



State of Wisconsin  
2015 - 2016 LEGISLATURE

LRB-1150/2  
PJK:wlj:wj

DOA:.....Dombrowski, BB0394 – Promissory notes as assets and divestment  
for MA

**FOR 2015-2017 BUDGET -- NOT READY FOR INTRODUCTION**

**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. To be eligible for certain MA programs, especially those providing long-term care services, including family care, an individual must satisfy certain income and asset requirements. This bill provides that, when determining or redetermining an individual's financial eligibility for an MA long-term care program, or any other MA program that counts assets for determining or redetermining financial eligibility, DHS must include as a countable asset a promissory note for which the individual or his or her spouse provided the goods, money loaned, or services rendered, that is entered into or purchased on or after the effective date of the 2015-17 budget act, that is negotiable, assignable, and enforceable, and that does not contain any terms making the note unmarketable. The bill provides that a promissory note is presumed to be negotiable and that its value is the outstanding principal balance at the time of the individual's application or redetermination of eligibility for MA, unless the individual shows by credible evidence from a knowledgeable source that the note is nonnegotiable or has a different current market value, which will then be considered the note's value.

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 (which is generally 60 months before the individual applies for MA), the institutionalized or noninstitutionalized individual is ineligible for certain MA services for a specified period of time. This is commonly known as divestment.

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 that triggers a period of ineligibility for MA 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 provides that the entering into or purchase of a promissory note by an individual or his or her spouse on or after the effective date of the 2015–17 budget act is a transfer of assets for less than fair market value that triggers a period of ineligibility for MA unless all of the following apply to the promissory note: it satisfies the previously stated requirements under current law; and it is negotiable, assignable, and enforceable and does not contain any terms making the note unmarketable.

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:***

**SECTION 1.** 46.2896 of the statutes is created to read:

**46.2896 Counting promissory notes as assets. (1)** In this section:

(a) “Long-term care program” means the long-term care program under s. 46.27, 46.275, 46.277, 46.278, or 46.2785; the family care program providing the benefit under s. 46.286; the Family Care Partnership program; or the long-term care program defined in s. 46.2899 (1), 2013 stats.

(b) “Promissory note” means a written, unconditional agreement, given in return for goods, money loaned, or services rendered, under which one party promises to pay another party a specified sum of money at a specified time or on demand.

(2) When determining or redetermining an individual's financial eligibility for a long-term care program, the department shall include a promissory note as a countable asset if all of the following apply:

(a) The individual applying for or receiving benefits under the long-term care program or his or her spouse provided the goods, money loaned, or services rendered for the promissory note.

(b) The promissory note was entered into or purchased on or after the effective date of this paragraph ... [LRB inserts date].

(c) The promissory note is negotiable, assignable, and enforceable and does not contain any terms making it unmarketable.

(3) A promissory note is presumed to be negotiable and its asset value is the outstanding principal balance at the time the individual applies for the long-term care program or at the time the individual's eligibility for the long-term care program is redetermined, unless the individual shows by credible evidence from a knowledgeable source that the note is nonnegotiable or has a different current market value, which will then be considered the asset value.

**SECTION 2.** 49.452 of the statutes is created to read:

**49.452 Counting promissory notes as assets for certain Medical Assistance programs.** (1) In this section, "promissory note" means a written, unconditional agreement, given in return for goods, money loaned, or services rendered, under which one party promises to pay another party a specified sum of money at a specified time or on demand.

(2) If an individual's assets are counted when determining or redetermining the individual's financial eligibility for Medical Assistance, the department shall include a promissory note as a countable asset if all of the following apply:

(a) The individual applying for or receiving benefits under Medical Assistance or his or her spouse provided the goods, money loaned, or services rendered for the promissory note.

(b) The promissory note was entered into or purchased on or after the effective date of this paragraph .... [LRB inserts date].

(c) The promissory note is negotiable, assignable, and enforceable and does not contain any terms making it unmarketable.

**(3)** A promissory note is presumed to be negotiable and its asset value is the outstanding principal balance at the time the individual applies for Medical Assistance or at the time the individual's eligibility for Medical Assistance is redetermined, unless the individual shows by credible evidence from a knowledgeable source that the note is nonnegotiable or has a different current market value, which will then be considered the asset value.

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

49.453 **(4c)** (am) Notwithstanding par. (a), for purposes of sub. (2), the purchase of or entering into a promissory note by an individual or his or her spouse on or after the effective date of this paragraph .... [LRB inserts date], is a transfer of assets for less than fair market value unless all of the following apply:

1. The promissory note satisfies the requirements under par. (a) 1. to 3.

2. The promissory note is negotiable, assignable, and enforceable and does not contain any terms making it unmarketable.

**SECTION 4.** 49.453 (4c) (b) of the statutes is renumbered 49.453 (4c) (b) 1. and amended to read:

49.453 **(4c)** (b) 1. The value of a promissory note, purchased before the effective date of this subdivision .... [LRB inserts date], a loan, or a mortgage that does not

satisfy the requirements under par. (a) 1. to 3. is the outstanding balance due on the date that the individual applies for medical assistance for nursing facility services or other long-term care services described in sub. (2).

**SECTION 5.** 49.453 (4c) (b) 2. of the statutes is created to read:

49.453 (4c) (b) 2. The value of a promissory note purchased or entered into on or after the effective date of this subdivision .... [LRB inserts date], that does not satisfy the requirements under par. (am) 1. and 2. is the outstanding balance due on the date that the individual applies for Medical Assistance for nursing facility services or other long-term care services described in sub. (2) or on the date that the individual's eligibility for Medical Assistance for nursing facility services or other long-term care services described in sub. (2) is redetermined.

(END)