State of Wisconsin
2013 – 2014 LEGISLATURE

LRB–0617/2
PJK&TJD:jld:jf

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

FOR 2013-2015 BUDGET — NOT READY FOR INTRODUCTION

AN ACT ...; **relating to:** the budget.

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

MEDICAL ASSISTANCE

Under current law, DHS is required to recover the amount of certain benefits (recoverable public assistance benefits) provided to individuals under certain programs (public assistance programs) by making claims against the estates of the individuals or their spouses. Recoverable public assistance benefits include benefits provided to individuals with hemophilia, cystic fibrosis, or kidney disease under the disease aids program; benefits under certain long–term care programs, including family care; and medical assistance (MA) benefits provided to individuals residing in nursing homes. Also under current law, DHS may collect the amounts of those recoverable public assistance benefits provided to an individual or his or her spouse from the nonprobate property of the individual, by sending an affidavit to a person who possesses the property. Besides making the estate recovery provisions for each of the types of recoverable public assistance benefits consistent with one another and streamlining the nonprobate property recovery program so that it applies to all of the types of recoverable public assistance benefits, this bill makes some changes to those recoverable public assistance benefits recovery programs.

Current law does not define the property that is subject to recovery by DHS. The bill defines the property that is subject to recovery, both nonprobate property and property in an estate, as all real and personal property to which the individual who

received the recoverable public assistance benefits under a public assistance program (recipient) held any legal title, or in which the recipient had any legal interest, immediately before death, including assets transferred to an heir or a survivor, such as jointly owned property or property transferred by a living trust. In addition, the property subject to recovery includes any real or personal property in which the recipient's spouse had an ownership interest at the recipient's death and in which the recipient had a marital property interest at any time within five years before the recipient applied for the public assistance program or during the time that the recipient was eligible for the public assistance program. The bill provides that there is a rebuttable presumption that all nonprobate property, and all property in the estate, of the recipient's deceased surviving spouse was marital property held with the recipient and that 100 percent of that property is subject to recovery by DHS. As under current law, however, DHS may not recover nonprobate property or property in an estate if the deceased person has a surviving spouse or a child who is under age 21 or disabled, in which case DHS receives a lien in the amount that it may recover on any real property included in the estate or nonprobate property.

The bill expands on the procedure under current law for recovery of nonprobate property. The bill specifies all of the following: what information must be provided in an affidavit by DHS to a person who possesses property of a decedent; what costs will be allowed if the property was real property and the person has sold the property; that the person receiving an affidavit has the right to a fair hearing on the value of the recipient's interest in the property and how the recipient's interest is determined; and that DHS may bring an action or issue an order to compel transmittal of the property if the person does not transmit the property to DHS after receiving an affidavit.

The bill establishes procedures for DHS to follow with respect to real property owned by a recipient, both before and after death. DHS must create three documents for recording in the office of the register of deeds: 1) a REQUEST FOR NOTICE OF TRANSFER OR ENCUMBRANCE AND NOTICE OF POTENTIAL CLAIM (REQUEST); 2) a TERMINATION OF REQUEST FOR NOTICE OF TRANSFER OR ENCUMBRANCE AND NOTICE OF POTENTIAL CLAIM (TERMINATION); 3) and a CERTIFICATE OF CLEARANCE (CLEARANCE). Whenever a recipient, upon becoming eligible for a public assistance program or during the time that the recipient is eligible for a public assistance program, has a current ownership interest in real property, or has a spouse with a current ownership interest in real property in which the recipient had a marital property interest at any time within the five years before applying for the public assistance program or during the time that the recipient is eligible for the public assistance program, DHS may record a REQUEST with respect to the property. Thereafter, unless DHS has recorded a TERMINATION or a CLEARANCE with respect to the property, any title insurance company or agent conducting a title search must note that a REQUEST is recorded against the property in any report for, or in any commitment to offer, a certificate of title insurance for the property. In addition, any person intending to transfer title to, encumber, or terminate an interest in, the property must notify DHS. If the recipient is alive when the notice is given, the person may transfer title to, encumber, or

terminate an interest in, the property. If the recipient is deceased and DHS determines that it has no claim for recoverable public assistance benefits, DHS must issue a CLEARANCE to the person for recording. However, if the recipient is deceased and DHS determines that it does have a claim for recoverable public assistance benefits, DHS must send the person a statement of claim and may recover against the property in an appropriate manner, including by placing a lien on the property.

The bill sets out requirements for the enforcement of liens on real property by DHS for recovering recoverable public assistance benefits, including specifying that DHS may enforce such a lien in the same manner as a mortgage on real property; prohibiting DHS from enforcing such a lien if the recipient has a surviving spouse or a child who is under age 21 or disabled; and specifying the circumstances under which DHS must release such a lien if DHS cannot enforce the lien because the recipient has a surviving spouse or a child who is under age 21 or disabled. The bill also provides that a section of the statutes that, generally, imposes a 30–year statute of limitations on the commencement of actions affecting the possession or title to real property applies to liens that DHS has on real property for recovering recoverable public assistance benefits.

The bill specifies that certain transfers of real property are voidable by DHS in court actions, in which case title to the real property reverts to the grantor or his or her estate. A voidable transfer is one that satisfies all of the following criteria: the transfer was made by a grantor who was receiving or who received MA; the transfer was made while the grantor was eligible for MA; DHS was unaware of the transfer; and the transfer was made to hinder, delay, or defraud DHS from recovering MA paid on behalf of the grantor. The bill provides that there is a rebuttable presumption that any "fraudulent transfer" was made to hinder, delay, or defraud DHS from recovering MA if the transfer was made by a grantor who was receiving or who received MA and while the grantor was eligible for MA. The bill defines a "fraudulent transfer" as one in which the property was transferred for less than fair market value or one in which the deed or other conveyance was not recorded during the lifetime of the grantor.

The bill requires trustees of living trusts to notify DHS, within 30 days after the death of the trust settlor and before any assets are distributed, if the trust settlor, or his or her predeceased spouse, received any recoverable public assistance benefits. If DHS sends the trustee a claim for the recovery of recoverable public assistance benefits, the trustee must, within 90 days, pay DHS the amount that it may recover or provide DHS with information about any property that was distributed and to whom it was distributed. The bill requires a trustee of a special needs or pooled trust, the beneficiaries of which receive MA, to provide notice to DHS within 30 days after the death of a trust beneficiary, and to repay DHS, within 90 days after receiving a claim from DHS, for the amount of MA paid on behalf of the beneficiary. If the trustee fails to comply with the notice or repayments requirements, the trustee is personally liable to DHS for any MA amounts paid on behalf of the beneficiary that DHS is unable to recover. The bill also provides that, after the death of a beneficiary under a pooled trust, the trustee may retain up to 30 percent of the balance in the deceased beneficiary's account, unless the trustee fails to comply with the notice and

repayment requirements, in which case the trustee may not retain any of the balance in the deceased beneficiary's account.

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:

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

20.435 **(4)** (im) *Medical assistance; correct payment recovery; collections; other recoveries.* All moneys received from the recovery of correct medical assistance payments under ss. 49.496 ~~and 867.035 and rules promulgated under s. 46.286 (7),~~ 49.848, and 49.849, all moneys received as collections and other recoveries from providers, drug manufacturers, and other 3rd parties under medical assistance performance–based contracts, and all moneys credited to this appropriation account under s. 49.89 (7) (f), for payments to counties and tribal governing bodies under s. 49.496 (4) (a), for payment of claims under s. ~~867.035 (3)~~ 49.849 (5), for payments to the federal government for its share of medical assistance benefits recovered, for the state share of medical assistance benefits provided under subch. IV of ch. 49, and for costs related to collections and other recoveries.

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

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

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

20.435 **(7)** (im) *Community options program; family care benefit; recovery of costs; birth to 3 waiver administration.* From the moneys received from the recovery of costs of care under ss. 46.27 (7g) ~~and 867.035 and under rules promulgated under s. 46.286 (7),~~ 49.848, and 49.849 for enrollees who are ineligible for medical assistance, all moneys not appropriated under sub. (4) (in), and all moneys transferred to this appropriation account from the appropriation account under sub. (4) (o), for payments to county departments and aging units under s. 46.27 (7g) (d), payments to care management organizations for provision of the family care benefit under s. 46.284 (5), payment of claims under s. ~~867.035 (3)~~ 49.849 (5), payments for long–term community support services funded under s. 46.27 (7) as provided in ss. 46.27 (7g) (e) and ~~867.035 (4m)~~ 49.849 (6) (b), and for administration of the waiver program under s. 46.99.

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

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

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

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

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

46.27 **(7g)** (a) 5. a. "Property of a decedent" means all real and personal property to which the client held any legal title or in which the client 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.

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

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

46.27 **(7g)** (c) 1. Except as provided in subd. 4., the department shall file a claim against the estate of a client ~~or~~, and against the estate of ~~the~~ a nonclient surviving spouse ~~of a client~~, for the amount of long–term community support services funded under sub. (7) paid on behalf of the client after the client attained 55 years of age, unless already recovered by the department under this subsection.

SECTION 8. 46.27 (7g) (c) 2m. of the statutes is created to read:

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

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

SECTION 9. 46.27 (7g) (c) 3. (intro.) of the statutes is amended to read:

46.27 **(7g)** (c) 3. (intro.) The court shall reduce the amount of a claim under subd. 1. by up to the amount specified in s. 861.33 (2) if necessary to allow the ~~client's~~

decedent's heirs or the beneficiaries of the ~~client's~~ decedent's will to retain the following personal property:

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

46.27 **(7g)** (c) 5. a. If the department's claim is not allowable because of subd. 4. and the estate includes an interest in real property, including a home, the court exercising probate jurisdiction shall, in the final judgment or summary findings and order, assign the interest in the ~~home~~ real property subject to a lien in favor of the department for the amount described in subd. 1. The personal representative or petitioner for summary settlement or summary assignment of the estate shall record the final judgment as provided in s. 863.29, 867.01 (3) (h), or 867.02 (2) (h).

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

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

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

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

SECTION 13. 46.27 (7g) (c) 6m. of the statutes is created to read:

46.27 **(7g)** (c) 6m. All of the following apply to a lien under subd. 5. that the department may not enforce because of subd. 6.:

a. If the decedent's surviving spouse or child who is under age 21 or disabled refinances a mortgage on the real property, the lien is subordinate to the new encumbrance.

b. The department shall release the lien in the circumstances described in s. 49.848 (5) (f).

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

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

SECTION 15. 46.286 (7) of the statutes is amended to read:

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

SECTION 16. 46.287 (2) (a) 1. k. of the statutes is amended to read:

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

SECTION 17. 49.496 (1) (a) of the statutes is renumbered 49.496 (1) (ah).

SECTION 18. 49.496 (1) (af) of the statutes is created to read:

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

SECTION 19. 49.496 (1) (bk) of the statutes is created to read:

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

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

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

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

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

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

SECTION 20. 49.496 (1) (bw) of the statutes is created to read:

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

SECTION 21. 49.496 (1) (cm) of the statutes is created to read:

49.496 **(1)** (cm) 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 all real and personal property in which the nonrecipient surviving spouse had an ownership interest at 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.

SECTION 22. 49.496 (3) (a) (intro.) of the statutes is amended to read:

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

SECTION 23. 49.496 (3) (a) 2. a. of the statutes is amended to read:

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

SECTION 24. 49.496 (3) (a) 2. am. of the statutes is created to read:

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

SECTION 25. 49.496 (3) (a) 2. b. of the statutes is repealed.

SECTION 26. 49.496 (3) (a) 2. c. of the statutes is repealed.

SECTION 27. 49.496 (3) (ad) of the statutes is created to read:

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

SECTION 28. 49.496 (3) (aj) of the statutes is created to read:

49.496 **(3)** (aj) 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.

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

SECTION 29. 49.496 (3) (am) (intro.) of the statutes is amended to read:

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

SECTION 30. 49.496 (3) (c) 1. of the statutes is amended to read:

49.496 **(3)** (c) 1. If the department's claim is not allowable because of par. (b) and the estate includes an interest in any real property, including a home, the court exercising probate jurisdiction shall, in the final judgment or summary findings and order, assign the interest in the ~~home~~ real property subject to a lien in favor of the department for the amount described in par. (a). The personal representative or

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

SECTION 31. 49.496 (3) (c) 2. of the statutes is amended to read:

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

SECTION 32. 49.496 (3) (d) (intro.) of the statutes is amended to read:

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

SECTION 33. 49.496 (3) (dm) of the statutes is created to read:

49.496 **(3)** (dm) All of the following apply to a lien under par. (c) that the department may not enforce because of par. (d):

1. If the decedent's surviving spouse or child who is under age 21 or disabled refinances a mortgage on the real property, the lien is subordinate to the new encumbrance.

2. The department shall release the lien in the circumstances described in s. 49.848 (5) (f).

SECTION 34. 49.496 (6m) of the statutes is amended to read:

49.496 **(6m)** WAIVER DUE TO HARDSHIP. The department shall promulgate rules establishing standards for determining whether the application of this section would work an undue hardship in individual cases. If the department determines that the

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

SECTION 35. 49.4962 of the statutes is created to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 36. 49.682 (1) (am) of the statutes is created to read:

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

SECTION 37. 49.682 (1) (d) of the statutes is created to read:

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

SECTION 38. 49.682 (1) (e) of the statutes is created to read:

49.682 **(1)** (e) 1. "Property of a decedent" means all real and personal property to which the client held any legal title or in which the client 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 all real and personal property in which the nonclient surviving spouse had an ownership interest at the client's death and in which the client had a marital property interest with that nonclient surviving spouse at any time within 5 years before the client applied for aid under s. 49.68, 49.683, or 49.685 or during the time that the recipient was eligible for aid under s. 49.68, 49.683, or 49.685.

SECTION 39. 49.682 (2) (a) of the statutes is amended to read:

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

SECTION 40. 49.682 (2) (bm) of the statutes is created to read:

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

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

SECTION 41. 49.682 (2) (c) (intro.) of the statutes is amended to read:

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

SECTION 42. 49.682 (2) (e) 1. of the statutes is amended to read:

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

SECTION 43. 49.682 (2) (e) 2. of the statutes is amended to read:

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

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

SECTION 44. 49.682 (2) (f) (intro.) of the statutes is amended to read:

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

SECTION 45. 49.682 (2) (fm) of the statutes is created to read:

49.682 **(2)** (fm) All of the following apply to a lien under par. (e) that the department may not enforce because of par. (f):

1. If the decedent's surviving spouse or child who is under age 21 or disabled refinances a mortgage on the real property, the lien is subordinate to the new encumbrance.

2. The department shall release the lien in the circumstances described in s. 49.848 (5) (f).

SECTION 46. 49.682 (3) of the statutes is amended to read:

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

SECTION 47. 49.682 (5) of the statutes is amended to read:

49.682 **(5)** The department shall promulgate rules establishing standards for determining whether the application of this section would work an undue hardship in individual cases. If the department determines that the application of this section

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

SECTION 48. 49.848 of the statutes is created to read:

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

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

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

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

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

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

(b) A document entitled "TERMINATION OF REQUEST FOR NOTICE OF TRANSFER OR ENCUMBRANCE AND NOTICE OF POTENTIAL CLAIM," which shall provide notice that, with respect to property against which a REQUEST FOR NOTICE OF TRANSFER OR ENCUMBRANCE AND NOTICE OF POTENTIAL CLAIM has been recorded, 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.

(c) A document entitled "CERTIFICATE OF CLEARANCE," which shall provide notice that, with respect to property against which a REQUEST FOR NOTICE OF TRANSFER OR ENCUMBRANCE AND NOTICE OF POTENTIAL CLAIM has been recorded, but against which a TERMINATION OF REQUEST FOR NOTICE OF TRANSFER OR ENCUMBRANCE AND NOTICE OF POTENTIAL CLAIM has not been recorded, insert 19-13 no notice to the department is required in the future when title to the property is transferred, an encumbrance is placed on the property, or an interest in the property is terminated, and the department will not be pursuing a claim for recovery of public assistance.

(3) RECORDING OF REQUEST FOR NOTICE AND TERMINATION OF REQUEST FOR NOTICE. (a) 1. Whenever an individual becomes eligible for public assistance, and at any time during the time that an individual is eligible for public assistance, the department may record a REQUEST FOR NOTICE OF TRANSFER OR ENCUMBRANCE AND NOTICE OF POTENTIAL CLAIM if the individual has any of the following ownership interests in real property:

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

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

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

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

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

(3m) DISCLOSURE OF REQUEST FOR NOTICE. If, in the course of a title search on real property, a title insurance company or agent finds that a REQUEST FOR NOTICE OF TRANSFER OR ENCUMBRANCE AND NOTICE OF POTENTIAL CLAIM has been recorded against the property but a TERMINATION OF REQUEST FOR NOTICE OF TRANSFER OR ENCUMBRANCE AND NOTICE OF POTENTIAL CLAIM has not been recorded against the property, the title insurance

company or agent shall disclose that a REQUEST FOR NOTICE OF TRANSFER OR ENCUMBRANCE AND NOTICE OF POTENTIAL CLAIM has been recorded against the property in any report submitted preliminary to issuing, or in any commitment to offer, a certificate of title insurance for the real property.

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

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

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

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

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

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

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

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

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

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

(b) Unless the property is being transferred under s. 867.03 or through formal or informal administration of the recipient's estate, the department shall send to the person providing the notice to the department under sub. (4) (a), or to the surviving

owner of the property, whichever is applicable, a statement of claim that states all of the following:

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

2. The amount of and basis for the claim.

3. That the person has a right to an administrative hearing under par. (bm), which must be requested within 45 days after the department sent the statement of claim, on the extent and fair market value of the recipient's interest in the property and how to request an administrative hearing.

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

(bm) A person who receives a statement of claim from the department under par. (b) is entitled to and may, within 45 days after the department sent the statement of claim, request a departmental fair hearing on the value of the property and the extent of the recipient's interest in the property. The value of the recipient's interest in the property shall be determined in the manner provided in s. 49.849 (5c).

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

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

1. The recipient's spouse.

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

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

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

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

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

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

SECTION 49. 49.849 of the statutes is created to read:

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

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

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

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

(d) 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 all real and personal property in which the nonrecipient surviving spouse had an ownership interest at 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 public assistance or during the time that the recipient was eligible for public assistance.

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

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

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

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

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

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

2. The amount of and basis for the claim.

3. That the person may have a right to an administrative hearing under sub. (5m), which must be requested within 45 days after the department sent the affidavit, on the extent and fair market value of the recipient's interest in the property.

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

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

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

(4) RECOVERY AGAINST REAL PROPERTY. (c) All of the following apply to a lien under par. (a) that the department may not enforce because of par. (b):

1. If the decedent's surviving spouse or child who is under age 21 or disabled refinances a mortgage on the real property, the lien is subordinate to the new encumbrance.

2. The department shall release the lien in the circumstances described in s. 49.848 (5) (f).

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

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

2. Property insurance premiums.

3. Property taxes due.

4. Utility costs necessary to preserve the property.

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

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

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

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

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

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

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

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

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

(5m) FAIR HEARING. A person who has possession of any property of the decedent, or who receives an affidavit from the department under sub. (3) (c) for transmittal of any property of the decedent, is entitled to and may, within 45 days

after the affidavit was sent, request a departmental fair hearing on the value of the property and the extent of the recipient's interest in the property, if the property is not being transferred under s. 867.03 or through formal or informal administration of the decedent's estate.

(5r) ACTION OR ORDER TO ENFORCE RECOVERY. (a) If, after receipt of an affidavit under sub. (3), a person who possesses property of a decedent does not transmit the property to the department or timely request a hearing, the department may bring an action to enforce its right to collect amounts specified in sub. (2) (a) from the property or may issue an order to compel transmittal of the property. Any person aggrieved by an order issued by the department under this paragraph may appeal the order as a class 3 proceeding, as defined in s. 227.01 (3) (c), under ch. 227 by filing a request for appeal, within 30 days after the date of the order, with the division of hearings and appeals created under s. 15.103 (1). The date on which the division of hearings and appeals receives the request for appeal shall be the date of service. The only issue at the hearing shall be whether the person has transmitted the property to the department. The decision of the division of hearing and appeals shall be the final decision of the department.

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

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

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

(6) PAYMENTS FROM RECOVERED AMOUNTS.

SECTION 50. 49.85 (title) of the statutes is amended to read:

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

SECTION 51. 49.85 (2) (a) (intro.) of the statutes is amended to read:

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

SECTION 52. 49.85 (2) (a) 4. of the statutes is created to read:

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

SECTION 53. 49.85 (3) (a) 1. of the statutes is amended to read:

49.85 **(3)** (a) 1. Inform the person that the department of health services intends to certify to the department of revenue an amount that the department of

health services has determined to be due under s. 49.45 (2) (a) 10., 49.497, 49.793, ~~or,~~ 49.847, or 49.849, for setoff from any state tax refund that may be due the person.

SECTION 54. 59.43 (1) (w) of the statutes is created to read:

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

SECTION 55. 632.697 of the statutes is created to read:

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

SECTION 56. 700.24 of the statutes is amended to read:

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

SECTION 57. 701.065 (1) (b) 1. of the statutes is amended to read:

701.065 **(1)** (b) 1. The claim is a claim based on tort, on a marital property agreement that is subject to the time limitations under s. 766.58 (13) (b) or (c), on Wisconsin income, franchise, sales, withholding, gift, or death taxes, or on

unemployment compensation contributions due or benefits overpaid; a claim for funeral or administrative expenses; a claim of this state under s. 46.27 (7g), 49.496 ~~or~~, 49.682, or ~~rules promulgated under s. 46.286 (7)~~ 49.849; or a claim of the United States.

SECTION 58. 701.065 (5) of the statutes is created to read:

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

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

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

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

2. After the death of a settlor who, or whose predeceased spouse, received services, medical assistance, long–term community support services, or aid described in subd. 1., the department may recover under s. 46.27 (7g), 49.496, 49.682, or 49.849, from property held in the living trust immediately before the settlor's death, an amount equal to the medical assistance that is recoverable under s. 49.496

(3) (a), an amount equal to aid under s. 49.68, 49.683, or 49.685 that is recoverable under s. 49.682 (2) (a), or an amount equal to long–term community support services under s. 46.27 that is recoverable under s. 46.27 (7g) (c) 1. and that was paid on behalf of the settlor or the settlor's predeceased spouse. The deadline for the department to file a claim for recovery under this subdivision shall be the date that is 4 months after the date of the trustee's notice under subd. 1.

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

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

2. If a trustee under subd. 1. fails to comply with the notice and repayment requirements under subd. 1., the trustee is personally liable to the department for

any costs the department incurs in recovering medical assistance amounts paid on behalf of the decedent from property distributed from the trust before any repayment is made and for any recoverable amounts that the department is unable to recover from persons to whom the property was distributed.

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

SECTION 59. 705.04 (2g) of the statutes is amended to read:

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

SECTION 60. 766.55 (2) (bm) of the statutes is created to read:

766.55 **(2)** (bm) An obligation incurred by a spouse that is recoverable under s. 46.27 (7g), 49.496, 49.682, or 49.849 may be satisfied from all property that was the property of that spouse immediately before that spouse's death and from all property that was marital property at any time within 5 years before that spouse

applied for public assistance, as defined in s. 49.849 (1) (e), or while that spouse was eligible for public assistance, as defined in s. 49.849 (1) (e).

SECTION 61. 859.02 (2) (a) of the statutes is amended to read:

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

SECTION 62. 859.07 (2) (a) 3. of the statutes is amended to read:

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

SECTION 63. 867.01 (3) (am) 4. of the statutes is amended to read:

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

SECTION 64. 867.01 (3) (d) of the statutes is amended to read:

867.01 **(3)** (d) *Notice.* The court may hear the matter without notice or order notice to be given under s. 879.03. If the decedent or the decedent's spouse received ~~the family care benefit under s. 46.286~~ services provided as a benefit under a

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

SECTION 65. 867.02 (2) (am) 6. of the statutes is amended to read:

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

SECTION 66. 867.03 (1g) (c) of the statutes is amended to read:

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

SECTION 67. 867.03 (1m) (a) of the statutes is amended to read:

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

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

SECTION 68. 867.03 (1m) (b) of the statutes is amended to read:

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

SECTION 69. 867.03 (2g) of the statutes is renumbered 867.03 (2g) (a) and amended to read:

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

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

SECTION 70. 867.03 (2g) (b) of the statutes is created to read:

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

SECTION 71. 867.035 (title) of the statutes is repealed.

SECTION 72. 867.035 (1) (a) (intro.) of the statutes is renumbered 49.849 (2) (a) (intro.) and amended to read:

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

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

SECTION 73. 867.035 (1) (a) 1. of the statutes is repealed.

SECTION 74. 867.035 (1) (a) 2. of the statutes is renumbered 49.849 (2) (a) 1.

SECTION 75. 867.035 (1) (a) 3. of the statutes is renumbered 49.849 (2) (a) 2.

SECTION 76. 867.035 (1) (a) 4. of the statutes is repealed.

SECTION 77. 867.035 (1) (bm) of the statutes is renumbered 49.849 (2) (b), and 49.849 (2) (b) (intro.), as renumbered, is amended to read:

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

SECTION 78. 867.035 (2) of the statutes is renumbered 49.849 (3) (b) and amended to read:

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

SECTION 79. 867.035 (2m) (a) of the statutes is renumbered 49.849 (4) (a), and 49.849 (4) (a) (intro.), as renumbered, is amended to read:

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

(b) The department may enforce ~~the~~ a lien under par. (a) by foreclosure in the same manner as a mortgage on real property, unless any of the following is alive:

SECTION 80. 867.035 (2m) (b) of the statutes is repealed.

SECTION 81. 867.035 (3) of the statutes is renumbered 49.849 (5) and amended to read:

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

SECTION 82. 867.035 (4) of the statutes is renumbered 49.849 (6) (a) and amended to read:

49.849 **(6)** (a) From the appropriation under s. 20.435 (4) (im), with respect to funds collected by the department under sub. ~~(1)~~ (2) related to medical assistance

paid on behalf of the decedent or the decedent's spouse, the department ~~of health services~~ shall pay claims under sub. ~~(3)~~ (5), shall pay to the federal government from the amount recovered under this section and not paid out as claims under sub. ~~(3)~~ (5) an amount equal to the amount of federal funds used to pay the benefits recovered under this section and shall spend the remainder of the amount recovered under this section for medical assistance benefits under subch. IV ~~of ch. 49~~.

SECTION 83. 867.035 (4m) of the statutes is renumbered 49.849 (6) (b) and amended to read:

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

SECTION 84. 867.035 (5) of the statutes is renumbered 49.849 (7) and amended to read:

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

SECTION 85. 893.33 (4r) of the statutes is created to read:

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

SECTION 9318. Initial applicability; Health Services.

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

(2) RECOVERY OF CAPITATED PAYMENTS. The treatment of section 49.496 (3) (ad) of the statutes first applies to capitation payments made for services that are received by an individual who is participating in a managed long–term care program on the effective date of this subsection.

(3) SPECIAL NEEDS AND POOLED TRUSTS.

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

(b) *Retained amounts.* The treatment of section 701.065 (5) (c) 3. of the statutes first applies to pooled trusts that are created or modified on the effective date of this paragraph.

(4) RECOVERY OF PUBLIC ASSISTANCE FROM PROPERTY OF A DECEDENT. The treatment of sections 46.27 (7g) (a) 5. and (c) 2m., 3. (intro.), 5. a. and b., and 6m., 49.496 (1) (a), (af), (bw), and (cm) and (3) (a) (intro.), (aj), (am) (intro.), (c) 1. and 2., and (dm), 49.682 (1) (e) and (2) (bm), (c) (intro.), (e) 1. and 2., and (fm), 49.848 (5), 49.849 (1) (d), (2) (c), (3) (a) and (c), (4) (c), (4m), (5c), (5m), and (5r), 49.85 (title), (2) (a) (intro.) and 4., and (3) (a) 1., 701.065 (5) (b), 766.55 (2) (bm), and 867.035 (1) (a) (intro.), 1., and 4., (2), (2m) (a) and (b), and (3) of the statutes, the renumbering and amendment of section 867.03 (2g) of the statutes, and the creation of section 867.03

(2g) (b) of the statutes first apply to the recovery of public assistance, as defined in section 49.849 (1) (e) of the statutes, as created by this act, provided to individuals who die on the effective date of this subsection.

SECTION 9418. Effective dates; Health Services.

(1) MEDICAL ASSISTANCE ESTATE RECOVERY. The treatment of sections 20.435 (4) (im) and (in) and (7) (im), 46.27 (7g) (a) 1m., 4., and 5., (c) 1., 2m., 3. (intro.), 5. a. and b., 6. (intro.), and 6m., and (g), 46.286 (7), 46.287 (2) (a) 1. k., 49.496 (1) (a), (af), (bk), (bw), and (cm), (3) (a) (intro.) and 2. a., am., b., and c., (ad), (aj), (am) (intro.), (c) 1. and 2., (d) (intro.), and (dm), and (6m), 49.4962, 49.682 (1) (am), (d), and (e), (2) (a), (bm), (c) (intro.), (e) 1. and 2., (f) (intro.), and (fm), (3), and (5), 49.848, 49.849, 49.85 (title), (2) (a) (intro.) and 4., and (3) (a) 1., 59.43 (1) (w), 632.697, 700.24, 701.065 (1) (b) 1. and (5), 705.04 (2g), 766.55 (2) (bm), 859.02 (2) (a), 859.07 (2) (a) 3., 867.01 (3) (am) 4. and (d), 867.02 (2) (am) 6., 867.03 (1g) (c) and (1m) (a) and (b), 867.035 (title), (1) (a) (intro.), 1., 2., 3., and 4., and (bm), (2), (2m) (a) and (b), (3), (4), (4m), and (5), and 893.33 (4r) of the statutes, the renumbering and amendment of section 867.03 (2g) of the statutes, the creation of section 867.03 (2g) (b) of the statutes, and SECTION 9318 (1), (2), (3), and (4) of this act take effect on October 1, 2013, or on the 90th day after publication, whichever is later.

(END)

insert 19-13

1 the department has no objection to the transfer of title to, placement of an
2 encumbrance on, or termination of an interest in, the property, and that

(end of insert 19-13)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–0617/2dn
PJK:...

date

the transfer of

I chose to say that the department has no objection to, rather than the department permits, title to the property to be transferred, etc., because the latter seems to imply that the department controls whether a person may alienate his or her own property, which raises a number of legal issues that I don't think need to be raised. Okay?

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

LRB–0617/2dn
PJK:jld:rs

February 6, 2013

I chose to say that the department has no objection to, rather than the department permits, the transfer of title to the property, etc., because the latter seems to imply that the department controls whether a person may alienate his or her own property, which raises a number of legal issues that I don't think need to be raised. Okay?

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