



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-0617/P3
PJK&TJD:jld:ph

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

FOR 2013-2015 BUDGET — NOT READY FOR INTRODUCTION

1 **AN ACT** ...; 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 ~~967.035~~ and rules promulgated under ~~s. 48.286 (7),~~
6 49.848, and 49.849, all moneys received as collections and other recoveries from

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

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

9 20.435 (4) (in) Community options program; family care; recovery of costs
10 administration. From the moneys received from the recovery of costs of care under
11 ss. 46.27 (7g) and ~~867.035~~ and under rules promulgated under s. ~~46.286 (7)~~, 49.848,
12 and 49.849 for enrollees who are ineligible for medical assistance, the amounts in the
13 schedule for administration of the recovery of costs of the care.

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

15 20.435 (7) (im) Community options program; family care benefit; recovery of
16 costs; birth to 3 waiver administration. From the moneys received from the recovery
17 of costs of care under ss. 46.27 (7g) and ~~867.035~~ and under rules promulgated under
18 s. ~~46.286 (7)~~, 49.848, and 49.849 for enrollees who are ineligible for medical
19 assistance, all moneys not appropriated under sub. (4) (in), and all moneys
20 transferred to this appropriation account from the appropriation account under sub.
21 (4) (o), for payments to county departments and aging units under s. 46.27 (7g) (d),
22 payments to care management organizations for provision of the family care benefit
23 under s. 46.284 (5), payment of claims under s. ~~867.035 (3)~~ 49.849 (5), payments for
24 long-term community support services funded under s. 46.27 (7) as provided in ss.

1 46.27 (7g) (e) and ~~867.035 (4m)~~ 49.849 (6) (b), and for administration of the waiver
2 program under s. 46.99.

3 SECTION 4. 46.27 (7g) (a) 1m. of the statutes is created to read:

4 46.27 (7g) (a) 1m. "Decedent" means a deceased client or a deceased nonclient
5 surviving spouse, whichever is applicable.

6 SECTION 5. 46.27 (7g) (a) 4. of the statutes is created to read:

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

10 SECTION 6. 46.27 (7g) (a) 5. of the statutes is created to read:

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

16 b. Notwithstanding subd. 5. a., "property of a decedent" includes any-all
real and personal

17 property in which the nonclient surviving spouse had an ownership interest at the
18 client's death and in which the client had a marital property interest with that
19 nonclient surviving spouse at any time within 5 years before the client applied for
20 long-term community support services funded under sub. (7) or during the time that
21 the client was eligible for long-term community support services funded under sub.
22 (7).

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

24 46.27 (7g) (c) 1. Except as provided in subd. 4., the department shall file a claim
25 against the estate of a client or, and against the estate of the a nonclient surviving

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.

4 SECTION 8. 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 9. 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:

17 SECTION 10. 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
23 petitioner for summary settlement or summary assignment of the estate shall record
24 the final judgment as provided in s. 863.29, 867.01 (3) (h), or 867.02 (2) (h).

25 SECTION 11. 46.27 (7g) (c) 5. b. of the statutes is amended to read:

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

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

9 ~~46.27 (7g) (c) 6. (intro.) The department may not enforce the a lien under subd.~~
10 ~~5. as long as any of the following survive the decedent:~~

11 **SECTION 13.** 46.27 (7g) (g) of the statutes is amended to read:

12 46.27 (7g) (g) The department shall promulgate rules establishing standards
13 for determining whether the application of this subsection would work an undue
14 hardship in individual cases. If the department determines that the application of
15 this subsection would work an undue hardship in a particular case, the department
16 shall waive application of this subsection in that case. This paragraph does not apply
17 with respect to claims against the estates of nonclient surviving spouses.

18 **SECTION 14.** 46.286 (7) of the statutes is amended to read:

19 ~~46.286 (7) RECOVERY OF FAMILY CARE BENEFIT PAYMENTS; RULES.~~ The department
20 shall ~~promulgate rules relating~~ apply to the recovery from persons who receive the
21 family care benefit, including by liens and affidavits and from estates, of correctly
22 ~~and incorrectly~~ paid family care benefits, ~~that are substantially similar to the~~
23 applicable provisions under ss. 49.496 and ~~49.497, 49.848, and 49.849.~~

24 **SECTION 15.** 46.287 (2) (a) 1. k. of the statutes is amended to read:

✓
Comment [RJK]: In this section, please add language of cross-reference provisions of 49.848(5)(e) and (f) regarding when a surviving spouse or disabled child sells property.

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

3 **SECTION 16.** 49.496 (1) (a) of the statutes is renumbered 49.496 (1) (ah).

4 **SECTION 17.** 49.496 (1) (af) of the statutes is created to read:

5 49.496 (1) (af) "Decedent" means a deceased recipient or a deceased
6 nonrecipient surviving spouse, whichever is applicable.

7 **SECTION 18.** 49.496 (1) (bk) of the statutes is created to read:

8 49.496 (1) (bk) "Long-term care program" means any of the following:

9 1. The family care program providing the benefit under s. 46.286.

10 2. The self-directed services option that operates under a waiver from the
11 secretary of the federal department of health and human services under 42 USC
12 1396n (c) in which an enrolled individual selects his or her own services and service
13 providers.

14 3. The family care partnership program that is an integrated health and
15 long-term care program operated under an amendment to the state medical
16 assistance plan under 42 USC 1396u-2 and a waiver under 42 USC 1396n (c).

17 4. The program for all-inclusive care for the elderly under 42 USC 1396u-4.

18 5. Any program that provides long-term care services and is operated by the
19 department under an amendment to the state medical assistance plan under 42 USC
20 1396n (i) or 42 USC 1396u-2; a waiver of medical assistance laws under 42 USC
21 1396n (c), 42 USC 1396n (b) and (c), or 42 USC 1396u; or a demonstration project
22 under 42 USC 1315 or 42 USC 1396n (c).

23 **SECTION 19.** 49.496 (1) (bw) of the statutes is created to read:

1 **SECTION 23.** 49.496 (3) (a) 2. am. of the statutes is created to read:

2 49.496 (3) (a) 2. am. All services provided to an individual while the individual
3 is participating in a long-term care program.

4 **SECTION 24.** 49.496 (3) (a) 2. b. of the statutes is repealed.

5 **SECTION 25.** 49.496 (3) (a) 2. c. of the statutes is repealed.

6 **SECTION 26.** 49.496 (3) (ad) of the statutes is created to read:

7 49.496 (3) (ad) The amount the department may claim against an estate of a
8 recipient, or an estate of a nonrecipient surviving spouse, for services that are
9 described under par. (a) 2. am. and that are provided by a managed long-term care
10 program funded by capitated payments is equal to the amount of the capitated
11 payment for the recipient.

12 **SECTION 27.** 49.496 (3) (aj) of the statutes is created to read:

13 49.496 (3) (aj) 1. Property that is subject to the department's claim under par.
14 (a) in the estate of a recipient or in the estate of a nonrecipient surviving spouse is
15 all property of a decedent that is included in the estate.

16 2. There is a presumption, which may be rebutted by clear and convincing
17 evidence, that all property in the estate of a nonrecipient surviving spouse was
18 marital property held with the recipient and that 100 percent of the property in the
19 estate of the nonrecipient surviving spouse is subject to the department's claim
20 under par. (a).

21 **SECTION 28.** 49.496 (3) (am) (intro.) of the statutes is amended to read:

22 49.496 (3) (am) (intro.) The court shall reduce the amount of a claim under par.
23 (a) by up to the amount specified in s. 861.33 (2) if necessary to allow the recipient's
24 decedent's heirs or the beneficiaries of the recipient's decedent's will to retain the
25 following personal property:

1 SECTION 29. 49.496 (3) (c) 1. of the statutes is amended to read:

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

9 SECTION 30. 49.496 (3) (c) 2. of the statutes is amended to read:

10 49.496 (3) (c) 2. If the department's claim is not allowable because of par. (b),
11 the estate includes an interest in any real property, including a home, and the
12 personal representative closes the estate by sworn statement under s. 865.16, the
13 personal representative shall stipulate in the statement that the ~~home~~ real property
14 is assigned subject to a lien in favor of the department for the amount described in
15 par. (a). The personal representative shall record the statement in the same manner
16 as described in s. 863.29, as if the statement were a final judgment.

17 SECTION 31. 49.496 (3) (d) (intro.) of the statutes is amended to read:

18 ~~49.496 (3) (d) (intro.) The department may not enforce the a lien under par. (c)~~
19 ~~as long as any of the following survive the decedent:~~

20 SECTION 32. 49.496 (6m) of the statutes is amended to read:

21 49.496 (6m) WAIVER DUE TO HARDSHIP. The department shall promulgate rules
22 establishing standards for determining whether the application of this section would
23 work an undue hardship in individual cases. If the department determines that the
24 application of this section would work an undue hardship in a particular case, the
25 department shall waive application of this section in that case. This subsection does



Comment [RLK2]: Add language or cross-reference provisions of 49.496(5)(e) and (f) regarding when a surviving spouse or disabled child sells property.

1 not apply with respect to claims against the estates of nonrecipient surviving
2 spouses.

3 SECTION 33. 49.4962 of the statutes is created to read:

4 **49.4962 Voiding certain transfers of real property. (1) DEFINITIONS.** In
5 this section:

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

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

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

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

11 2. A transfer of title to real property by a conveyance that is not recorded during
12 the lifetime of the grantor in the office of the register of deeds of the county in which
13 the real property is located.

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

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

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

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

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

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

1 (b) The department may commence an action in circuit court against the
2 grantee to void the transfer. If the court voids the transfer, the title to the real
3 property reverts to the grantor or his or her estate.

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

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

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

16 (6) APPLICABILITY. This section applies to any of the following transfers of real
17 property:

18 (a) A transfer that is made on or after the date that is 90 days after the effective
19 date of this paragraph [LRB inserts date].

20 (b) A transfer that was made before the date that is 90 days after the effective
21 date of this paragraph [LRB inserts date], if the grantor is receiving medical
22 assistance on, or receives medical assistance after, the date that is 90 days after the
23 effective date of this paragraph [LRB inserts date].

24 SECTION 34. 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 35.** 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 36.** 49.682 (1) (e) of the statutes is created to read:

8 49.682 (1) (e) 1. "Property of a decedent" means all real and personal property
9 to which the client held any legal title or in which the client had any legal interest
10 immediately before death, to the extent of that title or interest, including assets
11 transferred to a survivor, heir, or assignee through joint tenancy, tenancy in common,
12 survivorship, life estate, living trust, or any other arrangement.

13 2. Notwithstanding subd. 1., "property of a decedent" includes any ~~all~~
real and personal 

14 property in which the nonclient surviving spouse had an ownership interest at the
15 client's death and in which the client had a marital property interest with that
16 nonclient surviving spouse at any time within 5 years before the client applied for
17 aid under s. 49.68, 49.683, or 49.685 or during the time that the recipient was eligible
18 for aid under s. 49.68, 49.683, or 49.685.

19 **SECTION 37.** 49.682 (2) (a) of the statutes is amended to read:

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

24 **SECTION 38.** 49.682 (2) (bm) of the statutes is created to read:

1 49.682 (2) (bm) 1. Property that is subject to the department's claim under par.
2 (a) in the estate of a client or in the estate of a nonclient surviving spouse is all
3 property of a decedent that is included in the estate.

4 2. There is a presumption, which may be rebutted by clear and convincing
5 evidence, that all property in the estate of the nonclient surviving spouse was marital
6 property held with the client and that 100 percent of the property in the estate of the
7 nonclient surviving spouse is subject to the department's claim under par. (a).

8 **SECTION 39.** 49.682 (2) (c) (intro.) of the statutes is amended to read:

9 49.682 (2) (c) (intro.) The court shall reduce the amount of a claim under par.
10 (a) by up to the amount specified in s. 861.33 (2) if necessary to allow the client's
11 decedent's heirs or the beneficiaries of the client's decedent's will to retain the
12 following personal property:

13 **SECTION 40.** 49.682 (2) (e) 1. of the statutes is amended to read:

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

21 **SECTION 41.** 49.682 (2) (e) 2. of the statutes is amended to read:

22 49.682 (2) (e) 2. If the department's claim is not allowable because of par. (d),
23 the estate includes an interest in real property, including a home, and the personal
24 representative closes the estate by sworn statement under s. 865.16, the personal
25 representative shall stipulate in the statement that the ~~home~~ real property is

1 assigned subject to a lien in favor of the department for the amount described in par.
2 (a). The personal representative shall record the statement in the same manner as
3 described in s. 863.29, as if the statement were a final judgment.

4 SECTION 42. 49.682 (2) (f) (intro.) of the statutes is amended to read:

5 ~~49.682 (2) (f) (intro.) The department may not enforce the a lien under par. (e)~~
6 ~~as long as any of the following survive the decedent:~~

7 SECTION 43. 49.682 (3) of the statutes is amended to read:

8 49.682 (3) The department shall administer the program under this section
9 and may contract with an entity to administer all or a portion of the program,
10 including gathering and providing the department with information needed to
11 recover payment of aid provided under s. 49.68, 49.683, or 49.685. All funds received
12 under this subsection, net of any amount claimed under s. ~~867.036 (3)~~ 49.849 (5),
13 shall be remitted for deposit in the general fund.

14 SECTION 44. 49.682 (4) (b) of the statutes is amended to read:

15 49.682 (4) (b) The department may file a claim under sub. (2) to recover against
16 the property of a decedent only with respect to a client who dies after September 1,
17 1995 the date that is 90 days after the effective date of this paragraph [LRB inserts
18 date].

19 SECTION 45. 49.682 (5) of the statutes is amended to read:

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

✓
Comment [RLK3]: In this section, add language or cross-reference provisions of 49.849(5)(e) and (f) regarding when a surviving spouse or disabled child sells property.

1 SECTION 46. 49.848 of the statutes is created to read:

2 49.848 Treatment of real property owned by certain public assistance
3 recipients. (1) DEFINITIONS. In this section:

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

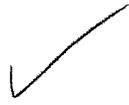
5 (b) "Public assistance" means any services provided as a benefit under a
6 long-term care program, as defined in s. 49.496 (1) (bk), that may be recoverable
7 under s. 49.496 (3) (a); medical assistance under subch. IV that may be recoverable
8 under s. 49.496 (3) (a); long-term community support services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

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

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

15 (a) A document entitled "REQUEST FOR NOTICE OF TRANSFER OR
16 ENCUMBRANCE AND NOTICE OF POTENTIAL CLAIM," which shall require
17 notice to the department with respect to any transfer of title to, placement of an
18 encumbrance on, or termination of an interest in, the property to which the document
19 relates and which shall provide notice that the department may have a claim against
20 the property to which the document relates on the basis of providing public
21 assistance to an individual who has or had a legal interest in the property.

~~NOTE: I didn't require parties to disclose or 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 disclose or notify the department in proposed s. 49.848 (3m) and (4).~~



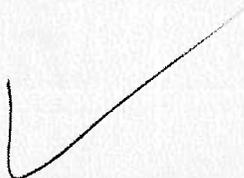
Comment [RLK4]: Okay as drafted.

22 (b) A document entitled "TERMINATION OF REQUEST FOR NOTICE OF
23 TRANSFER OR ENCUMBRANCE AND NOTICE OF POTENTIAL CLAIM," which

1 shall provide notice that, with respect to property against which a REQUEST FOR
2 NOTICE OF TRANSFER OR ENCUMBRANCE AND NOTICE OF POTENTIAL
3 CLAIM has been recorded, no notice to the department is required when title to the
4 property is transferred, an encumbrance is placed on the property, or an interest in
5 the property is terminated.

6 (c) A document entitled "CERTIFICATE OF CLEARANCE," which shall
7 provide notice that, with respect to property against which a REQUEST FOR
8 NOTICE OF TRANSFER OR ENCUMBRANCE AND NOTICE OF POTENTIAL
9 CLAIM has been recorded, but against which a TERMINATION OF REQUEST FOR
10 NOTICE OF TRANSFER OR ENCUMBRANCE AND NOTICE OF POTENTIAL
11 CLAIM has not been recorded, no notice to the department is required when title to
12 the property is transferred, an encumbrance is placed on the property, or an interest
13 in the property is terminated.

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



Comment [RLKS]: The termination document ends the notice requirement to the department. The certificate of clearance ends the notice requirement and gives notice that the department won't be pursuing a claim under s. 49.848. Perhaps we could add language to 49.848(1)(c) like, "no notice to the department is required when title to the property is transferred, an encumbrance is placed on the property, or an interest in the property is terminated and that the department will not be pursuing a claim for recovery under s. 49.848 [5]". We would prefer to keep both the termination of notice and the certificate of clearance.

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

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

19 a. A current ownership interest in real property, including a marital property
20 interest.

21 b. At any time within 5 years before the individual applied for public assistance,
22 a marital property interest in real property with his or her current spouse, if that
23 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 subd. 1. a. above.

Comment [RLK6]: Okay as drafted

NOTE: This is limited to the 5 years before application because, as drafted, this applies when an individual is determined to be eligible. If you prefer, 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.

Comment [RLK7]: We would like to have it drafted so that DHS records the document when an individual is determined to be eligible and at any time during the period of eligibility. It should also be clear that it applies to any marital property interest within 5 years before application and at any time during the period of eligibility (similar to property of the recipient in other sections). See comment 21 in section 9118 regarding effective date.

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

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

6 (b) Whenever the department determines that, with respect to property
7 against which a REQUEST FOR NOTICE OF TRANSFER OR ENCUMBRANCE
8 AND NOTICE OF POTENTIAL CLAIM has been recorded, the department no
9 longer requires notice when title to the property is transferred, an encumbrance is
10 placed on the property, or an interest in the property is terminated, the department
11 shall record a TERMINATION OF REQUEST FOR NOTICE OF TRANSFER OR
12 ENCUMBRANCE AND NOTICE OF POTENTIAL CLAIM in the office of the
13 register of deeds of the county in which the REQUEST FOR NOTICE OF
14 TRANSFER OR ENCUMBRANCE AND NOTICE OF POTENTIAL CLAIM with
15 respect to the property was recorded.

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 or indefinite to specify?

Comment [RLK8]: The reasons are really too numerous to specify, so we would prefer to leave as is.

16 (3m) DISCLOSURE OF REQUEST FOR NOTICE. If, in the course of a title search on
17 real property, a title insurance company or agent finds that a REQUEST FOR
18 NOTICE OF TRANSFER OR ENCUMBRANCE AND NOTICE OF POTENTIAL
19 CLAIM has been recorded against the property but a TERMINATION OF

1 REQUEST FOR NOTICE OF TRANSFER OR ENCUMBRANCE AND NOTICE OF
2 POTENTIAL CLAIM has not been recorded against the property, the title insurance
3 company or agent shall disclose that a REQUEST FOR NOTICE OF TRANSFER OR
4 ENCUMBRANCE AND NOTICE OF POTENTIAL CLAIM has been recorded
5 against the property in any report submitted preliminary to issuing, or in any
6 commitment to offer, a certificate of title insurance for the real property.

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 TRANSFER OR ENCUMBRANCE AND NOTICE OF POTENTIAL CLAIM has
11 been recorded, but against which a TERMINATION OF REQUEST FOR NOTICE
12 OF TRANSFER OR ENCUMBRANCE AND NOTICE OF POTENTIAL CLAIM has
13 not been recorded, shall notify the department of the proposed transfer,
14 encumbrance, or termination of interest.

15 (b) If, on the date that the person sends the notice under par. (a), the recipient
16 who had the ownership interest in the property when the department recorded the
17 REQUEST FOR NOTICE OF TRANSFER OR 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: 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?

20 (c) If, on the date that the person sends the notice under par. (a), the recipient
21 who had the ownership interest in the property when the department recorded the
22 REQUEST FOR NOTICE OF TRANSFER OR ENCUMBRANCE AND NOTICE OF
23 POTENTIAL CLAIM is deceased, all of the following apply:

✓
Comment [RLK9]: The person would most likely know that the recipient is alive. If the individual is alive, the transfer will take place without the need for a notice of termination, so the transferee is not affected. However, we probably will record a termination of request for notice as part of program operations, whenever a property transfers during the individual's lifetime.

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

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

9 3. If the department determines that it has a claim under subd. 1., the
10 department shall follow the procedure under sub. (5).

11 4. Transferring title to, encumbering, or terminating an interest in, the
12 property is not valid unless the department issues to the person, and the person
13 records, a CERTIFICATE OF CLEARANCE.

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

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

18 2. Upon the death of a recipient who, immediately before death, had an
19 ownership interest in real property, including a marital property interest, or whose
20 surviving spouse has an ownership interest in real property in which the recipient
21 had a marital property interest with that spouse at any time within 5 years before
22 the recipient applied for public assistance or during the time that the recipient was
23 eligible for public assistance, regardless of whether the department recorded a
24 REQUEST FOR NOTICE OF TRANSFER OR ENCUMBRANCE AND NOTICE OF
25 POTENTIAL CLAIM with respect to the property.

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

....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?

Comment [RLK10]: The procedure should be limited to property being transferred outside of probate.

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

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

7 3. That the person has a right to an administrative hearing on the extent and
8 fair market value of the recipient's interest in the property and how to request an
9 administrative hearing. The value of the recipient's interest in the property shall be
10 determined in the manner provided in s. 49.849 (5c).

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

....NOTE: Do you need a provision for a fair hearing in this section, like proposed s. 49.849 (5m)?

Comment [RLK11]: Yes, with language similar to 49.849(5m).

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

14 (c) The department may recover against the property in the manner
15 determined by the department to be appropriate, including by placing a lien on the
16 property. Subject to par. (d), the department may enforce a lien on the property by
17 foreclosure in the same manner as a mortgage on real property.

18 (d) The department may not enforce a lien under par. (c) as long as any of the
19 following is alive:

20 1. The recipient's spouse.

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

3 (e) If the recipient's surviving spouse or child who is under age 21 or disabled
4 refinances a mortgage on the property, any lien under par. (c) is subordinate to the
5 new encumbrance.

6 (f) The department shall release a lien under par. (c) that the department could
7 not enforce because of par. (d), if any of the following applies:

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

~~NOTE: Should this provision include something about the department being
paid the amount of its lien after the sale?~~

✓
Comment [RLA12]: No, the Department will not receive payment if the surviving spouse or minor or disabled child sells property for fair market value.

11 2. The recipient's surviving spouse or child who is under age 21 or disabled
12 transfers the property for less than fair market value, as described in s. 49.849 (5c)
13 (d), during the spouse's or child's lifetime, the transferee sells the property during the
14 spouse's or child's lifetime and places proceeds equal to the lesser of the department's
15 lien or the sale proceeds due to the seller in a trust or bond, and the department is
16 paid the secured amount upon the death of the recipient's spouse or disabled child
17 or when the recipient's child who is not disabled reaches age 22.

18 3. The surviving owner or transferee of the property, who is not the recipient's
19 surviving spouse or child who is under age 21 or disabled, sells the property during
20 the lifetime of the recipient's surviving spouse or child who is under age 21 or
21 disabled and places proceeds equal to the lesser of the department's lien or the sale
22 proceeds due to the seller in a trust or bond, and the department is paid the secured

1 amount upon the death of the recipient's spouse or disabled child or when the
2 recipient's child who is not disabled reaches age 22.

3 SECTION 47. 49.849 of the statutes is created to read:

4 **49.849 Recovery of correct payments under certain public assistance**
5 **programs. (1) DEFINITIONS.** In this section:

6 (a) "Decedent" means a deceased recipient or a deceased nonrecipient surviving
7 spouse, whichever is applicable.

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

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

12 (d) 1. "Property of a decedent" means all real and personal property to which
13 the recipient held any legal title or in which the recipient had any legal interest
14 immediately before death, to the extent of that title or interest, including assets
15 transferred to a survivor, heir, or assignee through joint tenancy, tenancy in common,
16 survivorship, life estate, living trust, or any other arrangement.

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

23 (e) "Public assistance" means any services provided as a benefit under a
24 long-term care program, as defined in s. 49.496 (1) (bk), medical assistance under

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

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

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

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

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

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

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

21 3. That the person may have a right to an administrative hearing under sub.
22 (5m) on the extent and fair market value of the recipient's interest in the property.

23 4. How to request an administrative hearing under sub. (5m).

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

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

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

5 **(4m) ALLOWABLE COSTS OF SALE OF REAL PROPERTY.** (a) Subject to par. (b), if any
6 property of a decedent that is real property has been sold after the death of the
7 decedent, only the following reasonable expenses, if any, incurred in preserving or
8 disposing of the real property may be deducted from the sale proceeds that the
9 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. Property insurance premiums.

13 3. Property taxes due.

14 4. Utility costs necessary to preserve the property.

15 5. Expenses incurred in providing necessary maintenance or making necessary
16 repairs, without which the salability of the property would be substantially
17 impaired.

18 (b) Any expense under par. (a) may be deducted from the sale proceeds only if
19 it is documented and approved by the department and it was not incurred while any
20 other individual was living on the property.

21 **(5c) VALUE OF RECIPIENT'S INTEREST.** For purposes of determining the value of
22 the recipient's interest in property of the decedent, all of the following apply:

23 (a) If the recipient held title to real property jointly with one or more persons
24 other than his or her spouse, the recipient's interest in the real property is equal to

1 the fractional interest that the recipient would have had in the property if the
2 property had been held with the other owner or owners as tenants in common.

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

6 1. The percentage interest that was attributed to the recipient when his or her
7 eligibility for public assistance was determined.

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

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

****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?

✓
Comment [RLK13]: Yes.

16 (d) A property's fair market value is the price that a willing buyer would pay
17 a willing seller for the purchase of the property. The burden of proof for establishing
18 a property's fair market value is on the surviving owners or beneficiaries, or their
19 representatives. Fair market value must be established through a credible
20 methodology, which may include an appraisal performed by a licensed appraiser.

21 (5m) FAIR HEARING. A person who has possession of any property of the
22 decedent, or who receives an affidavit from the department under sub. (3) (c) for
23 transmittal of any property of the decedent, is entitled to and may request a

1 departmental fair hearing on the value of property and the extent of the recipient's
2 interest in the property, if the property is not being transferred under s. 867.03 or
3 through formal or informal administration of the decedent's estate.

4 (5r) ACTION OR ORDER TO ENFORCE RECOVERY. (a) If, after receipt of an affidavit
5 under sub. (3), a person who possesses property of a decedent fails to transmit the
6 property to the department, the department may bring an action to enforce its right
7 to collect amounts specified in sub. (2) (a) from the property or may issue an order
8 to compel transmittal of the property. Any person aggrieved by an order issued by
9 the department under this paragraph may appeal the order as a contested case class 3
proceeding under

10 ch. 227 by filing with the department a request for a hearing within 30 days after the

11 date of the order. The request shall be submitted to the
department of administration's division of hearings and appeals.
The date on which the division of hearing and appeals receives the
request shall be the date of service. The only issue at the hearing shall be the
determination by the

12 department that the person has not transmitted the property to the department.
The hearing decision shall be the final decision of the department.

****NOTE: Since a person who receives an affidavit may request a fair hearing under sub. (5m), do you want to specify a time limit after receipt of an affidavit and if no fair hearing is requested before the department may bring an action or issue an order, such as if 30 days have elapsed after receipt of the affidavit and the person has not requested a fair hearing or transmitted the property?

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

✓
Comment [RLK14]: This change reflects language in HF5 108.02(12)(d). We may also want to include a note with the mailing address of DHA: P.O. Box 7875, Madison, WI 53707-7875.

Comment [RLK15]: Yes, we would like a 45 day time limit that a fair hearing to contest the extent and value of the deceased's property be requested from the mailing of our affidavit, similar to how we handle hardship requests under 108.02, (12) (d).
✓

22 entered in the judgment and lien docket and may be enforced in the same manner

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

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

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

6 **SECTION 48.** 49.85 (title) of the statutes is amended to read:

7 **49.85 (title) Certification of certain public assistance overpayments,**
8 **payment recoveries, and delinquent loan repayments.**

9 **SECTION 49.** 49.85 (2) (a) (intro.) of the statutes is amended to read:

10 49.85 (2) (a) (intro.) At least annually, the department of health services shall
11 certify to the department of revenue the amounts that, based on the notifications
12 received under sub. (1) and on other information received by the department of
13 health services, the department of health services has determined that it may
14 recover under s. 49.45 (2) (a) 10., 49.497, 49.793, or 49.847, or 49.849, except that the
15 department of health services may not certify an amount under this subsection
16 unless all of the following apply:

17 **SECTION 50.** 49.85 (2) (a) 4. of the statutes is created to read:

18 49.85 (2) (a) 4. If the determination relates to recovery of an amount under s.
19 49.849, the determination was rendered to a judgment under s. 49.849 (5r) (b).

20 **SECTION 51.** 49.85 (3) (a) 1. of the statutes is amended to read:

21 49.85 (3) (a) 1. Inform the person that the department of health services
22 intends to certify to the department of revenue an amount that the department of
23 health services has determined to be due under s. 49.45 (2) (a) 10., 49.497, 49.793,
24 or 49.847, or 49.849, for setoff from any state tax refund that may be due the person.

25 **SECTION 52.** 59.43 (1) (w) of the statutes is created to read:

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

2 SECTION 53. 632.697 of the statutes is created to read:

3 632.697 Benefits subject to department's right to recover. Death
4 benefits payable under a life insurance policy or an annuity are subject to the right
5 of the department of health services to recover under s. 46.27 (7g), 49.496, 49.682,
6 or 49.849 an amount equal to the medical assistance that is recoverable under s.
7 49.496 (3) (a), an amount equal to aid under s. 49.68, 49.683, or 49.685 that is
8 recoverable under s. 49.682 (2) (a), or an amount equal to long-term community
9 support services under s. 46.27 that is recoverable under s. 46.27 (7g) (c) 1. and that
10 was paid on behalf of the deceased policyholder or annuitant or the spouse of the
11 deceased policyholder or annuitant.

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

Comment [RLK16]: No, as we are recovering all property that the recipient had immediately prior to the date of death, so we shouldn't be recovering from the spouse's death benefit.

12 SECTION 54. 700.24 of the statutes is amended to read:

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

20 SECTION 55. 701.065 (1) (b) 1. of the statutes is amended to read:

21 701.065 (1) (b) 1. The claim is a claim based on tort, on a marital property
22 agreement that is subject to the time limitations under s. 766.58 (13) (b) or (c), on
23 Wisconsin income, franchise, sales, withholding, gift, or death taxes, or on
24 unemployment compensation contributions due or benefits overpaid; a claim for

1 funeral or administrative expenses; a claim of this state under s. 46.27 (7g), 49.496
2 or 49.682, or rules promulgated under s. 46.286 (7) 49.849; or a claim of the United
3 States.

4 SECTION 56. 701.065 (5) of the statutes is created to read:

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

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

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

9 (b) Living trusts. 1. Notwithstanding sub. (1) (a), if a settlor, or the spouse of
10 a settlor, of a living trust at anytime received any services provided as a benefit under
11 a long-term care program, medical assistance under subch. IV of ch. 49, long-term
12 community support services funded under s. 46.27 (7), or aid under s. 49.68, 49.683,
13 or 49.685, the trustee shall provide written notice to the department by registered
14 or certified mail, within 30 days after the death of the settlor and before any property
15 held in the trust is distributed. The notice shall include demographic information
16 about the decedent and the decedent's spouse, if any, information about how to file
17 a claim, a copy of the trust document, and documentation supporting the value of the
18 trust on the decedent's date of death.

19 2. After the death of a settlor described in subd. 1., the department may recover
20 under s. 46.27 (7g), 49.496, 49.682, or 49.849, from property held in the living trust
21 immediately before the settlor's death, an amount equal to the medical assistance
22 that is recoverable under s. 49.496 (3) (a), an amount equal to aid under s. 49.68,
23 49.683, or 49.685 that is recoverable under s. 49.682 (2) (a), or an amount equal to
24 long-term community support services under s. 46.27 that is recoverable under s.
25 46.27 (7g) (c) 1. and that was paid on behalf of the decedent or the decedent's spouse.

---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?

Comment [RLK17]: Yes, and we only want notice if the settlor received public assistance or if the predeceased spouse of the nonrecipient settlor received public assistance.

1 3. Within 90 days after receipt of a claim for recovery from the department, a
2 trustee under subd. 1. shall pay to the department any amount that the department
3 may recover under subd. 2. If the trustee distributes property from the trust before
4 the department makes a claim to the trustee for the recovery of any amount specified
5 in subd. 2., the trustee shall provide the department with information about the
6 distributed property and to whom it was distributed or transferred. The department
7 is entitled to recover any amounts specified in subd. 2. from the persons to whom the
8 property was distributed or transferred.

---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.

Comment [RLK18]: We would like a time limit to file our claim similar to s. 701.065 (1) (a); "deadline shall be the date that is 4 months after the date" of the notice.

9 (c) Special needs or pooled trusts. 1. Notwithstanding sub. (1) (a), within 30
10 days after the death of a beneficiary under a trust described in 42 USC 1396p (d) (4)
11 (A) or (C), the trustee shall provide written notice to the department by registered
12 or certified mail. The notice shall include demographic information about the
13 decedent, information about how to file a claim, a copy of the trust document, and
14 documentation supporting the value of the decedent's property held in the trust on
15 the decedent's date of death. Within 90 days after receipt of a claim from the
16 department, the trustee shall repay the department for any medical assistance paid
17 on behalf of the decedent, as required under the terms of the trust.

18 2. If a trustee under subd. 1. fails to comply with the notice and repayment
19 requirements under subd. 1., the trustee is personally liable to the department for
20 any costs the department incurs in recovering medical assistance amounts paid on
21 behalf of the decedent from property distributed from the trust before any repayment

1 is made and for any recoverable amounts that the department is unable to recover
2 from persons to whom the property was distributed.

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

8 SECTION 57. 705.04 (2g) of the statutes is amended to read:

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

19 SECTION 58. 766.55 (2) (bm) of the statutes is created to read:

20 766.55 (2) (bm) An obligation incurred by a spouse that is recoverable under
21 s. 46.27 (7g), 49.496, 49.682, or 49.849 may be satisfied from all property that was
22 the property of that spouse immediately before that spouse's death and from all
23 property that was marital property at any time within 5 years before that spouse
24 applied for public assistance, as defined in s. 49.849 (1) (e), or while that spouse was
25 eligible for public assistance, as defined in s. 49.849 (1) (e).

---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.



Comment [RLK19]: We would like this provision to stay in the draft.

1 SECTION 59. 859.02 (2) (a) of the statutes is amended to read:
2 859.02 (2) (a) It is a claim based on tort, on a marital property agreement that
3 is subject to the time limitations under s. 766.58 (13) (b) or (c), on Wisconsin income,
4 franchise, sales, withholding, gift, or death taxes, or on unemployment insurance
5 contributions due or benefits overpaid; a claim for funeral or administrative
6 expenses; a claim of this state under s. 46.27 (7g), 49.496 or 49.682, or rules
7 promulgated under ~~s. 46.286 (7)~~ 49.849; or a claim of the United States; or

8 SECTION 60. 859.07 (2) (a) 3. of the statutes is amended to read:
9 859.07 (2) (a) 3. The decedent or the decedent's spouse received ~~the family care~~
10 ~~benefit under s. 46.286~~ services provided as a benefit under a long-term care
11 program, as defined in s. 49.496 (1) (bk), medical assistance under subch. IV of ch.
12 49, long-term community support services funded under s. 46.27 (7), or aid under s.
13 49.68, 49.683, or 49.685.

14 SECTION 61. 867.01 (3) (am) 4. of the statutes is amended to read:
15 867.01 (3) (am) 4. Whether the decedent or the decedent's spouse received ~~the~~
16 ~~family care benefit under s. 46.286~~ services provided as a benefit under a long-term
17 care program, as defined in s. 49.496 (1) (bk), medical assistance under subch. IV of
18 ch. 49, long-term community support services funded under s. 46.27 (7) or aid under
19 s. 49.68, 49.683 or 49.685.

20 SECTION 62. 867.01 (3) (d) of the statutes is amended to read:
21 867.01 (3) (d) Notice. The court may hear the matter without notice or order
22 notice to be given under s. 879.03. If the decedent or the decedent's spouse received
23 ~~the family care benefit under s. 46.286~~ services provided as a benefit under a

1 long-term care program, as defined in s. 49.496 (1) (bk), medical assistance under
2 subch. IV of ch. 49, long-term community support services funded under s. 46.27 (7),
3 or aid under s. 49.68, 49.683, or 49.685, the petitioner shall give notice by certified
4 mail to the department of health services as soon as practicable after filing the
5 petition with the court.

6 **SECTION 63.** 867.02 (2) (am) 6. of the statutes is amended to read:

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

12 **SECTION 64.** 867.03 (1g) (c) of the statutes is amended to read:

13 867.03 (1g) (c) Whether the decedent or the decedent's spouse ever received the
14 ~~family care benefit under s. 46.286 services provided as a benefit under a long-term~~
15 care program, as defined in s. 49.496 (1) (bk), medical assistance under subch. IV of
16 ch. 49, long-term community support services funded under s. 46.27 (7) or aid under
17 s. 49.68, 49.683 or 49.685.

18 **SECTION 65.** 867.03 (1m) (a) of the statutes is amended to read:

19 867.03 (1m) (a) Whenever an heir, trustee, or person who was guardian of the
20 decedent at the time of the decedent's death intends to transfer a decedent's property
21 by affidavit under sub. (1g) and the decedent or the decedent's spouse ever received
22 ~~the family care benefit under s. 46.286 services provided as a benefit under a~~
23 long-term care program, as defined in s. 49.496 (1) (bk), medical assistance under
24 subch. IV of ch. 49, long-term community support services funded under s. 46.27 (7),
25 or aid under s. 49.68, 49.683, or 49.685, the heir, trustee, or person who was guardian

1 of the decedent at the time of the decedent's death shall give notice to the department
2 of health services of his or her intent. The notice shall include the information in the
3 affidavit under sub. (1g) and the heir, trustee, or person who was guardian of the
4 decedent at the time of the decedent's death shall give the notice by certified mail,
5 return receipt requested.

6 SECTION 66. 867.03 (1m) (b) of the statutes is amended to read:

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

17 SECTION 67. 867.03 (2g) of the statutes is renumbered 867.03 (2g) (a) and
18 amended to read:

19 867.03 (2g) (a) By accepting the decedent's property under this section the heir,
20 trustee, or guardian assumes a duty to apply the property transferred for the
21 payment of obligations according to priorities established under s. 859.25 and to
22 distribute any balance to those persons designated in the appropriate governing
23 instrument, as defined in s. 854.01, of the decedent or if there is no governing
24 instrument, according to the rules of intestate succession under ch. 852, subject to
25 par. (b). An heir or guardian may publish a notice to creditors in the same manner

1 and with the same effect as a trustee under s. 701.065. This ~~subsection~~ paragraph
2 does not prohibit any appropriate person from requesting administration of the
3 decedent's estate under s. 856.07 or ch. 865.

4 **SECTION 68.** 867.03 (2g) (b) of the statutes is created to read:

5 867.03 (2g) (b) Property transferred under this section to or by an heir, trustee,
6 or guardian is subject to the right of the department of health services to recover
7 under s. 46.27 (7g), 49.496, 49.682, or 49.849 an amount equal to the medical
8 assistance that is recoverable under s. 49.496 (3) (a), an amount equal to aid under
9 s. 49.68, 49.683, or 49.685 that is recoverable under s. 49.682 (2) (a), or an amount
10 equal to long-term community support services under s. 46.27 that is recoverable
11 under s. 46.27 (7g) (c) 1. and that was paid on behalf of the decedent or the decedent's
12 spouse. Upon request, the heir, trustee, or guardian shall provide to the department
13 of health services information about any of the decedent's property that the heir,
14 trustee, or guardian has distributed and information about the persons to whom the
15 property was distributed.

16 **SECTION 69.** 867.035 (title) of the statutes is repealed.

17 **SECTION 70.** 867.035 (1) (a) (intro.) of the statutes is renumbered 49.849 (2) (a)
18 (intro.) and amended to read:

19 49.849 (2) (a) (intro.) Subject to par. ~~(bm)~~ (b), the department of health services
20 may collect from the property of a decedent, ~~including funds of a decedent that are~~
21 ~~held by the decedent immediately before death in a joint account or a P.O.D. account,~~
22 by affidavit under sub. ~~(2)~~ (3) ~~(b)~~ or by lien under sub. ~~(2m)~~ (4) ~~(a)~~ an amount equal
23 to the medical assistance that is recoverable under s. 49.496 (3) (a), the long-term
24 community support services under s. 46.27 that is recoverable under s. 46.27 (7g) (c)
25 1., ~~the family care benefit that is recoverable under rules promulgated under s.~~

1 ~~46.286 (7)~~, or the aid under s. 49.68, 49.683, or 49.685 that is recoverable under s.
2 49.682 (2) (a), and that was paid on behalf of the decedent or the decedent's spouse,
3 if all of the following conditions are satisfied:

4 SECTION 71. 867.035 (1) (a) 1. of the statutes is repealed.

5 SECTION 72. 867.035 (1) (a) 2. of the statutes is renumbered 49.849 (2) (a) 1.

6 SECTION 73. 867.035 (1) (a) 3. of the statutes is renumbered 49.849 (2) (a) 2.

7 SECTION 74. 867.035 (1) (a) 4. of the statutes is repealed.

8 SECTION 75. 867.035 (1) (bm) of the statutes is renumbered 49.849 (2) (b), and
9 49.849 (2) (b) (intro.), as renumbered, is amended to read:

10 49.849 (2) (b) (intro.) The department of ~~health services~~ shall reduce the
11 amount of its recovery under par. (a) by up to the amount specified in s. 861.33 (2)
12 if necessary to allow the decedent's heirs or beneficiaries under the decedent's will
13 to retain the following personal property of the decedent:

14 SECTION 76. 867.035 (2) of the statutes is renumbered 49.849 (3) (b) and
15 amended to read:

16 49.849 (3) (b) A person who possesses or receives property of a decedent shall
17 transmit the property to the department of ~~health services~~, if the conditions in sub.
18 ~~(1) (a) 1. to 4.~~ (2) (a) 1. and 2. are satisfied, upon receipt of an affidavit by a person
19 designated by the secretary of health services to administer this section showing that
20 the department paid on behalf of the decedent or the decedent's spouse recoverable
21 benefits specified in sub. ~~(1) (2) (a)~~. Upon transmittal, the person is released from
22 any obligation to other creditors or heirs of the decedent.

23 SECTION 77. 867.035 (2m) (a) of the statutes is renumbered 49.849 (4) (a), and
24 49.849 (4) (a) (intro.), as renumbered, is amended to read:

✓
Comment [RLK20]: In 49.849, add language or cross-reference provisions of 49.849(3)(e) and (f) regarding when a surviving spouse or disabled child sells property.

See 49.849
(4)(b)

1 49.849 (4) (a) (intro.) If the ~~conditions~~ condition in sub. (4) (a) 1., 2., and 4. are
 2 (2) (a) 1. is satisfied, the department of health services shall have a lien in the amount
 3 that it may recover under sub. (4) (2) (a) on any interest in the ~~decedent's any~~
 4 property of the decedent that is real property, including a home, as defined in s.
 5 49.496 (1) (b), ~~transferred under s. 867.03 (1g)~~. The department may record the lien
 6 in the office of the register of deeds of the county in which the real property is located.
 7 The department may enforce the lien by foreclosure in the same manner as a
 8 mortgage on real property, unless any of the following is alive:

 ****NOTE: I removed "transferred under s. 867.03 (1g)" because, as I understand it,
 this provision applies in other situations, too.

9 **SECTION 78.** 867.035 (2m) (b) of the statutes is repealed.

10 **SECTION 79.** 867.035 (3) of the statutes is renumbered 49.849 (5) and amended
 11 to read:

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

22 **SECTION 80.** 867.035 (4) of the statutes is renumbered 49.849 (6) (a) and
 23 amended to read:

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. (4) (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
7 under this section and shall spend the remainder of the amount recovered under this
8 section for medical assistance benefits under subch. IV of ch. 49.

9 SECTION 81. 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. (4) (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 82. 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

1 from the property of a decedent if the decedent is a deceased nonrecipient surviving
2 spouse.

3 SECTION 83. 893.33 (6r) of the statutes is created to read:

4 893.33 (6r) This section applies to liens of the department of health services
5 on real property under ss. 46.27 (7g), 49.496, 49.682, 49.848, and 49.849.

6 SECTION 9118. Nonstatutory provisions; Health Services.

7 (1) RECORDING POTENTIAL CLAIM DOCUMENTS IN THE OFFICE OF THE REGISTER OF
8 DEEDS. Notwithstanding section 49.848 (3) (a) 1. (intro.) of the statutes, as created
9 by this act, and SECTION 9318 (3) of this act, the department of health services may
10 apply the provisions of section 49.848 of the statutes, as created by this act, with
11 respect to individuals who are receiving public assistance, as defined in section
12 49.848 (1) (b) of the statutes, as created by this act, on October 1, 2013, or on the 90th
13 day after publication, whichever is later, and who, when they applied for public
14 assistance, as defined in section 49.848 (1) (b) of the statutes, as created by this act,
15 had any of the ownership interests in real property specified in section 49.848 (3) (a)
16 1. a. and b. of the statutes, as created by this act.

NOTE: Do you want them to have these ownership interests on the effective date
rather than when they applied for public assistance, as drafted above?

Comment [RLK21]: We want to ensure that if you are on public assistance on the effective date and have a current ownership interest or had a marital property interest at any time within 5 years prior to application or at any time during eligibility. See Comment 7 in Section 46.

17 SECTION 9318. Initial applicability; Health Services.

18 (1) RECOVERY OF LONG-TERM CARE PAYMENTS. The treatment of section 49.496 (3)
19 (a) 2. am. of the statutes first applies to additional services that are received by an
20 individual who is participating in a long-term care program on the effective date of
21 this subsection.

22 (2) RECOVERY OF CAPITATED PAYMENTS. The treatment of section 49.496 (3) (ad)
23 of the statutes first applies to capitation payments made for services that are

1 received by an individual who is participating in a managed long-term care program
2 on the effective date of this subsection.

3 (3) SPECIAL NEEDS AND POOLED TRUSTS.

4 (a) Notices. The treatment of section 701.065 (5) (c) 1. and 2. of the statutes first
5 applies to deaths occurring on the effective date of this paragraph.

6 (b) Retained amounts. The treatment of section 701.065 (5) (c) 3. of the statutes
7 first applies to deaths of beneficiaries under pooled trusts who apply for medical
8 assistance on the effective date of this paragraph.

NOTE: This seems to be what the instructions are asking for, but I'm not sure
it is what you intended. Does this work with the "Notwithstanding the terms of the trust"
language in proposed s. 701.065 (5) (c) 3.? Perhaps the "notwithstanding" language is not
needed.

Comment [RLK22]: We would like this provision to apply prospectively to trusts created or modified on or after the effective date.

Comment [RLK23]: We deleted the "notwithstanding" language in proposed s. 701.065 (5)(c)3.

9 (4) RECOVERY OF PUBLIC ASSISTANCE FROM PROPERTY OF A DECEDENT. The
10 treatment of sections 46.27 (7g) (a) 5. and (c) 2m., 3. (intro.), and 5. a. and b., 49.496
11 (1) (a), (af), (bw), and (cm) and (3) (a) (intro.) and 2. am., (ad), (aj), (am) (intro.), and
12 (c) 1. and 2., 49.682 (1) (e) and (2) (bm), (c) (intro.), and (e) 1. and 2., 49.849 (1) (d),
13 (2) (c), (3) (a), (4) (b), (4m), (5c), (5m), and (5r), 49.85 (title), (2) (a) (intro.) and 4., and
14 (3) (a) 1., 701.065 (5) (c), 766.55 (2) (bm), and 867.035 (1) (a) (intro.), 1., and 4., (2),
15 (2m) (a) and (b), and (3) of the statutes first applies to the recovery of public
16 assistance, as defined in section 49.849 (1) (e) of the statutes, as created by this act,
17 provided to individuals who die on the effective date of this subsection.

NOTE: The requested initial applicability was for medical assistance provided
on the effective date to individuals who die on or after the effective date. It can only be
one or the other: either recovery of public assistance (because it is more than MA) that
is provided on or after the effective date or recovery from the estates, etc., of individuals
who die on or after the effective date. Which is the important event, the date of the death
or when public assistance was provided? This initial applicability makes the date of death
the important event; however, it can be modified to make public assistance provided on
and after the effective date the "event" around which everything is based.

Comment [RLK24]: The current language seems to express our intent that the expanded estate provisions take effect for anyone who dies after the effective date. New services are addressed in Section 9318, where provisions apply to services received on or after the effective date.

18 (5) RECORDING POTENTIAL CLAIM DOCUMENTS IN THE OFFICE OF THE REGISTER OF
19 DEEDS. The treatment of section 49.848 of the statutes first applies to individuals who

1 are determined to be eligible for public assistance on October 1, 2013, or on the 90th
2 day after publication, whichever is later.

NOTE: This is the logical initial applicability for proposed s. 49.848, since under the language in the draft the department records a document when an individual becomes eligible for public assistance. It is not necessary to delay the effective date of s. 49.848 with an initial applicability as above. See the nonstatutory provision I have included.

Comment [RLK25]: Okay as drafted.

3 SECTION 9418. Effective dates; Health Services.

4 (1) MEDICAL ASSISTANCE ESTATE RECOVERY. The treatment of sections 46.27 (7g)
5 (a) 5. and (c) 2m., 3. (intro.), and 5. a. and b., 49.496 (1) (a), (af), (bw), and (cm) and
6 (3) (a) (intro.) and 2. am., (ad), (aj), (am) (intro.), and (c) 1. and 2., 49.682 (1) (e) and
7 (2) (bm), (c) (Intro.), and (e) 1. and 2., 49.849 (1) (d), (2) (c), (3) (a), (4) (b), (4m), (5c),
8 (5m), and (5r), 49.85 (title), (2) (a) (intro.) and 4., and (3) (a) 1., 701.065 (5) (c), 766.55
9 (2) (bm), and 867.035 (1) (a) (intro.), 1., and 4., (2), (2m) (a) and (b), and (3) of the
10 statutes and SECTION 9318 (1), (2), (3), and (4) of this act take effect on October 1,
11 2013, or on the 90th day after publication, whichever is later.

Comment [RLK26]: There is some concern about a gap between the repeal date of current sections on recoverable services and the effective date for new recoverable services sections. Can we ensure that current law on recoverable services will be in effect until 10/1, when the new sections on recoverable services become effective?

12 (END)