and 49.849.

(END OF INSERT 35-25)

## Kahler, Pam

---

**From:** Iwata, Yuko - DOA <Yuko.Iwata@wisconsin.gov>  
**Sent:** Thursday, January 24, 2013 4:05 PM  
**To:** Kahler, Pam  
**Subject:** FW: estate recovery comments for LRB

Hi Pam,

DHS' comments on Estate Recovery.

Thanks,

**Yuko Iwata**

Executive Policy and Budget Analyst  
Division of Executive Budget and Finance  
Department of Administration  
(608) 267 – 7980

---

**From:** Rosen, Lara K - DHS  
**Sent:** Thursday, January 24, 2013 4:03 PM  
**To:** Iwata, Yuko - DOA  
**Cc:** Gauger, Michelle C - DOA; Emmerton, Kathleen M - DHS; Wasilewski, Daniel L - DHS; Garza, Jesus G - DHS; Cunningham, Curtis J - DHS; Megna, Richard H - DHS; Forsaith, Andrew C - DHS  
**Subject:** estate recovery comments for LRB

Hi Yuko,

We have another several comments regarding the LRB draft of estate recovery changes – assuming it's not too late, would you please forward to Pam?

1. In Section 37, we would like the language changed for 49.848 (3) from shall to may, as illustrated below.

**SECTION 37.** Page 13, Line 7

49.848(3) RECORDING OF REQUEST FOR NOTICE AND TERMINATION OF REQUEST FOR NOTICE.

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

2. Sections 22, 35 and 57 of the LRB estate recovery draft change the effective dates from dates in the 1990s to a date 90 days after a LRB inserted date. In the past when we had changes, the old dates stayed in the specific sections, but the new effective dates were included in an applicability section at the bottom of the budget, and we'd like to continue making changes to effective dates in this way if possible.

Specifically, we would like to change the statutory language in those sections back to the original language, as illustrated below.

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

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

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

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

**SECTION 57.** 867.035 (1) (a) 2. of the statutes is renumbered 49.849 (2) (a) 2. And amended to read:

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

3. In conjunction with 2., we also would like the new effective dates to be included in the applicability section at the bottom of the bill, such that changes would first apply to the recovery of medical assistance services provided on the effective date of this subsection from estates of medical assistance recipients who die on or after the effective date of this subsection. The effective date should be 90 days after the enactment of the statutory changes.

Thanks for your help, and let me know if you have any questions.

Lara

**Lara Rosen**

Budget & Policy Analyst

Office of Policy Initiatives & Budget

Wisconsin Department of Health Services

608-266-5655

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