



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-0749(P1)

TJD:kjf:jm

RMNR

In: 1/20/13

DOA:.....Iwata, BB0289 – Alter divestment provisions to prevent individuals with sufficient financial means from being eligible for Medical Assistance

**FOR 2013-2015 BUDGET – NOT READY FOR INTRODUCTION**

Don't Gen

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

*Analysis by the Legislative Reference Bureau*

**HEALTH AND HUMAN SERVICES**

**MEDICAL ASSISTANCE**

Insert Analysis

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

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

2 SECTION 1. 49.45 (4m) (a) 3. of the statutes is renumbered 49.45 (4m) (a) 3.

3 (intro.) and amended to read:

4 49.45 (4m) (a) 3. (intro.) "Financial institution" has the meaning given in 12

5 USC 3401 (1). means any of the following:

6 SECTION 2. 49.45 (4m) (a) 3. a. to f. of the statutes are created to read:

1 49.45 (4m) (a) 3. a. A depository institution, as defined in 12 USC 1813 (c).

2 b. An institution-affiliated party, as defined in 12 USC 1813 (u), of a depository  
3 institution under subd. 3. a.

4 c. A federal credit union, as defined in 12 USC 1752, or state credit union, as  
5 defined in 12 USC 1752.

\*\*\*NOTE: I am unsure whether this definition includes all credit unions if that is  
your intent. I wonder whether additional terms like "state-chartered credit union"  
should also be added.

6 d. An institution-affiliated party, as defined in 12 USC 1786 (r), of a credit  
7 union under subd. 3. c.

8 e. A benefit association, insurance company, safe deposit company, money  
9 market mutual fund, or similar entity authorized to do business in this state.

10 f. A broker-dealer, as defined in s. 551.102 (4).

excluded

11 SECTION 3. 49.453 (2) (a) (intro.) of the statutes is amended to read:

12 49.453 (2) (a) *Institutionalized individuals.* (intro.) Except as provided in sub.  
13 (8), if an institutionalized individual or his or her spouse, or another person acting  
14 on behalf of the institutionalized individual or his or her spouse, transfers assets  
15 regardless of whether those assets are exempt under 42 USC 1396p for less than fair  
16 market value on or after the institutionalized individual's look-back date, the  
17 institutionalized individual is ineligible for medical assistance for the following  
18 services for the period specified under sub. (3):

\*\*\*NOTE: Please confirm that the underscored language is sufficient to comply  
with the request.

19 SECTION 4. 49.453 (2) (b) (intro.) of the statutes is amended to read:

20 49.453 (2) (b) *Noninstitutionalized individuals.* (intro.) Except as provided in  
21 sub. (8), if a noninstitutionalized individual or his or her spouse, or another person  
22 acting on behalf of the noninstitutionalized individual or his or her spouse, transfers

if retained,

;

;

;

if retained

excluded

;

1 assets, regardless of whether those assets are exempt under 42 USC 1396p for less  
2 than fair market value on or after the noninstitutionalized individual's look-back  
3 date, the noninstitutionalized individual is ineligible for medical assistance for the  
4 following services for the period specified under sub. (3):

\*\*\*\*NOTE: Please confirm that the underscored language is sufficient to comply with the request.

5 SECTION 5. 49.453 (3) (a) (intro.) of the statutes is amended to read:

6 49.453 (3) (a) (intro.) The period of ineligibility under this subsection begins  
7 on either of the following for an applicant for Medical Assistance:

8 SECTION 6. 49.453 (3) (ag) of the statutes is created to read:

9 49.453 (3) (ag) The period of ineligibility under this subsection for a transfer  
10 of assets made at the time the individual is receiving long-term care services through  
11 Medical Assistance begins on the first day of the month following the month in which  
12 the individual receives advance notice of the period of ineligibility.

13 SECTION 7. 49.453 (4c) (c) of the statutes is created to read:

14 49.453 (4c) (c) A promissory note in which the debtor is a presumptive heir of  
15 the lender or in which neither the lender nor debtor has any incentive to enforce  
16 repayment is considered cancelled upon the death of the lender for purposes of this  
17 section.

Insert  
3-18

\*\*\*\*NOTE: Instead of considering the note "cancelled upon the death of the lender," would it be more direct to consider the note a "transfer of assets for less than fair market value"?

18 SECTION 8. 49.453 (8) (a) 3. of the statutes is created to read:

19 49.453 (8) (a) 3. All of the assets transferred for less than fair market value,  
20 or cash equal to the value of the assets transferred for less than fair market value,  
21 are returned to the individual. Subsections (2) and (3) apply if only part of the assets

1 transferred for less than fair market value, or cash equal to only part of the value of  
2 the assets transferred for less than fair market value, are returned to the individual.

3 SECTION 9. 49.455 (5) (title) of the statutes is amended to read:

4 49.455 (5) (title) RULES FOR TREATMENT OF RESOURCES; INELIGIBILITY.

5 SECTION 10. 49.455 (5) (d) of the statutes is amended to read:

6 49.455 (5) (d) During a continuous period of institutionalization, after an  
7 institutionalized spouse is determined to be eligible for medical assistance, no  
8 resources of the community spouse are considered to be available to the  
9 institutionalized spouse, except that a transfer of those resources or other assets by  
10 the institutionalized spouse or community spouse within the first 5 years of  
11 eligibility of the institutionalized spouse may result in a period of ineligibility under  
12 s. 49.453 (2) and (3). for the institutionalized spouse

13 SECTION 11. 49.455 (5) (e) of the statutes is created to read:

14 49.455 (5) (e) The department may deny to the institutionalized spouse  
15 eligibility for Medical Assistance if, when requested by the department, the  
16 institutionalized spouse and the community spouse do not provide the total value of  
17 their assets and information on income and resources to the extent required under  
18 federal Medicaid law or sign the application for Medical Assistance.

19 SECTION 12. 49.455 (8) (d) of the statutes is renumbered 49.455 (8) (d) 1. and  
20 amended to read:

21 49.455 (8) (d) 1. If either spouse establishes at a fair hearing that the  
22 community spouse resource allowance determined under sub. (6) (b) 1. to 2. or 4.  
23 without a fair hearing does not generate enough income to raise the community  
24 spouse's income to the minimum monthly maintenance needs allowance under sub.  
25 (4) (c), the department shall establish, under subd. 2., an amount to be used under

1 sub. (6) (b) 3. that results in a community spouse resource allowance that generates  
2 enough income to raise the community spouse's income to the minimum monthly  
3 maintenance needs allowance under sub. (4) (c).

4 3. Except in exceptional cases which would result in financial duress for the  
5 community spouse, the department may not establish an amount to be used under  
6 sub. (6) (b) 3. unless the institutionalized spouse makes available to the community  
7 spouse the maximum monthly income allowance permitted under sub. (4) (b) or, if  
8 the institutionalized spouse does not have sufficient income to make available to the  
9 community spouse the maximum monthly income allowance permitted under sub.  
10 (4) (b), unless the institutionalized spouse makes all of his or her income, except for  
11 an amount equal to the sum of the personal needs allowance under sub. (4) (a) 1. and  
12 any family allowances under sub. (4) (a) 3. paid by the institutionalized spouse and  
13 the amount incurred as expenses for medical or remedial care for the  
14 institutionalized spouse under sub. (4) (a) 4., available to the community spouse as  
15 a community spouse monthly income allowance under sub. (4) (b).

\*\*\*\*NOTE: Please note that I retained all of the information in the current section  
49.455 (8) (d), though I have divided the paragraph into subdivisions to add the new  
provisions in the middle. Please advise if you want any of the existing language changed  
or eliminated.

16 **SECTION 13.** 49.455 (8) (d) 2. of the statutes is created to read:

17 49.455 (8) (d) 2. The department shall base the amount to be used under sub.  
18 (6) (b) 3. on the cost of a single premium lifetime annuity that pays monthly amounts  
19 that, combined with other available income, raises the community spouse's income  
20 to the minimum monthly maintenance needs allowance. Any resource, regardless  
21 of whether the resource generates income, may be transferred in an amount that,  
22 combined with the community spouse resource allowance calculated before the fair  
23 hearing, provides the community spouse with sufficient funds to purchase the

1 annuity. The community spouse is not required to purchase an annuity to obtain this  
2 amount.

\*\*\*NOTE: Did you want any additional provisions from the Iowa Administrative Code included?

3 SECTION 14. 49.47 (4) (b) 2w. of the statutes is amended to read:

Surrender

4 49.47 (4) (b) 2w. For a person who is eligible under par. (a) 3. or 4., life insurance  
5 with cash surrender values if the total face combined cash value of all life insurance  
6 policies is not more than \$1,500.

including riders and other attachments

\*\*\*NOTE: I substituted combined cash value for total face value. Instead, did you want to retain the face value limit and add the same limit for combined cash value?

7 SECTION 15. 224.42 (1) (a) of the statutes is amended to read:

8 224.42 (1) (a) "Financial institution" has the meaning given in 12 USC 3401

9 (1) s. 49.45 (4m) (a) 3.

\*\*\*NOTE: Would all of the provisions in this draft apply only to transfers of assets and other events occurring on the effective date of the provisions? If so, or if you intend the provisions to also apply to transfers occurring for a specified time in the past, this draft should contain an initial applicability provision to clarify and give notice to which transfers these provisions apply to. Please contact me to discuss options for an initial applicability provision.

Insert 6-10

1

## INSERT ANALYSIS

Currently, DHS administers the Medical Assistance (MA) program, which is a joint federal and state program that provides health and long-term care services to individuals who have limited resources. Eligibility for certain MA programs, especially those providing long-term care services, involves satisfying certain income and asset requirements. An individual who divests income or assets, or disposes of income or assets for less than fair market value, may be ineligible for a MA program for a certain period of time. This bill makes various changes to the laws regarding divestment and financial eligibility for MA programs.

Under current law, with certain exceptions, if an institutionalized, or noninstitutionalized, individual or his or her spouse transfers assets for less than fair market value on or after a specific date the institutionalized or noninstitutionalized individual is ineligible for certain MA services for a specified period of time. An institutionalized individual, under current law, is an individual who is an inpatient in a nursing facility or a medical institution or an individual who meets certain criteria and would require the level of care provided in a hospital, nursing facility, or intermediate care facility for persons with an intellectual disability if the individual was not receiving certain home-based or community-based services. A noninstitutionalized individual, under current law, is an individual who is receiving home health services, home and community care services as a functionally disabled elderly individual, or certain personal care services provided by a qualified provider in the individual's home or other non-institutional location. The bill specifies that an ineligibility period applies for an institutionalized or noninstitutionalized individual regardless of whether the assets transferred for less than fair market value are considered excluded assets, if retained, under federal law.

Under current law, one of the exceptions DHS is required to make from imposing an ineligibility period for the transfer of assets for less than fair market value applies if the assets are exempt under federal law. The bill specifies that to make a satisfactory showing to the state to meet one of the federal exemptions and to adjust the ineligibility period, the individual shall have all of the assets, or cash equal to the value of the assets, that were transferred at less than fair market value returned to him or her.

Current law specifies a method for determining the starting date for a period of ineligibility for MA resulting from a divestment. This bill specifies that the current law method for determining the starting date for a period of ineligibility applies to applicants for MA. The bill sets as the starting date for a period of ineligibility for MA for an individual who is already receiving long-term care services through MA the first day of the month following the month in which the individual receives advance notice of that period of ineligibility.

Under current law, the purchase by an individual or his or her spouse of a promissory note, loan, or mortgage is a transfer of assets for less than fair market value triggers an ineligibility period unless all of the following apply: the repayment

term is actuarially sound; the payments are to be made in equal amounts during the loan's term with no deferral and no balloon payment; and the loan's terms prohibit cancellation of the balance upon the death of the lender. This bill specifies that a promissory note in which the debtor is a presumptive heir of the lender or in which neither the lender nor debtor has any incentive to enforce repayment is considered cancelled upon the death of the lender for purposes of divestment and eligibility for MA.

Current law provides for protection of certain income and resources for a spouse who is not receiving long-term care services through MA, known as the community spouse, of an institutionalized individual. Under current law, after an institutionalized spouse is determined to be eligible for MA and during a continuous period of institutionalization, the resources of the community spouse are considered to be unavailable to the institutionalized spouse. This bill specifies that even though the community spouse's resources are considered unavailable the transfer of those resources or other assets by the community spouse within the first five years of eligibility for MA may result in a period of ineligibility for MA for the institutionalized spouse. The bill also allows DHS to deny MA eligibility to an institutionalized spouse if the institutionalized spouse and community spouse do not provide the total value of their assets and information on income and resources to the extent required under federal law or do not sign the MA application.

Current law allows a community spouse to have a minimum monthly maintenance needs allowance and the community spouse is allowed a resource allowance to generate the income to provide the minimum monthly maintenance needs allowance. If either spouse establishes at a fair hearing that the resource allowance determined outside the fair hearing does not generate enough income to meet the minimum monthly maintenance needs allowance, DHS is required, under current law, to establish an amount that results in a sufficient minimum monthly maintenance needs allowance. The bill specifies that DHS must base the amount to be used to raise the income to the level of the minimum monthly maintenance needs allowance on the cost of a single premium lifetime annuity that pays monthly amounts that, combined with other available income, raise the community spouse's income to the minimum monthly maintenance needs allowance. The community spouse, however, is not required to actually purchase the annuity to receive the amount.

Under current law, certain individuals are eligible for MA for the medically indigent if they also meet limitations on income and resources. Eligibility for the program is contingent on the applicant's property not exceeding certain parameters. Certain applicants, under current law, are eligible only if the total face value of all of their life insurance policies that have a cash surrender value is \$1,500 or less. The bill changes this parameter such that those applicants are eligible only if the combined cash surrender value of all life insurance policies with cash surrender values, including riders and other attachments is \$1,500 or less.

The bill also changes the definition of financial institution for purposes of verifying the assets of applicants for and recipients of MA programs.

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

(END INSERT ANALYSIS)

1 INSERT 3-18

2 SECTION 1. 49.453 (8) (a) 1. of the statutes is amended to read:

3 49.453 (8) (a) 1. The assets are exempt under 42 USC 1396p (c) (2) (A), (B), or  
4 (C). To make a satisfactory showing to the state under 42 USC 1396p (c) (2) (C) and  
5 adjust the ineligibility period under sub. (3), the individual shall have all of the  
6 assets transferred for less than fair market value, or cash equal to the value of the  
7 assets transferred for less than fair market, returned to him or her.

History: 1993 a. 437 ss. 74 to 92; 1997 a. 35; 1999 a. 9, 185; 2007 a. 20.

(END INSERT 3-18)

8 INSERT 6-10

9 SECTION 9318. Initial applicability; Health Services.

10 (1) MEDICAL ASSISTANCE DIVESTMENT. The treatment of sections 49.453 (2) (a)  
11 (intro.), (2) (b) (intro.), (3) (a) (intro.), and (8) (a) 1., 49.455 (5) (d), 49.478 (4) (b) 2w.,  
12 and 224.42 (1) (a) of the statutes, the renumbering and amendment of sections 49.45  
13 (4m) (a) 3. and 49.455 (8) (d) of the statutes, and the creation of sections 49.45 (4m)  
14 (a) 3. a. to f., 49.453 (3) (ag) and (4c) (d), and 49.455 (5) (e) and (8) (d) 2. of the statutes  
15 first applies to determinations of initial eligibility for Medical Assistance for  
16 individuals who apply for Medical Assistance on the effective date of this subsection.

(END INSERT 6-10)

(END Insert)

## Dodge, Tamara

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**From:** Iwata, Yuko - DOA <Yuko.Iwata@wisconsin.gov>  
**Sent:** Friday, February 01, 2013 8:23 AM  
**To:** Dodge, Tamara  
**Cc:** Gauger, Michelle C - DOA  
**Subject:** FW: LRB draft on divestment

Hi Tami,

See DHS' response below. If you have any questions, please let me know.

Thanks,

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

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**From:** Rosen, Lara K - DHS  
**Sent:** Friday, February 01, 2013 8:08 AM  
**To:** Iwata, Yuko - DOA  
**Cc:** Megna, Richard H - DHS; Forsaith, Andrew C - DHS; Ryan, Paula M - DHS; Fox, Sabrina - DHS; Malofsky, Shelley F - DHS; Miller, Fratney L - DHS; Auchue, Linda M - DHS; Gauger, Michelle C - DOA  
**Subject:** RE: LRB draft on divestment

Hi Yuko,

We are in agreement with Tami's suggestion to change the "...all of the assets...shall be returned" language to state: "To make a satisfactory showing..., the individual shall demonstrate (or show) that all of the assets transferred...have been returned to him or her."

We will look forward to seeing the changes in the initial applicability section in the next draft.

Thanks,  
Lara

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**From:** Iwata, Yuko - DOA  
**Sent:** Thursday, January 31, 2013 12:39 PM  
**To:** Rosen, Lara K - DHS  
**Cc:** Gauger, Michelle C - DOA  
**Subject:** FW: LRB draft on divestment

Hi Lara,

See Tami's comments below regarding divestment.

Thanks,

**Yuko Iwata**

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

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**From:** Dodge, Tamara [<mailto:Tamara.Dodge@legis.wisconsin.gov>]  
**Sent:** Thursday, January 31, 2013 12:35 PM  
**To:** Iwata, Yuko - DOA  
**Subject:** RE: LRB draft on divestment

Yuko,

I cannot draft the return of asset language as requested in the email. "...all of the assets...shall be returned" is a false imperative. From where? By whom? The assets cannot return themselves. That language sounds like it puts the requirement on someone who may not have anything to do with the individual's application for Medical Assistance, but it is unclear about that fact. Either everyone or no one is required to comply and either everyone or no one can challenge the provision if applied to them.

I am puzzled about the comment as well. With the cross-reference to the federal provision already altering the penalty for return of all assets, I interpreted the purpose of the requested language is to emphasize that the individual must have **all** of the assets back and not part. Otherwise, the sentence is not needed and the federal law may be relied on. Who besides the individual is supposed to get the assets back?

One option is to rely on the federal law reference and eliminate the added language. (In other words, retain current law.)

Another option is this language: "To make a satisfactory showing..., the individual shall demonstrate (or show) that all of the assets transferred...have been returned to him or her." (This is my preference. It doesn't require the individual to get them back but demonstrate they are back.)

Initial applicability section:

I believe this draft needs an initial applicability provision (or more than one). Otherwise, it is unclear whether the law can be applied to an MA recipient whose eligibility has already been determined. Individuals need notice what law applies to them. I can draft a separate initial applicability for the provision regarding the transfer by a community spouse within the first 5 years of eligibility to capture the type of situation in the email. I will plan on doing that in the next version of the draft.

Tami

**Tamara J. Dodge**

Attorney  
Wisconsin Legislative Reference Bureau  
P.O. Box 2037  
Madison, WI 53701-2037  
(608) 267 - 7380  
[tamara.dodge@legis.wisconsin.gov](mailto:tamara.dodge@legis.wisconsin.gov)

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**From:** Iwata, Yuko - DOA [<mailto:Yuko.Iwata@wisconsin.gov>]  
**Sent:** Wednesday, January 30, 2013 4:23 PM  
**To:** Dodge, Tamara

**Cc:** Gauger, Michelle C - DOA  
**Subject:** FW: LRB draft on divestment

Hi Tami,

Below are DHS' comments on your last draft regarding divestment. If you have any questions, please let me know.

Thanks,

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

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**From:** Rosen, Lara K - DHS  
**Sent:** Wednesday, January 30, 2013 4:20 PM  
**To:** Iwata, Yuko - DOA  
**Cc:** Gauger, Michelle C - DOA; Malofsky, Shelley F - DHS; Miller, Fratney L - DHS; Auchue, Linda M - DHS; Fox, Sabrina - DHS; Ryan, Paula M - DHS; Forsaith, Andrew C - DHS; Megna, Richard H - DHS  
**Subject:** LRB draft on divestment

There is some concern about the wording on pg. 5 at lines 15-19. If the provision could be read as requiring an active role by the individual in getting the assets returned, then lawyers might argue that if the individual had no legal way to do that or could only get a partial return then that impossibility should make the provision unenforceable or cause an undue hardship. We would be more comfortable taking action by the individual out of the equation and simply require that all assets are returned. This is my suggestion:

49.453 (8) (a) 1. The assets are exempt under 42 USC 1396p (c) (2) (A), (B), or (C). To make a satisfactory showing to the state under 42 USC 1396p (c) (2) (C) and adjust the ineligibility period under sub. (3), ~~the individual shall have~~ all of the assets transferred for less than fair market value, or cash equal to the value of the assets transferred for less than fair market, shall be returned ~~to him or her~~ to the individual.

There is also a question regarding the initial applicability section. It states all of the sections first apply to initial eligibility determinations for applications after 7/13. While we believe it was meant to zero in on initial applications, there is concern that it could be interpreted as, for example, not applying to a community spouse who divests on 9/1/13 if her spouse was found eligible on 6/1/13 (initial app before 7/1/13). If the law is only meant to deal with first time eligibility decisions then does this initial applicability even need to be stated? It seems that the law wouldn't apply to anything prior to its effective date.

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**From:** Iwata, Yuko - DOA  
**Sent:** Wednesday, January 23, 2013 11:26 AM  
**To:** Rosen, Lara K - DHS  
**Cc:** Gauger, Michelle C - DOA  
**Subject:** Divestment

Hi Lara,

Please find attached the latest draft on divestment. Please send me your suggestions/questions if you have any. Per our conversation, I will talk to Pam about where they are on estate recovery.

See you soon,

**Yuko Iwata**

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



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-07491-2

TJD:kjf:jm

RMR

In: 2/1/13

DOA:.....Iwata, BB0289 – Alter divestment provisions to prevent individuals with sufficient financial means from being eligible for Medical Assistance

**FOR 2013-2015 BUDGET – NOT READY FOR INTRODUCTION**

Don't Gen

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

*Analysis by the Legislative Reference Bureau*

**HEALTH AND HUMAN SERVICES**

**MEDICAL ASSISTANCE**

Currently, DHS administers the Medical Assistance (MA) program, which is a joint federal and state program that provides health and long-term care services to individuals who have limited resources. Eligibility for certain MA programs, especially those providing long-term care services, involves satisfying certain income and asset requirements. An individual who divests income or assets, or disposes of income or assets for less than fair market value, may be ineligible for a MA program for a certain period of time. This bill makes various changes to the laws regarding divestment and financial eligibility for MA programs.

Under current law, with certain exceptions, if an institutionalized, or noninstitutionalized, individual or his or her spouse transfers assets for less than fair market value on or after a specific date the institutionalized or noninstitutionalized individual is ineligible for certain MA services for a specified period of time. An institutionalized individual, under current law, is an individual who is an inpatient in a nursing facility or a medical institution or an individual who meets certain criteria and would require the level of care provided in a hospital,

nursing facility, or intermediate care facility for persons with an intellectual disability if the individual was not receiving certain home-based or community-based services. A noninstitutionalized individual, under current law, is an individual who is receiving home health services, home and community care services as a functionally disabled elderly individual, or certain personal care services provided by a qualified provider in the individual's home or other noninstitutional location. The bill specifies that an ineligibility period applies for an institutionalized or noninstitutionalized individual regardless of whether the assets transferred for less than fair market value are considered excluded assets, if retained, under federal law.

Under current law, one of the exceptions DHS is required to make from imposing an ineligibility period for the transfer of assets for less than fair market value applies if the assets are exempt under federal law. The bill specifies that to make a satisfactory showing to the state to meet one of the federal exemptions and to adjust the ineligibility period, the individual shall have all of the assets, or cash equal to the value of the assets, that were transferred at less than fair market value returned to him or her.

Current law specifies a method for determining the starting date for a period of ineligibility for MA resulting from a divestment. This bill specifies that the current law method for determining the starting date for a period of ineligibility applies to applicants for MA. The bill sets as the starting date for a period of ineligibility for MA for an individual who is already receiving long-term care services through MA the first day of the month following the month in which the individual receives advance notice of that period of ineligibility.

Under current law, the purchase by an individual or his or her spouse of a promissory note, loan, or mortgage is a transfer of assets for less than fair market value triggers an ineligibility period unless all of the following apply: the repayment term is actuarially sound; the payments are to be made in equal amounts during the loan's term with no deferral and no balloon payment; and the loan's terms prohibit cancellation of the balance upon the death of the lender. This bill specifies that a promissory note in which the debtor is a presumptive heir of the lender or in which neither the lender nor debtor has any incentive to enforce repayment is considered cancelled upon the death of the lender for purposes of divestment and eligibility for MA.

Current law provides for protection of certain income and resources for a spouse who is not receiving long-term care services through MA, known as the community spouse, of an institutionalized individual. Under current law, after an institutionalized spouse is determined to be eligible for MA and during a continuous period of institutionalization, the resources of the community spouse are considered to be unavailable to the institutionalized spouse. This bill specifies that even though the community spouse's resources are considered unavailable the transfer of those resources or other assets by the community spouse within the first five years of eligibility for MA may result in a period of ineligibility for MA for the institutionalized spouse. The bill also allows DHS to deny MA eligibility to an institutionalized spouse if the institutionalized spouse and community spouse do not

must demonstrate that

have been

provide the total value of their assets and information on income and resources to the extent required under federal law or do not sign the MA application.

Current law allows a community spouse to have a minimum monthly maintenance needs allowance and the community spouse is allowed a resource allowance to generate the income to provide the minimum monthly maintenance needs allowance. If either spouse establishes at a fair hearing that the resource allowance determined outside the fair hearing does not generate enough income to meet the minimum monthly maintenance needs allowance, DHS is required, under current law, to establish an amount that results in a sufficient minimum monthly maintenance needs allowance. The bill specifies that DHS must base the amount to be used to raise the income to the level of the minimum monthly maintenance needs allowance on the cost of a single premium lifetime annuity that pays monthly amounts that, combined with other available income, raise the community spouse's income to the minimum monthly maintenance needs allowance. The community spouse, however, is not required to actually purchase the annuity to receive the amount.

Under current law, certain individuals are eligible for MA for the medically indigent if they also meet limitations on income and resources. Eligibility for the program is contingent on the applicant's property not exceeding certain parameters. Certain applicants, under current law, are eligible only if the total face value of all of their life insurance policies that have a cash surrender value is \$1,500 or less. The bill changes this parameter such that those applicants are eligible only if the combined cash surrender value of all life insurance policies with cash surrender values, including riders and other attachments is \$1,500 or less.

The bill also changes the definition of financial institution for purposes of verifying the assets of applicants for and recipients of MA programs.

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:***

1           **SECTION 1.** 49.45 (4m) (a) 3. of the statutes is renumbered 49.45 (4m) (a) 3.

2           (intro.) and amended to read:

3           49.45 (4m) (a) 3. (intro.) “Financial institution” ~~has the meaning given in 12~~

4           USC 3401 (1). means any of the following:

5           **SECTION 2.** 49.45 (4m) (a) 3. a. to f. of the statutes are created to read:

6           49.45 (4m) (a) 3. a. A depository institution, as defined in 12 USC 1813 (c).

1           b. An institution–affiliated party, as defined in 12 USC 1813 (u), of a depository  
2 institution under subd. 3. a.

3           c. A federal credit union, as defined in 12 USC 1752, or state credit union, as  
4 defined in 12 USC 1752.

5           d. An institution–affiliated party, as defined in 12 USC 1786 (r), of a credit  
6 union under subd. 3. c.

7           e. A benefit association, insurance company, safe deposit company, money  
8 market mutual fund, or similar entity authorized to do business in this state.

9           f. A broker–dealer, as defined in s. 551.102 (4).

10          **SECTION 3.** 49.453 (2) (a) (intro.) of the statutes is amended to read:

11          49.453 (2) (a) *Institutionalized individuals.* (intro.) Except as provided in sub.  
12 (8), if an institutionalized individual or his or her spouse, or another person acting  
13 on behalf of the institutionalized individual or his or her spouse, transfers assets;  
14 regardless of whether those assets, if retained, are excluded under 42 USC 1396p;  
15 for less than fair market value on or after the institutionalized individual’s look–back  
16 date, the institutionalized individual is ineligible for medical assistance for the  
17 following services for the period specified under sub. (3):

18          **SECTION 4.** 49.453 (2) (b) (intro.) of the statutes is amended to read:

19          49.453 (2) (b) *Noninstitutionalized individuals.* (intro.) Except as provided in  
20 sub. (8), if a noninstitutionalized individual or his or her spouse, or another person  
21 acting on behalf of the noninstitutionalized individual or his or her spouse, transfers  
22 assets; regardless of whether those assets, if retained, are excluded under 42 USC  
23 1396p; for less than fair market value on or after the noninstitutionalized  
24 individual’s look–back date, the noninstitutionalized individual is ineligible for  
25 medical assistance for the following services for the period specified under sub. (3):

1           **SECTION 5.** 49.453 (3) (a) (intro.) of the statutes is amended to read:

2           49.453 (3) (a) (intro.) The period of ineligibility under this subsection begins  
3 on either of the following for an applicant for Medical Assistance:

4           **SECTION 6.** 49.453 (3) (ag) of the statutes is created to read:

5           49.453 (3) (ag) The period of ineligibility under this subsection for a transfer  
6 of assets made at the time the individual is receiving long-term care services through  
7 Medical Assistance begins on the first day of the month following the month in which  
8 the individual receives advance notice of the period of ineligibility.

9           **SECTION 7.** 49.453 (4c) (c) of the statutes is created to read:

10          49.453 (4c) (c) A promissory note in which the debtor is a presumptive heir of  
11 the lender or in which neither the lender nor debtor has any incentive to enforce  
12 repayment is considered cancelled upon the death of the lender for purposes of this  
13 section.

14          **SECTION 8.** 49.453 (8) (a) 1. of the statutes is amended to read:

15          49.453 (8) (a) 1. The assets are exempt under 42 USC 1396p (c) (2) (A), (B), or  
16 (C). To make a satisfactory showing to the state under 42 USC 1396p (c) (2) (C) and

17 adjust the ineligibility period under sub. (3), the individual shall <sup>e</sup> have all of the  
18 assets transferred for less than fair market value, or cash equal to the value of the

19 assets transferred for less than fair market, returned to him or her. have been

20          **SECTION 9.** 49.455 (5) (title) of the statutes is amended to read:

21          49.455 (5) (title) RULES FOR TREATMENT OF RESOURCES; INELIGIBILITY.

22          **SECTION 10.** 49.455 (5) (d) of the statutes is amended to read:

23          49.455 (5) (d) During a continuous period of institutionalization, after an  
24 institutionalized spouse is determined to be eligible for medical assistance, no  
25 resources of the community spouse are considered to be available to the

1 institutionalized spouse, except that a transfer of those resources or other assets by  
2 the community spouse within the first 5 years of eligibility of the institutionalized  
3 spouse may result in a period of ineligibility under s. 49.453 (2) and (3) for the  
4 institutionalized spouse.

5 **SECTION 11.** 49.455 (5) (e) of the statutes is created to read:

6 49.455 (5) (e) The department may deny to the institutionalized spouse  
7 eligibility for Medical Assistance if, when requested by the department, the  
8 institutionalized spouse and the community spouse do not provide the total value of  
9 their assets and information on income and resources to the extent required under  
10 federal Medicaid law or sign the application for Medical Assistance.

11 **SECTION 12.** 49.455 (8) (d) of the statutes is renumbered 49.455 (8) (d) 1. and  
12 amended to read:

13 49.455 (8) (d) 1. If either spouse establishes at a fair hearing that the  
14 community spouse resource allowance determined under sub. (6) (b) 1. to 2. or 4.  
15 without a fair hearing does not generate enough income to raise the community  
16 spouse's income to the minimum monthly maintenance needs allowance under sub.  
17 (4) (c), the department shall establish, under subd. 2., an amount to be used under  
18 sub. (6) (b) 3. that results in a community spouse resource allowance that generates  
19 enough income to raise the community spouse's income to the minimum monthly  
20 maintenance needs allowance under sub. (4) (c).

21 3. Except in exceptional cases which would result in financial duress for the  
22 community spouse, the department may not establish an amount to be used under  
23 sub. (6) (b) 3. unless the institutionalized spouse makes available to the community  
24 spouse the maximum monthly income allowance permitted under sub. (4) (b) or, if  
25 the institutionalized spouse does not have sufficient income to make available to the

1 community spouse the maximum monthly income allowance permitted under sub.  
2 (4) (b), unless the institutionalized spouse makes all of his or her income, except for  
3 an amount equal to the sum of the personal needs allowance under sub. (4) (a) 1. and  
4 any family allowances under sub. (4) (a) 3. paid by the institutionalized spouse and  
5 the amount incurred as expenses for medical or remedial care for the  
6 institutionalized spouse under sub. (4) (a) 4., available to the community spouse as  
7 a community spouse monthly income allowance under sub. (4) (b).

8 **SECTION 13.** 49.455 (8) (d) 2. of the statutes is created to read:

9 49.455 (8) (d) 2. The department shall base the amount to be used under sub.  
10 (6) (b) 3. on the cost of a single premium lifetime annuity that pays monthly amounts  
11 that, combined with other available income, raises the community spouse's income  
12 to the minimum monthly maintenance needs allowance. Any resource, regardless  
13 of whether the resource generates income, may be transferred in an amount that,  
14 combined with the community spouse resource allowance calculated before the fair  
15 hearing, provides the community spouse with sufficient funds to purchase the  
16 annuity. The community spouse is not required to purchase an annuity to obtain this  
17 amount.

18 **SECTION 14.** 49.47 (4) (b) 2w. of the statutes is amended to read:

19 49.47 (4) (b) 2w. For a person who is eligible under par. (a) 3. or 4., life insurance  
20 with cash surrender values if the ~~total face~~ combined cash surrender value of all life  
21 insurance policies, including riders and other attachments, is not more than \$1,500.

22 **SECTION 15.** 224.42 (1) (a) of the statutes is amended to read:

23 224.42 (1) (a) "Financial institution" has the meaning given in 12 USC 3401  
24 (1) ~~s.~~ 49.45 (4m) (a) 3.

25 **SECTION 9318. Initial applicability; Health Services.**

; APPLICANTS

1 (1) MEDICAL ASSISTANCE DIVESTMENT. The treatment of sections 49.453 (2) (a)  
 2 (intro.) and (b) (intro.), (3) (a) (intro.) and (ag), (4c) (c), and (8) (a) 1., 49.455 (5) (d) and  
 3 (e), 49.47 (4) (b) 2w., and 224.42 (1) (a) of the statutes, the renumbering and  
 4 amendment of sections 49.45 (4m) (a) 3. and 49.455 (8) (d) of the statutes, and the  
 5 creation of sections 49.45 (4m) (a) 3. a. to f. and 49.455 (8) (d) 2. of the statutes first  
 6 apply to determinations of initial eligibility for Medical Assistance for individuals  
 7 who apply for Medical Assistance on the effective date of this subsection.

8 (END)

Insert 8-8

2013-2014 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-0749/2ins  
TJD:.....

check ↓ 1  
NS: sub 2 →

INSERT 8-8

3 ~~§~~ MEDICAL ASSISTANCE DIVESTMENT; RECIPIENTS. The treatment of sections  
4 49.453 (3) (ag) and 49.455 (5) (d) of the statutes first applies to a transfer of assets  
5 made by a recipient of Medical Assistance or a spouse of a recipient of Medical  
Assistance on the effective date of this subsection.

(END INSERT 8-8)



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-0749/2  
TJD:kjf:jf

DOA:.....Iwata, BB0289 – Alter divestment provisions to prevent individuals with sufficient financial means from being eligible for Medical Assistance

**FOR 2013-2015 BUDGET -- NOT READY FOR INTRODUCTION**

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

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*Analysis by the Legislative Reference Bureau*

**HEALTH AND HUMAN SERVICES**

**MEDICAL ASSISTANCE**

Currently, DHS administers the Medical Assistance (MA) program, which is a joint federal and state program that provides health and long-term care services to individuals who have limited resources. Eligibility for certain MA programs, especially those providing long-term care services, involves satisfying certain income and asset requirements. An individual who divests income or assets, or disposes of income or assets for less than fair market value, may be ineligible for a MA program for a certain period of time. This bill makes various changes to the laws regarding divestment and financial eligibility for MA programs.

Under current law, with certain exceptions, if an institutionalized, or noninstitutionalized, individual or his or her spouse transfers assets for less than fair market value on or after a specific date the institutionalized or noninstitutionalized individual is ineligible for certain MA services for a specified period of time. An institutionalized individual, under current law, is an individual who is an inpatient in a nursing facility or a medical institution or an individual who meets certain criteria and would require the level of care provided in a hospital,

nursing facility, or intermediate care facility for persons with an intellectual disability if the individual was not receiving certain home-based or community-based services. A noninstitutionalized individual, under current law, is an individual who is receiving home health services, home and community care services as a functionally disabled elderly individual, or certain personal care services provided by a qualified provider in the individual's home or other noninstitutional location. The bill specifies that an ineligibility period applies for an institutionalized or noninstitutionalized individual regardless of whether the assets transferred for less than fair market value are considered excluded assets, if retained, under federal law.

Under current law, one of the exceptions DHS is required to make from imposing an ineligibility period for the transfer of assets for less than fair market value applies if the assets are exempt under federal law. The bill specifies that to make a satisfactory showing to the state to meet one of the federal exemptions and to adjust the ineligibility period, the individual must demonstrate that all of the assets, or cash equal to the value of the assets, that were transferred at less than fair market value have been returned to him or her.

Current law specifies a method for determining the starting date for a period of ineligibility for MA resulting from a divestment. This bill specifies that the current law method for determining the starting date for a period of ineligibility applies to applicants for MA. The bill sets as the starting date for a period of ineligibility for MA for an individual who is already receiving long-term care services through MA the first day of the month following the month in which the individual receives advance notice of that period of ineligibility.

Under current law, the purchase by an individual or his or her spouse of a promissory note, loan, or mortgage is a transfer of assets for less than fair market value triggers an ineligibility period unless all of the following apply: the repayment term is actuarially sound; the payments are to be made in equal amounts during the loan's term with no deferral and no balloon payment; and the loan's terms prohibit cancellation of the balance upon the death of the lender. This bill specifies that a promissory note in which the debtor is a presumptive heir of the lender or in which neither the lender nor debtor has any incentive to enforce repayment is considered cancelled upon the death of the lender for purposes of divestment and eligibility for MA.

Current law provides for protection of certain income and resources for a spouse who is not receiving long-term care services through MA, known as the community spouse, of an institutionalized individual. Under current law, after an institutionalized spouse is determined to be eligible for MA and during a continuous period of institutionalization, the resources of the community spouse are considered to be unavailable to the institutionalized spouse. This bill specifies that even though the community spouse's resources are considered unavailable the transfer of those resources or other assets by the community spouse within the first five years of eligibility for MA may result in a period of ineligibility for MA for the institutionalized spouse. The bill also allows DHS to deny MA eligibility to an institutionalized spouse if the institutionalized spouse and community spouse do not

provide the total value of their assets and information on income and resources to the extent required under federal law or do not sign the MA application.

Current law allows a community spouse to have a minimum monthly maintenance needs allowance and the community spouse is allowed a resource allowance to generate the income to provide the minimum monthly maintenance needs allowance. If either spouse establishes at a fair hearing that the resource allowance determined outside the fair hearing does not generate enough income to meet the minimum monthly maintenance needs allowance, DHS is required, under current law, to establish an amount that results in a sufficient minimum monthly maintenance needs allowance. The bill specifies that DHS must base the amount to be used to raise the income to the level of the minimum monthly maintenance needs allowance on the cost of a single premium lifetime annuity that pays monthly amounts that, combined with other available income, raise the community spouse's income to the minimum monthly maintenance needs allowance. The community spouse, however, is not required to actually purchase the annuity to receive the amount.

Under current law, certain individuals are eligible for MA for the medically indigent if they also meet limitations on income and resources. Eligibility for the program is contingent on the applicant's property not exceeding certain parameters. Certain applicants, under current law, are eligible only if the total face value of all of their life insurance policies that have a cash surrender value is \$1,500 or less. The bill changes this parameter such that those applicants are eligible only if the combined cash surrender value of all life insurance policies with cash surrender values, including riders and other attachments is \$1,500 or less.

The bill also changes the definition of financial institution for purposes of verifying the assets of applicants for and recipients of MA programs.

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

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

1           **SECTION 1.** 49.45 (4m) (a) 3. of the statutes is renumbered 49.45 (4m) (a) 3.

2 (intro.) and amended to read:

3           49.45 (4m) (a) 3. (intro.) "Financial institution" has the meaning given in 12

4 USC 3401 (1). means any of the following:

5           **SECTION 2.** 49.45 (4m) (a) 3. a. to f. of the statutes are created to read:

6           49.45 (4m) (a) 3. a. A depository institution, as defined in 12 USC 1813 (c).

1           b. An institution–affiliated party, as defined in 12 USC 1813 (u), of a depository  
2 institution under subd. 3. a.

3           c. A federal credit union, as defined in 12 USC 1752, or state credit union, as  
4 defined in 12 USC 1752.

5           d. An institution–affiliated party, as defined in 12 USC 1786 (r), of a credit  
6 union under subd. 3. c.

7           e. A benefit association, insurance company, safe deposit company, money  
8 market mutual fund, or similar entity authorized to do business in this state.

9           f. A broker–dealer, as defined in s. 551.102 (4).

10          **SECTION 3.** 49.453 (2) (a) (intro.) of the statutes is amended to read:

11          49.453 (2) (a) *Institutionalized individuals.* (intro.) Except as provided in sub.  
12 (8), if an institutionalized individual or his or her spouse, or another person acting  
13 on behalf of the institutionalized individual or his or her spouse, transfers assets;  
14 regardless of whether those assets, if retained, are excluded under 42 USC 1396p;  
15 for less than fair market value on or after the institutionalized individual’s look–back  
16 date, the institutionalized individual is ineligible for medical assistance for the  
17 following services for the period specified under sub. (3):

18          **SECTION 4.** 49.453 (2) (b) (intro.) of the statutes is amended to read:

19          49.453 (2) (b) *Noninstitutionalized individuals.* (intro.) Except as provided in  
20 sub. (8), if a noninstitutionalized individual or his or her spouse, or another person  
21 acting on behalf of the noninstitutionalized individual or his or her spouse, transfers  
22 assets; regardless of whether those assets, if retained, are excluded under 42 USC  
23 1396p; for less than fair market value on or after the noninstitutionalized  
24 individual’s look–back date, the noninstitutionalized individual is ineligible for  
25 medical assistance for the following services for the period specified under sub. (3):

1           **SECTION 5.** 49.453 (3) (a) (intro.) of the statutes is amended to read:

2           49.453 (3) (a) (intro.) The period of ineligibility under this subsection begins  
3 on either of the following for an applicant for Medical Assistance:

4           **SECTION 6.** 49.453 (3) (ag) of the statutes is created to read:

5           49.453 (3) (ag) The period of ineligibility under this subsection for a transfer  
6 of assets made at the time the individual is receiving long-term care services through  
7 Medical Assistance begins on the first day of the month following the month in which  
8 the individual receives advance notice of the period of ineligibility.

9           **SECTION 7.** 49.453 (4c) (c) of the statutes is created to read:

10          49.453 (4c) (c) A promissory note in which the debtor is a presumptive heir of  
11 the lender or in which neither the lender nor debtor has any incentive to enforce  
12 repayment is considered cancelled upon the death of the lender for purposes of this  
13 section.

14          **SECTION 8.** 49.453 (8) (a) 1. of the statutes is amended to read:

15          49.453 (8) (a) 1. The assets are exempt under 42 USC 1396p (c) (2) (A), (B), or  
16 (C). To make a satisfactory showing to the state under 42 USC 1396p (c) (2) (C) and  
17 adjust the ineligibility period under sub. (3), the individual shall demonstrate that  
18 all of the assets transferred for less than fair market value, or cash equal to the value  
19 of the assets transferred for less than fair market, have been returned to him or her.

20          **SECTION 9.** 49.455 (5) (title) of the statutes is amended to read:

21          49.455 (5) (title) RULES FOR TREATMENT OF RESOURCES; INELIGIBILITY.

22          **SECTION 10.** 49.455 (5) (d) of the statutes is amended to read:

23          49.455 (5) (d) During a continuous period of institutionalization, after an  
24 institutionalized spouse is determined to be eligible for medical assistance, no  
25 resources of the community spouse are considered to be available to the

1 institutionalized spouse, except that a transfer of those resources or other assets by  
2 the community spouse within the first 5 years of eligibility of the institutionalized  
3 spouse may result in a period of ineligibility under s. 49.453 (2) and (3) for the  
4 institutionalized spouse.

5 **SECTION 11.** 49.455 (5) (e) of the statutes is created to read:

6 49.455 (5) (e) The department may deny to the institutionalized spouse  
7 eligibility for Medical Assistance if, when requested by the department, the  
8 institutionalized spouse and the community spouse do not provide the total value of  
9 their assets and information on income and resources to the extent required under  
10 federal Medicaid law or sign the application for Medical Assistance.

11 **SECTION 12.** 49.455 (8) (d) of the statutes is renumbered 49.455 (8) (d) 1. and  
12 amended to read:

13 49.455 (8) (d) 1. If either spouse establishes at a fair hearing that the  
14 community spouse resource allowance determined under sub. (6) (b) 1. to 2. or 4.  
15 without a fair hearing does not generate enough income to raise the community  
16 spouse's income to the minimum monthly maintenance needs allowance under sub.  
17 (4) (c), the department shall establish, under subd. 2., an amount to be used under  
18 sub. (6) (b) 3. that results in a community spouse resource allowance that generates  
19 enough income to raise the community spouse's income to the minimum monthly  
20 maintenance needs allowance under sub. (4) (c).

21 3. Except in exceptional cases which would result in financial duress for the  
22 community spouse, the department may not establish an amount to be used under  
23 sub. (6) (b) 3. unless the institutionalized spouse makes available to the community  
24 spouse the maximum monthly income allowance permitted under sub. (4) (b) or, if  
25 the institutionalized spouse does not have sufficient income to make available to the

1 community spouse the maximum monthly income allowance permitted under sub.  
2 (4) (b), unless the institutionalized spouse makes all of his or her income, except for  
3 an amount equal to the sum of the personal needs allowance under sub. (4) (a) 1. and  
4 any family allowances under sub. (4) (a) 3. paid by the institutionalized spouse and  
5 the amount incurred as expenses for medical or remedial care for the  
6 institutionalized spouse under sub. (4) (a) 4., available to the community spouse as  
7 a community spouse monthly income allowance under sub. (4) (b).

8 **SECTION 13.** 49.455 (8) (d) 2. of the statutes is created to read:

9 49.455 (8) (d) 2. The department shall base the amount to be used under sub.  
10 (6) (b) 3. on the cost of a single premium lifetime annuity that pays monthly amounts  
11 that, combined with other available income, raises the community spouse's income  
12 to the minimum monthly maintenance needs allowance. Any resource, regardless  
13 of whether the resource generates income, may be transferred in an amount that,  
14 combined with the community spouse resource allowance calculated before the fair  
15 hearing, provides the community spouse with sufficient funds to purchase the  
16 annuity. The community spouse is not required to purchase an annuity to obtain this  
17 amount.

18 **SECTION 14.** 49.47 (4) (b) 2w. of the statutes is amended to read:

19 49.47 (4) (b) 2w. For a person who is eligible under par. (a) 3. or 4., life insurance  
20 with cash surrender values if the ~~total face~~ combined cash surrender value of all life  
21 insurance policies, including riders and other attachments, is not more than \$1,500.

22 **SECTION 15.** 224.42 (1) (a) of the statutes is amended to read:

23 224.42 (1) (a) "Financial institution" has the meaning given in ~~12 USC 3401~~  
24 ~~(1)~~ s. 49.45 (4m) (a) 3.

25 **SECTION 9318. Initial applicability; Health Services.**

